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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
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Filing Date: April 19, 2019) Case No.: PSH-19-0023
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Issued: July 16, 2019

Administrative Judge Decision

Brooke A. DuBois, Administrative Judge:

This Decision concerns the eligibility of XXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s security clearance should not be granted.

I. BACKGROUND

The Individual is employed in a position that requires him to obtain a security clearance. During his background investigation, information pertaining to the Individual’s alcohol consumption prompted the Local Security Office (LSO) to conduct a Personnel Security Interview (PSI) with the Individual in September 2018. Ex. 9. After the PSI, a DOE-consultant Psychologist (DOE Psychologist) conducted an evaluation of the Individual, submitting a report in December 2018 (Psychological Evaluation). Ex. 6.

Because the PSI and Psychological Evaluation did not resolve the security concerns raised by the Individual’s alcohol consumption, the LSO informed the Individual, in a letter dated March 26, 2019 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised concerns under Guideline G (Alcohol Consumption). Ex. 1.

¹ Under the regulations, “access authorization” means an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will also be referred to in this Decision as a security clearance.

The Individual requested an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently convened a hearing pursuant to 10 C.F.R. § 710.25(d), (e) and (g). Before the hearing, the LSO submitted ten numbered exhibits (Ex. 1-10) and the Individual submitted eight lettered exhibits (Ex. A-H). During the hearing, the Individual testified on his own behalf, while the LSO presented the testimony of the DOE Psychologist. *See* Transcript of Hearing, Case No. PSH-19-0023 (hereinafter cited as “Tr.”). After the hearing, the Individual submitted an additional exhibit (Ex. I).

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance, citing Guideline G of the Adjudicative Guidelines as the basis. Ex. 1. “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.” Adjudicative Guideline G at ¶ 21. In invoking Guideline G, the LSO cited the DOE Psychologist’s conclusion that the Individual meets the *Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, 5th edition* (DSM-5) criteria for Alcohol Use Disorder-Moderate and five alcohol-related arrests. Ex. 1. Alcohol-related incidents away from work and the diagnosis by a duly qualified mental health professional both justify the LSO’s invocation of Guideline G. Guideline G at ¶ (a), (d).

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. FINDINGS OF FACT

The Individual has a lengthy history with alcohol. He began drinking when he turned 21 in 2005. Ex. 9 at 39. He described his consumption as “moderate,” drinking a six pack of beer over the weekend. *Id.* Later that year, the Individual joined the military at which point his alcohol consumption “started to increase pretty steadily” once he completed basic training *Id.* Eventually, his alcohol consumption increased to a six-pack of beer most days, with the Individual becoming intoxicated most weekends by consuming approximately eight to twelve beers. *Id.* at 46-47.

When the Individual left the military in 2009, he spent “the better part of three...four weeks” consuming alcohol, anywhere from six to ten beers, every day. *Id.* at 48. During the PSI, the Individual described several periods in which he would quit drinking for a period of months, then start drinking again at the levels previously described. *Id.* at 49-56. The Individual’s abstinence from alcohol consumption was typically precipitated by an alcohol-related arrest. *See id.* at 52 (when the Individual stopped drinking after being arrested for an incident with his sister and for throwing a beer can at a sign in 2011); *id.* at 54 (when the Individual stopped drinking after being arrested for Driving Under the Influence (DUI) in 2012); and *id.* at 56 (when the Individual stopped drinking after being arrested after his participation in a bar fight in 2014). After his 2012 DUI, the Individual completed several months of court-required substance abuse counseling. *Id.* at 69-72.

During the PSI, the Individual stated that, in 2017, he cut back his alcohol consumption to its current level. *Id.* at 58. Although he was still consuming alcohol at this time, he had stopped drinking during the week, drinking between six to eight beers over the course of the weekend. *Id.* at 59. The Individual stated that, although he often reported to duty hungover when he was in military service, only once since then, in 2016, has he had to use sick leave due to being too hungover to go to work. *Id.* 61-62.

The Individual stated that his previous attempts to abstain from alcohol resulted from legal issues, health considerations, and family pressure. His doctor advised him on at least two occasions during his annual checkup to stop drinking due to possible adverse effects on his liver. *Id.* at 64-65. His mother often made comments about his drinking, especially when bailing him out of jail after an alcohol-related arrest. *Id.* at 66. During the September 2018 PSI, the Individual recognized that he had a problem with alcohol and stated that he intended to be abstinent. *Id.* at 72.

In December 2018, the Individual reported to the DOE Psychologist that he was still consuming alcohol, describing his alcohol consumption over the past year as three to four beers, sometimes six on a Friday evening. Ex. 6 at 4. The Individual also expressed an intention to quit consuming alcohol, just as he did during the PSI. *Id.* The DOE Psychologist noted that there were discrepancies between the alcohol history the Individual provided at different points in the security clearance process and to previous medical providers. *Id.* As part of the Psychological Evaluation, the Individual submitted to Ethyl Glucuronide (EtG) test and Phosphatidylethanol (PEth) blood tests. *Id.* at 5. The EtG was positive, indicating that the Individual consumed alcohol during the three days prior, and the PEth test was positive at a level consistent with regular heavy consumption of

alcohol.² *Id.* at 14. The DOE Psychologist noted that the laboratory results were inconsistent with the Individual's reporting of his current alcohol consumption. *Id.* at 8.

The DOE Psychologist diagnosed the Individual with Alcohol Use Disorder - Moderate and recommended that the Individual abstain from alcohol for at least six months and attend alcohol rehabilitation counseling (either on an individual basis or by attending Alcoholics Anonymous (AA) meetings). *Id.* at 10. The DOE Psychologist also recommended random alcohol testing approximately six times throughout the six-month treatment period. *Id.* The DOE Psychologist specifically stated that, given the Individual's history, she did not recommend that the Individual address his alcohol use by his own efforts, but rather through formal treatment. *Id.* at 11.

During the hearing, the Individual testified, describing the five alcohol-related arrests in the Notification Letter and how much alcohol he had consumed prior to each incident. Tr. at 10-22. The Individual testified that during the last ten years, he stopped consuming alcohol on at least three previous occasions, for as long as a year and a half between 2012 and 2014. Tr. at 29-33. According to the Individual, on at least two occasions, he was arrested after consuming alcohol for the first or second time after ending his abstinence. Tr. at 29, 33. He described tapering off his alcohol consumption in June 2017, once he started his current employment. Tr. at 34.

The Individual testified that he last consumed alcohol "the second to last weekend in March." Tr. at 23. He also began attending AA three times a week the first week in April, around the time he received the notification from DOE about his security clearance, and started working with a sponsor the week before the hearing. Tr. at 24, 41. The Individual testified that he believed he had his drinking under control and that he hopes to stay sober for the rest of his life. Tr. at 24-25. When questioned about why this period of sobriety was different than his other attempts, the Individual stated that he never really committed himself to lifelong abstinence before, and stated that in the back of his mind, he always thought he could control his consumption if he returned to drinking, which he now knows is not true. Tr. at 46.

During the hearing, the DOE Psychologist testified that, in her opinion, there was not adequate evidence of rehabilitation or reformation in the Individual's case because not enough time has passed. Tr. at 64. She further testified that she believes the Individual has a moderate risk of relapse. Tr. at 65. The DOE Psychologist believes that the Individual is on a good path with his abstinence and treatment, but considering the Individual's history of relapse, believes there needs to be a longer period before she can be confident about the sustainability of his sobriety. Tr. at 62-63. The DOE Psychologist stated that, although she would not change her diagnosis based upon the evidence presented at the hearing, she would add the specifier to her diagnosis that the Individual was in early remission. Tr. at 66.

After the hearing, the Individual submitted a June 2019 PEth test, which was negative. Ex. I.

² Regular heavy consumption is described as about four or more drinks a day several days a week or greater amounts less frequently. *Id.*

V. ANALYSIS

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual's security clearance should not be granted. I cannot find that granting the Individual a DOE security clearance will not endanger the common defense and security, and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a).

Guideline G provides that security concerns arising from alcohol consumption can be mitigated when (1) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment; (2) the individual acknowledges his or her pattern of maladaptive alcohol abuse, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations; (3) the individual is participating in counseling or a treatment program, has no history of treatment and relapse, and is making satisfactory progress in a treatment program; or (4) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations. Adjudicative Guidelines at ¶ 23(a)-(d).

In this case, I cannot find that any of the mitigating factors apply. The Individual has a lengthy history of alcohol consumption that has on at least five occasions led to his arrest, with the most recent alcohol-related arrest being in May 2018. Guideline G at ¶ 23(a). Despite this history, the Individual continued to consume alcohol, except for varying periods of sobriety generally after an arrest. At the time of the hearing, the Individual had only been abstinent for approximately two-and-a-half months, which does not demonstrate a clear and established pattern of modified consumption, especially considering his history of relapse. Guideline G at ¶ 23(b)-(c). At the time of the hearing, the Individual had not yet achieved the period of abstinence or treatment recommended by the DOE Psychologist, although his June 2019 PEth test demonstrates that he is making strides in his sobriety. Guideline G at ¶ 23(d). Based on the record before me, including the Individual's history of alcohol consumption, his previous periods of sobriety and relapse, and the short length of his current period of sobriety, I cannot find that the Individual has successfully mitigated the Guideline G security concerns.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was sufficient evidence that raised concerns regarding the Individual's eligibility for a security clearance under Guideline G of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that granting a DOE security clearance to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not grant access

authorization to the Individual at this time. The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Brooke A. DuBois
Administrative Judge
Office of Hearings and Appeals