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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: May 1, 2019)	Case No.:	PSH-19-0025
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Issued: July 23, 2019

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (hereinafter referred to as “the Individual”) for 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, I conclude that the Individual’s security clearance should be restored.

I. BACKGROUND

On February 15, 2018, the Individual’s employer administered an alcohol test to the Individual at his supervisor’s request. Ex. 9 at 16. That test measured his blood alcohol content (BAC) at .029. Ex. 6 at 3. The Individual had a history of alcohol-related incidents including a July 1986 arrest for Driving Under the Influence (DUI). The Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual on May 30, 2018, in which the Individual provided additional derogatory information concerning his alcohol consumption. Ex. 9 at 1. Because this derogatory information raised concerns about the Individual’s alcohol use and psychological state, the LSO asked the Individual to undergo an evaluation by a DOE Psychiatrist (the Psychiatrist). The Psychiatrist conducted a clinical interview (the Clinical Interview) of the Individual on July 26, 2018, and on August 7, 2018, he issued a report concluding that the Individual met the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, by the American Psychiatric Association, 5th edition (DSM-5), for Alcohol Use Disorder (AUD), Moderate, in early remission. Ex. 7 at 1, 3, 8. On the basis of the Psychiatrist’s opinion, and the Individual’s history of alcohol-related incidents at work and outside of work, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to

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.

a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on May 1, 2019. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual, the clinical supervisor (the Clinical Supervisor) of the Individual's Intensive Outpatient Program (IOP), his counselor (the Counselor), his Alcoholics Anonymous (AA) Sponsor (the Sponsor), his former supervisor, his current supervisor, and the Psychiatrist. *See* Transcript of Hearing, Case No. PSH-19-0025 (hereinafter cited as "Tr."). The LSO submitted ten exhibits, marked as Exhibits 1 through 10 (hereinafter cited as "Ex."). The Individual submitted 20 exhibits, marked as Exhibits A through T.

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. That information pertains to Guideline G of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). Specifically, the LSO alleges that the Individual has been diagnosed by a Psychiatrist with AUD, Moderate, and has a history of alcohol-related incidents. This information adequately justifies the LSO's invocation of Guideline G and raises significant security concerns. The Adjudicative Guidelines state: "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." Guideline G at ¶ 21. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern are (1) "alcohol-related incidents away from work, such as driving while under the influence . . . regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder" (Guideline G at § 22(a)); (2) "alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder." (Guideline G at § 22(b)) and (3) "diagnosis by a duly qualified medical or mental health professional (e.g., . . . psychiatrist, . . .) of alcohol use disorder" (Guideline G at § 22(d)). These allegations adequately justify the LSO's invocation of Guideline G.

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. The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

On February 15, 2018, the Individual’s employer administered, at his supervisor’s request, a test for alcohol to the Individual at the Individual’s workplace at 2:40 p.m. Ex. 6 at 3. That test measured the Individual’s BAC at .029. Ex. 6 at 3.

On May 30, 2018, the LSO conducted a PSI of the Individual. During this PSI, the Individual acknowledged that his alcohol consumption is “definitely a problem.” Ex. 9 at 90. The Individual admitted drinking very heavily on the night of February 14, 2018. Ex. 9 at 18-21. The Individual reported that, several years prior, after a night of heavy drinking, the he had been tested for alcohol use after falling asleep at his desk at work. Ex. 9 at 83-84. The Individual tested positive for alcohol at that time. Ex. 9 at 84. The Individual further reported that his mother had expressed concerns about his alcohol consumption. Ex. 9 at 88. The Individual admitted that he had missed work on a number of occasions because of his alcohol use. Ex. 9 at 79-80. The Individual admitted that he operated a motor vehicle while intoxicated on a weekly basis. Tr. at 76. The Individual further reported that he had been arrested for Driving Under the Influence (DUI) in July 1986. Ex. 9 at 103-104. The Individual reported that he had not consumed alcohol since February 2018. Ex. 9 at 38. He further reported that his occupational medicine department had tested him for alcohol use on 28 occasions since the February 15, 2018, incident, and that each of these tests were negative. Ex. 9 at 39.

Because of the security concerns raised by these incidents, the Individual was evaluated by the Psychiatrist on July 26, 2018, at the LSO’s request.² Ex. 7 at 2. During the Clinical Interview, the Individual reported that he had not consumed alcohol since February 15, 2018. Ex. 7 at 6, 8. The Individual also stated that he did not intend to consume alcohol in the future. Ex. 7 at 6. The Individual further reported that he was attending an IOP, and undergoing individual counseling for alcohol and grief issues. Ex. 7 at 6. On August 7, 2018, the Psychiatrist issued a report in which he concluded the Individual met the criteria set forth in the DSM-5, for AUD, Moderate, in early remission. Ex. 7 at 8. The Psychiatrist further opined:

² The Psychiatrist also requested that the Individual take a laboratory test, the Phosphatidylethanol (PEth) test, in order to ascertain whether he had recently used alcohol. Ex. 7 at 7. This test was negative, supporting the Individual’s assertion that he had stopped consuming alcohol. Ex. 7 at 7.

[The Individual] is currently participating in an adequate treatment program: weekly alcohol treatment group meetings of 2 hours, and weekly individual counseling sessions for grief work and alcohol treatment. This Intensive Outpatient Treatment should be followed by an outpatient program for a total of one year (beginning from his sobriety date of 2/15/18) in order to provide adequate evidence of rehabilitation and reformation. His treatment should include maintenance of sobriety (abstinence from alcohol).

Ex. 7 at 11.

The Individual successfully completed the IOP on August 13, 2018. Ex. M at 1.

The Individual has submitted a substantial amount of documentation supporting his contention that he has abstained from alcohol use. This documentation includes the results of 43 breathalyzer tests administered to him by his employer from March 18, 2018, until March 18, 2019. Each of these tests indicated that his BAC was negative. Ex. I at 1-43. This documentation also includes the results of four negative PEth tests administered to the Individual on February 5, 2019, March 22, 2019, April 19, 2019, and May 17, 2019. Ex. N at 1-8.

The Hearing

At the hearing, the Individual acknowledged that he is “a grateful recovering alcoholic.” Tr. at 6. The Individual presented the testimony of six witnesses, including himself, to show that he had complied with the recommendations of the Psychiatrist and achieved sobriety, and that his AUD is now in full sustained remission.

The Individual’s supervisor and former supervisor both testified that the Individual’s attendance and productivity had improved once the Individual began addressing his alcohol problem. Tr. at 22, 79.

The Clinical Supervisor testified he had first met the Individual on March 19, 2018, when the Individual began attending the IOP. Tr. at 29, 33. The IOP included group therapy and individual counseling components. Tr. at 35. The Clinical Supervisor further testified that the Individual recognized that he had a problem with alcohol and had set forth on “a path of recovery and abstinence from alcohol,” noting that the Individual’s attendance at the IOP was “exemplary.” Tr. at 28-29, 34. The Clinical Supervisor testified that the Individual had become involved in AA, and used AA to develop his support network. Tr. at 29, 31, 39-40. The Individual has developed a support network. Tr. at 30. The Individual has also strengthened his relationship with his family. Tr. at 40. The Clinical Supervisor testified that the Individual had become a leader of his therapy group. Tr. at 30. The Individual is continuing with his individual counseling on a bi-weekly basis. Tr. at 37-38. The Individual completed the IOP “very” successfully. Tr. at 38. The Clinical Supervisor testified that Individual was committed to changing his life and had a strong desire to stay sober. Tr. at 30. The Clinical Supervisor further testified: “At this point, after the length of time he’s been sober and the effort he’s put into this, I think he’s got an excellent prognosis.” Tr. at 40. He further opined that the Individual’s risk of relapse is “very low at this point.” Tr. at 41.

The Individual's Counselor testified on his behalf at the hearing. She testified that she has been treating the Individual, on a bi-weekly basis, since August 2018, after taking over for a previous counselor who had left the practice. Tr. at 53. She agreed that the Psychiatrist's diagnosis of AUD, Moderate was accurate. Tr. at 59. She described the Individual as "motivated and willing to work" on his alcohol problem. Tr. at 50, 56. She further testified that the Individual has developed a support system through his involvement with AA and his faith community. Tr. at 50-52, 55. She testified that the Individual is working Steps One, Two, and Three of the AA's Twelve-Step program. Tr. at 60-61. She testified that she was impressed with the Individual's efforts to achieve his sobriety, and described him as the most engaged client that she has ever had. Tr. at 52. She testified that few persons with alcohol problems do as well as the Individual. Tr. at 58. She believes that the Individual has been sober for about a year and three months, and that he is doing "very well." Tr. at 58. She considers the Individual's AUD to be in full remission. Tr. at Tr. at 59-60.

The Individual's AA Sponsor testified at the hearing. He testified that he meets with the Individual on a weekly basis to help the Individual work on his Twelve-Step Program. Tr. at 70-71. He testified that the Individual is committed to changing his life and staying sober. Tr. at 65. He testified that the Individual regularly attends AA meetings. Tr. at 66-67. He testified that the Individual has developed a support system. Tr. at 67. He believes that the Individual will continue to engage in AA and will stay sober. Tr. at 68. He further testified that the Individual "has demonstrated a 100 percent commitment that I rarely see in anyone who is new, whether they've been sober for a day or a year." Tr. at 68. He testified that the Individual's sobriety date is February 15, 2018. Tr. at 73.

At the hearing, the Individual testified that he is "an alcoholic." Tr. at 101, 103. The Individual testified that his last use of alcohol occurred on February 14, 2018. Tr. at 87. The Individual testified that he has a support system consisting of his faith community, his AA community, and his family. Tr. at 89-91. He no longer keeps alcohol in his home. He testified that his initial counseling focused upon his grief resulting from the illness and death of his spouse. Tr. at 92. After he had learned more constructive approaches to handling those feelings, he began to focus more on addressing his alcohol use. Tr. at 92. The Individual testified that the IOP taught him that he is an "alcoholic" and that he cannot use alcohol. Tr. at 95. He testified that he plans to permanently abstain from alcohol use. Tr. at 101. He further testified that he began attending AA meetings after hearing other participants in the IOP discuss it. Tr. at 95. He now attends AA meetings on a daily basis. Tr. at 96-97. The Individual testified that he plans to continue attending aftercare and AA meetings indefinitely. Tr. at 98.

The Psychiatrist observed the testimony of the other witnesses before he testified. The Psychiatrist testified that after observing the testimony of the other witnesses at the hearing, and after reviewing the exhibits submitted by the Individual, he was still convinced that the Individual was properly diagnosed with AUD, Moderate. Tr. at 104-105. However, after reviewing the Individual's exhibits and hearing the testimony of the other witnesses, the Psychiatrist was convinced that the Individual is now reformed and rehabilitated. Tr. at 105, 108. The Psychiatrist noted that the Individual's laboratory testing results show that he has been able to maintain his sobriety. Tr. at 106. The Individual is now in full sustained remission. Tr. at 107-108. The Psychiatrist opined that the Individual's progress is "very good" or excellent. Tr. at 108, 111.

V. ANALYSIS

The Individual has presented evidence that he has taken actions to address the LSO's concerns about his AUD, including enrolling in and completing an IOP, undergoing individual counseling, and abstaining from alcohol use for 16 months. The Psychiatrist testified that the Individual's AUD is in full remission, and that he has maintained abstinence from alcohol use for 16 months, a more than adequate period of time for him to prove that he has resolved the concerns about his judgment, reliability, and trustworthiness arising from his AUD. I find that these actions provide mitigation of the security concerns raised by the Individual's AUD under Guideline G and that this mitigation is sufficient to resolve the security concerns at issue in the present case.

Guideline G, Section 23, sets forth four conditions that "could mitigate security concerns" raised under Guideline G. I find that three of these conditions are present in the instant case and they fully mitigate the security concerns raised by the LSO under Guideline G resulting from the Individual's AUD.

Section 23(a) provides that security concerns raised under Guideline G can be mitigated if: "so much time has passed or the behavior is 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." The Individual has demonstrated through the submission of objective evidence, in the form of extensive laboratory testing, that he has abstained from alcohol use since February 15, 2018.

Section 23(b) provides that security concerns raised under Guideline G can be mitigated if: "the individual acknowledges his or her pattern of maladaptive alcohol use, 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." The Individual has acknowledged his pattern of maladaptive alcohol use, and taken effective actions to overcome this problem, as discussed above. Moreover, the Individual has demonstrated a clear and established pattern of abstinence dating to February 15, 2018.

Section 23(c) provides that security concerns raised under Guideline G can be mitigated if: "the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program." The Individual is currently participating in counseling and is making more than satisfactory progress.

Section 23(d) provides that security concerns raised under Guideline G can be mitigated if: "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." As discussed above, the Individual has successfully completed a treatment program, in accordance with the Psychiatrist's recommendations, and has established a well-documented pattern of abstinence.

I have found that the Individual has shown that several mitigating conditions are present in the instant case. Accordingly, I find that the security concerns arising under Guideline G from the Individual's Alcohol Use Disorder, Moderate have been resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G. After considering all of the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has sufficiently mitigated the security concerns raised under Guideline G. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be restored. The parties may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals