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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: June 28, 2019 ) Case No.: PSH-19-0034  
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Issued: September 17, 2019

**Administrative Judge Decision**

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXX (hereinafter referred to as “the Individual”) to hold an access authorization<sup>1</sup> under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed 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 access authorization should not be granted.

**I. Background**

The Individual is employed by a DOE Contractor in a position that requires a security clearance. In June 2017, the Individual completed a Questionnaire for National Security Positions (QNSP). Ex. 7. In the course of an investigation into the Individual, the Local Security Office (LSO) learned derogatory information about the Individual’s alcohol use. Ex. 1. As a result, a DOE consulting psychologist (the Psychologist) evaluated the Individual in February 2019. Ex. 5.

Due to unresolved security concerns related to the Individual’s alcohol consumption, the LSO informed the Individual, in a Notification Letter dated May 17, 2019 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline G (alcohol consumption) of the Adjudicative Guidelines. Ex. 1.

<sup>1</sup> Access authorization is defined as “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 be referred to variously in this Decision as access authorization or security clearance.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted eight numbered exhibits (Exhibits 1-8) into the record and presented the testimony of the Psychologist. The Individual introduced five lettered exhibits (Exhibits A-E) into the record, and presented the testimony of seven witnesses, including himself. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate alphabetic or numeric designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

## **II. Regulatory Standard**

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.

## **III. Notification Letter and Associated Security Concerns**

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the Individual’s eligibility for access authorization. The information in the letter specifically cites Guideline G of the Adjudicative Guidelines. Guideline G relates to security risks arising from alcohol consumption. 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. In citing Guideline G, the LSO relied upon the evaluation of the Psychologist, who determined that the Individual habitually or binge consumes alcohol to the point of impaired judgment without adequate evidence of rehabilitation. Ex. 1. As a second basis for citing Guideline G, the LSO relied upon a January 2014 arrest and charge of Driving Under the Influence (DUI) and a March 2012 arrest and charge of shoplifting. *Id.* The LSO additionally relied upon the Individual’s admissions in a March 2018 Enhanced Subject Interview (ESI) that he: (1) consumes four to five miniatures of hard alcohol and

one six-pack of beer every Friday and Saturday evening, to the point of intoxication, (2) was intoxicated prior to the January 2014 DUI arrest, and (3) was intoxicated prior to the March 2012 shoplifting arrest. *Id.*

#### **IV. Findings of Fact**

The Individual did not dispute any of the allegations contained within the Notification Letter and sought to mitigate any security concerns. Tr. at 64-65. I have carefully considered the totality of the record in reaching the findings of fact set forth below.

Following unresolved security concerns related to the Individual's alcohol consumption, the Psychologist evaluated the Individual in February 2019. Ex. 5. In his report, the Psychologist noted that the Individual "drinks in order to relax and does not see a problem with his drinking." *Id.* at 4. He also noted that when the Individual consumes alcohol, he "drinks to intoxication." *Id.* However, per the Individual's report, he began abstaining from alcohol "about a month ago." *Id.* As part of the evaluation, the Psychologist requested that the Individual undergo a Phosphatidylethanol (PEth) test, which revealed a "positive" result. *Id.* at 10. A psychiatrist's interpretation of this test revealed that the positive result indicated that the Individual had consumed alcohol "within the last several weeks," and if the Individual's claim of abstinence from alcohol for a one month period was accurate, the Individual would have been engaging in "very heavy alcohol consumption" prior to that time. *Id.*

The Psychologist considered the Individual's reports that prior to becoming abstinent from alcohol, he would consume "four to five 'miniatures' and a six pack of beer per evening every Friday and Saturday night." *Id.* at 5. He determined that the Individual's circumstances were not consistent with a Diagnostic and Statistical Manual – Fifth Edition (DSM-5) diagnosis, but did indicate that the Individual "ha[d] been a weekend binge drinker for several years." *Id.* at 4, 6. The Psychologist concluded that the Individual did not demonstrate adequate evidence of rehabilitation, and opined that the Individual should: (1) become permanently abstinent from alcohol, (2) provide evidence of his abstinence by having negative laboratory tests over the next nine months, and (3) fully participate in an intensive outpatient program (IOP). *Id.* at 6. Lastly, the Psychologist recommended that the Individual participate in Alcoholics Anonymous (AA) at least four times a week for a minimum of nine months. *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 has not sufficiently mitigated the security concerns noted by the LSO with regard to Guideline G. I cannot find that granting the Individual's 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). Therefore, I have determined that the Individual's security clearance should not be granted. The specific findings that I make in support of this decision are discussed below.

At the hearing, the Individual presented the testimony of his IOP counselor (the Counselor), a member of his AA group (the AA Member), his supervisor (the Supervisor), his team lead (the Team Lead), his former supervisor (the Former Supervisor), and his older brother (the Brother).

The Counselor testified that he had known the Individual for less than one month, having met him during intake at the IOP. Tr. at 12-13. He stated that the Individual's IOP consists of a recovery relapse prevention group, a substance use education group, and individual therapy. *Id.* at 13. The Counselor noted that the Individual had not yet attended an individual counseling session, but had attended three weeks of group sessions. *Id.* As a result of the intake psychological assessment, the Counselor stated that he diagnosed the Individual with a moderate alcohol use disorder. *Id.* at 15, 19. Although he has not attended an education or recovery session with the Individual, he testified that the Individual was "doing very well," and if he continued as he had been, he would have a very positive prognosis. *Id.* at 17-18. However, the Counselor clarified that as of the hearing date, the Individual was still in the early stages of recovery. *Id.* at 18.

The AA Member testified that he met the Individual approximately two months prior to the hearing at an AA meeting. *Id.* at 24. He noted that he was not the Individual's sponsor, but he thought he would be at some point. *Id.* He stated that he did not see the Individual outside of AA meetings, but he had spoken with him on the phone about "AA issues" on a few occasions. *Id.* The AA Member testified that the Individual participated in meetings, attended approximately two meetings per week, and estimated that the Individual had been abstaining from alcohol for about three months. *Id.* at 25, 27.

The Individual's Supervisor testified that the Individual began reporting to him in the spring of 2017. *Id.* at 29. He stated that he knew the Individual primarily in a professional capacity; however, the two have attended work-related social events two or three times. *Id.* at 30. The Supervisor stated that he had never seen the Individual consume alcohol and noted that the Individual does not display signs that he is struggling outside of work. *Id.* at 30, 33. The Supervisor testified to the Individual's impressive attendance record and stated that the Individual "shows no sign of needing to take off Mondays to recover from the weekend." *Id.* at 33. He further indicated that the Individual was very honest in disclosing the DOE concerns with regard to his alcohol consumption. *Id.* at 34.

The Individual's Team Lead and the Team Lead's spouse, who was the Individual's Former Supervisor, testified that they had known the Individual since 2017, primarily in a professional capacity, although the Individual had attended work-related social events at their house. *Id.* at 39, 45. Both indicated that they had never seen the Individual consume alcohol or suffer any alcohol related effects, such as a hangover. *Id.* at 39-40, 45, 47.

The Individual's Brother testified that he sees the Individual all day on the weekends and every evening during the week for family dinner, with the exception of the nights that the Individual attends AA. *Id.* at 53. The Brother stated that the Individual does not keep alcohol in his home and that no one consumes alcohol at their daily family dinners. *Id.* at 54-55. He noted that he last saw the Individual consume alcohol about five months prior. *Id.* at 55. The Brother indicated that he has noticed positive changes in the Individual, and he and his family are very supportive of the Individual's sobriety. *Id.* at 56-57. The Brother also felt that the Individual will be able to maintain his abstinence. *Id.* at 57.

The Individual then testified on his own behalf. The Individual explained that prior to abstaining from alcohol, he would typically consume it on evenings when he did not need to report to work the following day. *Id.* at 65. He stated that the amount of this alcohol consumption varied depending on what he was doing; he never consumed alcohol to become purposely “drunk,” but solely to unwind; and he did not see his alcohol consumption “as a problem” until he sought professional help. *Id.* at 65, 67 The Individual explained that he “tried typically not to drink in front of [his] mother or father.” *Id.* at 66. He reported that he would consume alcohol “behind their back, where they physically couldn’t see [him] doing it” because his parents are abstinent, and they do not allow alcohol in their house. *Id.* at 66, 80. The Individual testified that now that he has become abstinent from alcohol, his parents are “very happy,” encouraging, proud, and supportive. *Id.* at 67.

The Individual described his abstinence from alcohol, stating that he last consumed alcohol on May 8, 2019 and that he intends to continue attending the IOP and the AA meetings. *Id.* at 68-69. The Individual’s AA attendance log indicated that the Individual had been attending AA meetings, approximately weekly, since June 15, 2019. Ex. E. The Individual explained that he did not feel that sobriety is “that hard.” *Id.* at 69. He described the process as, “go to meetings, don’t drink, . . . read” the 12- Step book. *Id.* The Individual testified that he is “going to try [his] hardest to not ever drink again.” *Id.* at 71. He felt that he was meeting all of the requirements of the DOE Psychologist and submitted into evidence the results of a PEth test, which indicated a “negative” result. *Id.* at 71-72; Ex. B.

The Psychologist testified, opining that although the Individual does not qualify for a DSM-V diagnosis, he does “have a problem with alcohol” and he does “drink enough to impair his judgment.”<sup>2</sup> Tr. at 91, 93. The Psychologist noted that the Individual was in an “early place” of abstinence from alcohol. *Id.* at 94. He testified that “[i]f a person can maintain abstinence over a good period of time, that’s our best . . . indication of whether a person is really reforming.” *Id.* The Psychologist stated that the Individual has not shown “a lot of time in AA,” has not yet begun IOP counseling with the Counselor, and ultimately has not shown adequate evidence of rehabilitation at this time. *Id.* at 94-95, 98.

### **A. Guideline G**

Habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with an alcohol use disorder, can raise a security concern and potentially disqualify an individual from holding a security clearance. Guideline G at ¶ 22(c). If an 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 recommendation, an individual may be able to mitigate any security concerns, *Id.* ¶ 23(d).

In this situation, it is clear that the Individual has undertaken considerable effort to mitigate the security concern related to his alcohol consumption. He has been consistently engaging in AA meetings, has enrolled in an IOP, and has made a commitment to himself and his family to abstain from consuming alcohol. At this time, however, the Individual’s abstinence and path to recovery

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<sup>2</sup> The Psychologist based this conclusion on the Individual’s report that he consumes “four or five minis plus up to a six-pack or so of beer” in one evening. Tr. at 93.

is quite recent and does not demonstrate a clear and established pattern of abstinence. The Individual has been abstinent from alcohol for approximately three months; he has been attending AA meetings for approximately two months, has yet to retain a sponsor or begin fully working through the 12 Steps; and his IOP counseling has not yet begun. Therefore, although I commend the Individual on his efforts, I cannot find that he has fully mitigated the security concerns with regard to Guideline G.

## **VI. Conclusion**

After considering all of the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has not brought forth sufficient evidence to resolve the security concern associated with Guideline G. Therefore, I cannot conclude that granting DOE access authorization 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.

Katie Quintana  
Administrative Judge  
Office of Hearings and Appeals