

\*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

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

In the Matter of: Personnel Security Hearing )  
 )  
Filing Date: July 3, 2019 ) Case No.: PSH-19-0037  
 )  
 )  
\_\_\_\_\_ )

Issued: October 7, 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.”<sup>1</sup> For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored.

**I. BACKGROUND**

On the morning of January 15, 2019, the Individual’s employer administered a random breath alcohol test to the Individual. Ex. 6 at 1. That test measured his blood alcohol content (BAC) at .075. Ex. 6 at 1. When the Individual was subsequently interviewed by a site psychologist (the Site Psychologist), the Individual denied consuming alcohol on either January 14, 2019, or the day of the test. Ex. 6 at 1. However, the Individual, a week later, admitted to a labor relations (LR) representative that he had consumed an unknown quantity of vodka on January 14, 2019. Ex. 6 at 1-2. Further investigation disclosed that the Individual had a history of five alcohol-related arrests from 1979 through 1983. Because this derogatory information raised concerns about the Individual’s alcohol use, the Local Security Office (LSO) asked the Individual to undergo an evaluation by a DOE Psychologist (the DOE Psychologist). The DOE Psychologist conducted a clinical interview (the Clinical Interview) of the Individual on April 4, 2019, and on April 13, 2019, she issued a report (Report) concluding that the Individual met the criteria set forth in the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition* (DSM-5) for Alcohol Use Disorder (AUD), Moderate.<sup>2</sup> Ex. 9 at 2, 7-8. On the basis of the DOE Psychologist’s opinion, the

<sup>1</sup> 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.

<sup>2</sup> On Page 2 of the Report the DOE Psychologist indicates that the Individual’s AUD is “Severe,” while on Page 7 she indicates that the Individual’s AUD is “Moderate.” Ex. 9 at 2, 7.

Individual's positive January 15 BAC test and history of five alcohol-related arrests, as well as his intentionally false statement concerning his alcohol use to the Site Psychologist, the LSO began the present administrative review process. The LSO issued a Notification Letter to the Individual informing him that his security clearance was suspended and that he was entitled to 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 July 10, 2019. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), I took testimony from the Individual, his supervisor (the Supervisor) his co-worker (the Co-worker) and the DOE Psychologist. *See* Transcript of Hearing, Case No. PSH-19-0037 (hereinafter cited as "Tr."). The LSO submitted fourteen exhibits, marked as Exhibits 1 through 14 (hereinafter cited as "Ex."). The Individual submitted four exhibits, marked as Exhibits A through D.

## **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 Guidelines E and 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).

Under Guideline E, the LSO alleges that the Individual has intentionally provided false information to the Site Psychologist, in an effort to conceal his alcohol use from Human Reliability Program (HRP)<sup>3</sup> officials. This information adequately justifies the LSO's invocation of Guideline E and raises significant security concerns. The Adjudicative Guidelines state: "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Guideline E at § 15. Among those conditions set forth in Guideline E that could raise a disqualifying security concern are: "deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative." Guideline E at §16(b).

Under Guideline G, the LSO also alleges that the Individual has been diagnosed by a Psychologist with AUD, Moderate, has a history of an alcohol-related incident at work, and a history of five alcohol-related arrests. 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.

---

<sup>3</sup> The HRP is a security and safety reliability program designed to ensure that individuals who occupy positions affording access to certain materials, nuclear explosive devices, facilities, and programs meet the highest standards of reliability and physical and mental suitability. 10 C.F.R. § 712.1.

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. . . . psychologist. . . ) 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 the morning of January 15, 2019, the Individual’s employer administered a breathalyzer test for alcohol to the Individual at the Individual’s workplace. Ex. 6 at 1. That test measured the Individual’s BAC at .075. Ex. 6 at 1.

On January 17, 2019, the Individual met with the Site Psychologist for an evaluation, during which the Individual reported that he had not consumed any alcohol since the evening of January 13, 2019. Ex. 6 at 1. He further claimed that he was “shocked” to have tested positive for alcohol. Ex. 6 at 1-2. The Individual admitted to the Site Psychologist that he had been arrested for alcohol-related offenses, including Driving While Intoxicated and Public Intoxication, on numerous occasions between 1979 and 1983, and that he felt guilty about how much alcohol he had consumed

in the past. Ex. 6 at 2. However, the Individual reported to the Site Psychologist that he had consumed an average of two drinks twice per week since 2016, and that he never consumed more than four drinks per sitting. Ex. 6 at 2.

The Site Psychologist recommended that the Individual undergo a substance abuse evaluation by another mental health professional. Ex. at 2. The results of that substance abuse evaluation suggested that the Individual had a “diagnosable substance abuse condition.” Ex. 5 at 1. Shortly after completing the substance abuse evaluation, the Individual admitted to the site’s Labor Relations Department that he had consumed alcohol on January 14, 2019, and had lied about his alcohol consumption because he “panicked.” Ex. 5 at 1-2.

The DOE Psychologist conducted a Clinical Interview of the Individual on April 4, 2019. Ex. 9 at 2. During the Clinical Interview, the Individual reported having consumed two mixed drinks consisting of “no more than a couple of ounces” of vodka per drink on January 14, 2019, and that he went to bed at 10:00 p.m. Ex. 9 at 3. The DOE Psychologist calculated that, if the Individual had stopped drinking at 9:00 p.m. on January 14<sup>th</sup>, his BAC must have been at least .23g/210L in order to test positive for alcohol at a level of .075g/210L at 9:00 a.m. on January 15<sup>th</sup>. Ex. 9 at 4. According to the DOE Psychologist, in light of the Individual’s height and weight, he likely consumed more than fifteen shots of hard alcohol on the night of January 14<sup>th</sup>. Ex. 9 at 4.

The Individual indicated during the Clinical Interview that he had abstained from alcohol from 1989 until 2011. Ex. 9 at 4. He asserted that, since 2011, he had consumed alcohol in a controlled manner and never consumed more than eight beers or four mixed drinks in a sitting. Ex. 9 at 4. The Individual admitted to the DOE Psychologist that his daughter had expressed concern about his drinking, but dismissed those concerns as attributable to his daughter’s conservative stance towards drinking. Ex. 9 at 5.

As a condition of returning to work, the Individual was required to attend treatment at an intensive outpatient program (IOP), which included daily group sessions and Alcoholics Anonymous (AA) meetings, and periodic individual counseling sessions. Ex. 9 at 4. The Individual expressed significant opposition to attending the IOP, describing his employer’s requirement that he attend AA as “a punishment,” and indicated that he would not pursue AA’s twelve-step program because he did not believe himself powerless over alcohol. Ex. 9 at 4, 6.

On April 13, 2019, the DOE Psychologist issued the Report, in which she concluded that the Individual met the diagnostic criteria for Alcohol Use Disorder, Moderate, under the *DSM-V*. *Id.* at 7. She recommended that the Individual address his AUD, Moderate by abstaining from alcohol for at least twelve months.<sup>4</sup> Ex. 9 at 7–8. She also recommended that the Individual attend AA, or an equivalent in-person self-help group, on a weekly basis for twelve months. Ex. 9 at 7-8.

## **The Hearing**

At the hearing, the Supervisor testified on the Individual’s behalf. The Supervisor testified that he had no doubts as to the Individual’s honesty and had no suspicion that the Individual was

---

<sup>4</sup> The DOE Psychologist further recommended that the Individual document his abstinence through frequent, random ethyl glucuronide (EtG) and phosphatidylethanol (PEth) tests. Ex. 9 at 7.

consuming alcohol at work. Tr. at 10. The Supervisor reported that he had driven the Individual home after he tested positive for alcohol. During that ride, the Individual denied that he had used alcohol and expressed his disbelief that his alcohol test was positive. Tr. at 15-16. The Individual subsequently informed the Supervisor that he had resumed attending AA meetings, and had begun counseling. Tr. at 17. The Individual also informed the Supervisor that he intends to abstain from future alcohol use. Tr. at 20.

The Co-worker described himself as a personal friend of the Individual. Tr. at 24. The Co-worker testified that he believed the Individual to be an honest person. Tr. at 23. The Co-worker reported that he watches football games with the Individual, and that he had only observed the Individual consuming alcohol on one occasion, approximately three years ago. Tr. at 24-25. The Co-worker indicated that the Individual had confided in him that he had consumed alcohol since his positive blood alcohol test at work, “possibly” within two or three months of the date of the hearing. Tr. at 28, 32. The Co-worker reported that he and the Individual had discussed the Individual’s recovery efforts through AA and counseling, and that the Individual had told him that some parts of the recovery effort helped him to think about things that he had not considered before, but that other parts had not been useful. Tr. at 28-29. The Individual told the Co-worker that he is abstaining from alcohol use. Tr. at 31.

The Individual testified that he did not contest the facts alleged in the Notification Letter, but asserted that he had mitigated the security concerns under Guideline G. In support of his assertion, he testified that he now uses alcohol in moderation. Moreover, the Individual testified that he has completed an Intensive Outpatient Program (IOP),<sup>5</sup> is attending an associated aftercare program (Aftercare),<sup>6</sup> and is attending AA meetings.<sup>7</sup> Tr. at 34-35, 42. He further notes that he had only tested positive for alcohol on one occasion in thirty-one years working at the DOE facility.

Despite his assertion that he did not contest the facts set forth in the Notification Letter, the Individual opined that the DOE Psychologist misdiagnosed him with an AUD, and asserted that the only *DSM-5* diagnostic criterion that applied to him at the time of the DOE Psychologist’s diagnosis was “[alcohol was] taken in larger amounts over longer periods of time than intended.” Tr. at 36-38. The Individual claimed that he currently consumes alcohol infrequently and in moderation, and adamantly testified that he does not believe that he has an alcohol problem. Tr. at 35, 37, 39-40, 45, 56. For this reason, he testified “I don’t see a reason to get better. I don’t think I have a problem.” Tr. at 45. He admitted that he had consumed alcohol on the weekend prior to the hearing when he drank one shot of hard alcohol and one beer (which he characterized as “one drink” because he mixed them together). Tr. at 39.

During the hearing, the Individual repeatedly exhibited ambivalence about his treatment for AUD. He testified that he delayed starting Aftercare following his completion of the IOP until he realized

---

<sup>5</sup> The Individual submitted Exhibit A, showing that he had attended an IOP from February 8, 2019, through April 5, 2019.

<sup>6</sup> The Individual submitted Exhibit D, showing that he has been regularly attending an Aftercare program since completing his IOP.

<sup>7</sup> The Individual submitted attendance forms indicating that he had attended AA meetings since February 2019. Ex. C; Ex. D.

that it was required. Tr. at 42. The Individual testified that he did not relate to his fellow AA participants because he perceives them as having a “serious problem” while he does not. Tr. at 53. He testified that he does not discuss his alcohol consumption at AA, and does not have a sponsor.<sup>8</sup> Tr. at 56. The Individual admitted that he attends AA in order to meet the DOE’s treatment recommendations. Tr. at 44-45. The Individual also admitted that he was told he was in “denial” during the IOP, but stated that he disagrees with that characterization, and does not believe that he has an alcohol problem. Tr. at 56. The Individual acknowledged that the IOP, AA, and the DOE Psychologist had recommended that he abstain from alcohol.<sup>9</sup> Tr. at 41, 43, 45. He testified that he did not follow the recommendations to abstain from alcohol use because “it’s not required under the Adjudicative Guidelines.” Tr. at 43.

The Individual admitted that he had lied about when he last consumed alcohol after testing positive at work because he could not believe that he had tested at such a high level of alcohol and panicked. Tr. at 34-35, 55. He ultimately “came clean” about a week later, because he “thought it was best to tell the truth.” Tr. at 55.

The DOE Psychologist testified after observing all of the other hearing testimony. She testified that she had concerns about the accuracy of the information that the Individual had provided to her, given his initial claim that he had not been consuming alcohol prior to the breath test, and his defensive response style which she noted during the Clinical Interview. Tr. at 65-66. The DOE Psychologist testified that all of the factors that led her to conclude that the Individual met the diagnostic criteria for Alcohol Use Disorder, Moderate, were still applicable. Tr. at 69. The DOE Psychologist believes that the Individual is still drinking and has not changed his behaviors. Tr. at 69. She further testified that the Individual’s decision to continue drinking, despite all of the problems alcohol was causing him, suggested that he was experiencing “strong desire or craving to use.” Tr. at 69-70. The DOE Psychologist opined that even though the Individual was attending counseling and AA, it was apparent that the Individual was merely attending these resources without actively participating, and therefore was not realizing therapeutic benefits from them. Tr. at 70-71. The DOE Psychologist further noted that the Individual: is not actively engaged in AA; does not have a sponsor; does not admit he has an alcohol problem; and continues to use alcohol. Tr. at 71. She stated that his lack of engagement prevents his from realizing the potential benefits of AA. Tr. at 70-72. She testified that the Individual is in denial about his drinking problem, and he will have to overcome that denial in order to have a meaningful recovery from his AUD. Tr. at 72-73. The DOE Psychologist testified that the Individual needs to abstain from using alcohol in order to address his AUD. Tr. at 76. She testified that the IOP and AA had not been effective for the Individual because of his lack of motivation to change. Tr. at 76-77.

## **V. ANALYSIS**

### **Guideline E Concerns**

---

<sup>8</sup> The Individual testified that he had asked one person to be his sponsor, but that person declined because the Individual would not admit to being an “alcoholic.” Tr. at 62.

<sup>9</sup> He indicated that he had tried to do so at first, but he admitted that he had relapsed. Tr. at 47-49.

The Individual's false claim that he had not consumed alcohol the night before he tested positive for alcohol at work raises security concerns under Guideline E. Adjudicative Guidelines at § 16(b). An individual may mitigate security concerns under Guideline E if:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability; and
- (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Guideline E at § 17(a)–(g).

I find that the Individual has not met any of the mitigating conditions under Guideline E. The Individual did not admit to having consumed alcohol the night before the positive test until he was confronted by a LR representative over a week after he told the Site Psychologist that he had not been using alcohol. Therefore he has not met the first mitigating condition. Guideline E at § 17(a). The Individual does not contend that he was advised to provide the false information. Guideline E at § 17(b). His intentional provision of false statements concerning whether he had consumed alcohol the night before testing positive for alcohol at work were clearly not a minor matter, and occurred relatively recently. Moreover, this conduct raises serious doubts about the Individual's reliability, trustworthiness, and good judgment. Therefore, the Individual does not meet the third mitigating condition. Guideline E at § 17(c). The fourth and fifth mitigating conditions are not applicable because, as discussed in further detail below, the Individual continues to consume alcohol, has not followed the treatment recommendations of the DOE Psychologist, and remains at significant risk of engaging in alcohol-related misconduct in the future. Guideline E at §§ 17(d) and (e). The remaining mitigating conditions are obviously inapplicable to the facts of this case.

Accordingly, I find that the Guideline E security concerns arising from the Individual's attempt to conceal his alcohol use from the HRP are not resolved.

### **Guideline G Concerns**

The Individual's positive alcohol test, history of five alcohol-related arrests, and the DOE Psychologist's determination that the Individual met the diagnostic criteria for Alcohol Use Disorder, Moderate, under the *DSM-5* raise serious concerns under Guideline G. Adjudicative Guidelines at § 22(b)–(c). The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if:

- (a) 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;
- (b) 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;
- (c) 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; or,
- (d) 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.

Guideline G at § 23(a)–(d).

I find that the Individual has not met any of the mitigating conditions under Guideline G. While the Individual correctly observed that decades have passed since his arrests for alcohol-related offenses, the recency of, and circumstances surrounding, his testing positive for alcohol in the workplace cast serious doubt on the applicability of the first mitigating condition. The Individual's BAC was measured at .075 after he reported to work, in an area requiring HRP certification for access. This behavior demonstrates that the Individual's reliability and judgement were seriously impaired as a result of his alcohol consumption. Consequently, I must find that the first mitigating condition under Guideline G is not applicable in this case. Guideline G at § 23(a)

The Individual does not meet the second mitigating condition because he has not accepted that he has a problem with alcohol, and he continues to consume alcohol against the recommendations of the DOE Psychologist and the AA program. Guideline G at § 23(b). The Individual does not meet the third mitigating condition since he relapsed after completing the IOP. Guideline G at § 23(c). Finally, the Individual does not meet the fourth mitigating condition because, although he attended the IOP, Aftercare, and AA, he has not fully engaged in any of these treatments, and his current consumption of alcohol in contravention to each program's recommendations shows that his treatment has not been successful, and that he has not demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations. Guideline G at § 23(d).

Having concluded that the Individual has not met any of the mitigating conditions under Guideline E or Guideline G, I conclude that the Individual has not resolved the security concerns asserted by the LSO.

## **VI. CONCLUSION**



For the reasons set forth above, I conclude that the LSO properly invoked Guidelines E and G. After considering all of the evidence, both favorable and unfavorable, in a common sense manner, I find that the Individual has not sufficiently mitigated the security concerns raised under either Guideline E or Guideline G. Accordingly, the Individual has not 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 not 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