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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: August 27, 2019	)	Case No.: PSH-19-0048
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Issued: December 19, 2019

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**Administrative Judge Decision**

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Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."<sup>1</sup> 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 should not be granted access authorization.

**I. BACKGROUND**

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. The Individual completed an Electronic Questionnaire for Investigations Processing (e-QIP) on December 17, 2017, in connection with seeking access authorization. Exhibit (Ex.) 9 at 60. The Office of Personnel Management (OPM) subsequently conducted a background investigation which revealed significant derogatory information related to the Individual's consumption of alcohol. *See* Ex. 5 at 2 (summarizing the findings of the OPM investigation).

As part of its evaluation of the Individual's eligibility for a security clearance, the local security office (LSO) issued a letter of interrogatory (LOI) to the Individual to collect information concerning his use of alcohol. Ex. 6. The Individual's response to the LOI did not resolve the security concerns, and the LSO subsequently recommended that the Individual undergo an evaluation by a DOE-contracted psychologist (DOE Psychologist). Ex. 4 at 1. Following a clinical interview with the Individual, the DOE Psychologist issued a psychological assessment (Report) in which he concluded that the Individual was a habitual and binge consumer of alcohol to the

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<sup>1</sup> The regulations define access authorization 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). This Decision will refer to such authorization as access authorization or security clearance.

point of impaired judgement and that he met the diagnostic criteria for Alcohol Use Disorder under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. Ex. 7 at 4.

On June 19, 2019, the LSO issued the Individual a letter (Notification Letter) in which it indicated 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.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted nine numbered exhibits (Ex. 1–9) into the record. The Individual did not submit any exhibits. The LSO presented the testimony of the DOE Psychologist and the Individual presented the testimony of five witnesses, including his own testimony.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the basis for denying the Individual a security clearance. Ex. 1.

Excessive alcohol consumption often leads to the exercise of questionable judgement or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. Adjudicative Guidelines at ¶ 21. The Notification Letter listed as relevant facts: (1) the Individual was a habitual and binge consumer of alcohol to the point of impaired judgement; (2) the DOE Psychologist's determination that the Individual met the diagnostic criteria for Alcohol Use Disorder under the *DSM-5*; (3) the Individual's admission to consuming twelve to fifteen beers and half of a pint of vodka per week since 2015; (4) the Individual's admission to consuming alcohol at work and smelling of alcohol at work during prior employment; and (5) the Individual's admission to having entered in-patient treatment for his alcohol use but refusing to participate in aftercare following his discharge. Ex. 1 at 1. The Individual's alcohol-related incidents at work, habitual and binge consumption of alcohol to the point of impaired judgement, the DOE Psychologist's diagnosis of the Individual with Alcohol Use Disorder, and the Individual's failure to follow treatment advice justify the LSO's invocation of Guideline G in the Notification Letter. Adjudicative Guidelines at ¶ 22(b)–(e).

## **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

During a background investigation in response to the e-QIP, the OPM investigator unearthed information that the Individual had been found to smell of alcohol at two previous employments. Ex. 9 at 60, 80, 89-90. The OPM investigator also determined that the Individual had been counseled about his workday alcohol consumption. *Id.* at 84. Further, the OPM investigator determined that, on at least one occasion, the Individual missed a work event and was found consuming alcohol in a hotel bar. *Id.* at 83–84.

At an interview with the OPM investigator, the Individual reported that he presently consumed eighteen twelve-ounce beers each week, but no more than four beers on most occasions. Ex. 9 at 67. He also claimed that alcohol did not affect his behavior and that he had no alcohol related accidents or incidents. *Id.* Over the course of a follow-up interview and continuing contact with the investigator, the Individual remembered that he had one or two beers over lunch and then returned to work on approximately twenty occasions. *Id.* at 73. In response to the LOI sent by the LSO, the Individual asserted that, at that time, he was consuming twelve beers and one-half pint of vodka each week. Ex. 6. He further asserted that he had never reported to work hungover. *Id.* at 3–4. The Individual also reported that he sought in-patient treatment for alcohol use in 2014,<sup>2</sup> prior to which he was consuming two to three drinks per day. *Id.* at 5; Tr. at 42. At the hearing, the Individual testified that his lunch-hour alcohol consumption at a prior employer was limited to an occasional beer with clients, which was the norm in the industry in which he was employed, and that his supervisor was aware of his alcohol consumption. Tr. at 32–35, 35–36. He claimed that he entered in-patient treatment to quit hard alcohol because it affected his personality. *Id.* at 41. In an apparent inconsistency, the Individual claimed that he did not “refuse” aftercare, but chose not to follow the treatment recommendations upon discharge because he believe that he could handle his alcohol consumption himself. *Id.* at 78. However, he also claimed that he continued to consume hard alcohol on occasion. *Id.* at 79.

The Individual reported that he continued drinking twelve to fifteen beers each week until he received the DOE Psychologist’s Report. Ex. 7 at 3. He testified that he was recently diagnosed

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<sup>2</sup> Although not cited by the LSO as a basis for denying the Individual access authorization, I note that the Individual was required to disclose any counseling or treatment for alcohol use on the e-QIP but omitted this information. See Ex. 9 at 53 (directing the person completing the form to disclose if he “EVER [sic] voluntarily sought counseling or treatment as a result of your alcohol use”).

with a liver condition that is exacerbated by alcohol consumption and that he intended to become abstinent by late December 2019. Tr. at 94–96. The Individual also claimed that he knew where to seek help if he could not stop on his own. *Id.* at 97. He concluded that he does not think that he has a problem with alcohol, but could in the future, and wants to avoid health complications from drinking. *Id.* at 102.

At the hearing, two of the Individual's co-workers testified concerning the Individual's character and workplace conduct. The co-workers have known the Individual for approximately two years. Tr. at 12–13, 23. The first co-worker testified that they are personal friends, and she had seen the Individual consume alcohol moderately on one social outing and that she had never seen him under the influence of alcohol or hungover at work. *Id.* at 13–14, 19–20. The second co-worker testified that she had never seen the Individual under the influence of alcohol or hungover at work. *Id.* at 27–28, 30. Both co-workers testified that the Individual is a trustworthy person. *Id.* at 16–17, 28. The second co-worker explained that she escorts the Individual since he does not have a clearance and that he is always careful to adhere to security rules. *Id.* at 25–26.

The Individual's ex-wife, who has known him since 2016, testified that she believes the Individual is a good person who does not pose a security risk. *Id.* at 49, 53. She testified that, during the short duration of their marriage and time they lived together,<sup>3</sup> she and the Individual consumed alcohol daily but she did not observe the Individual drink to intoxication. *Id.* at 51–52.

The Individual's current therapist (Therapist) also testified that his training and specialization is primarily in couples therapy and treating anxiety and depression. *Id.* at 60–61. He indicated that addressing substance abuse is part of the treatment that he provides to many of his clients, but that he has no training or credentials specific to substance abuse treatment. *Id.* at 61–62. The Therapist stated they had only met for two sessions. *Id.* at 63. He explained that he planned to focus the Individual's treatment on addressing the connection between depressive thoughts and alcohol and the triggers that led the Individual to engage in substance abuse. *Id.* at 63–64.

The Therapist testified that he found the Individual's account of his alcohol consumption to be highly credible. *Id.* at 74. The Individual reported to the Therapist that he was drinking three beers per sitting five days per week. *Id.* at 64–65. The Therapist asserted that that he would withhold a final diagnosis until he and the Individual had met for at least one more session. *Id.* at 65–66. He speculated that the Individual would be successful in meeting his goal to reduce his drinking. *Id.* at 70–72.

After an evaluation, the DOE Psychologist opined in the Report that the Individual was a habitual and binge consumer of alcohol to the point of impaired judgement and that he met the diagnostic criteria for Alcohol Use Disorder under the DSM-5. Ex. 7 at 4. He testified that his diagnosis of Alcohol Use Disorder was unchanged and that the condition was of moderate severity. *Id.* at 115–

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<sup>3</sup> The Individual's ex-wife testified that they met in early February 2016 and were married shortly thereafter. Tr. at 49. The ex-wife explained that they lived together for only a short time because until September 2017, the Individual lived in another state. *Id.* at 50. Further, during the duration of the time they did live together, she claimed that she traveled 50 to 75 percent of the time, living at home only one or two weeks a month. *Id.*

17. The DOE Psychologist asserted that the Individual strongly met at least four of the DSM-5's diagnostic criteria. *Id.* at 117–19.

In the Report, the DOE Psychologist recommended that in order to show rehabilitation or reformation, the Individual should participate in an appropriate outpatient substance abuse treatment program for at least sixteen weeks followed by aftercare of six months. *Ex. 7* at 4–5. He also recommended participation in Alcoholics Anonymous (AA) or a similar program. *Id.* at 5. At the hearing, the DOE Psychologist opined that the Individual had not demonstrated rehabilitation or reformation because he had not followed the recommended treatment plan. *Tr.* at 120. He articulated that, although the Individual has reported benefiting from meeting with his Therapist, the Individual would have a significantly increased probability of recovery if he pursued treatment with a substance abuse professional. *Id.* at 119–20. The DOE Psychologist further indicated that the Individual's lack of recognition of his problems with alcohol make it difficult for him to maintain sobriety over a long period of time. *Id.* at 121. He expressed a guarded to fair prognosis for the Individual's ability to avoid problematic alcohol consumption. *Id.*

## V. ANALYSIS

The Individual's alcohol-related incidents at work, the Individual's practice of engaging in habitual and binge consumption of alcohol to the point of impaired judgement, the DOE Psychologist's diagnosis of the Individual with Alcohol Use Disorder, and the Individual's failure to follow treatment advice all raise security concerns under Guideline G of the Adjudicative Guidelines. Adjudicative Guidelines at ¶ 22(b)–(e). 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.

*Id.* at ¶ 23(a)–(d).

The Individual asserted during the hearing that he was taking steps to reduce his drinking and that his alcohol consumption did not present a security risk. *Tr.* at 106. In addition, the Individual asserted that there was no definitive proof in the record, such as alcohol testing, showing exactly how much he drank in the past or that he came to work under the influence of alcohol. *Id.* at 88, 105; *Ex. 2* (noting that there was “no documented evidence other than [the Individual's]

statements”). A proceeding under the Part 710 Regulations is not a criminal trial in which the LSO must prove its allegations beyond a reasonable doubt; rather, the burden is on the Individual to prove that granting him a security clearance “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). Accordingly, the absence of medical testing showing how much alcohol the Individual consumed at any particular time does not provide much, if any, mitigation of the Guideline G security concerns in this case.

The first mitigating condition under Guideline G is not applicable in this case because the Individual’s problems with alcohol are longstanding and have recurred despite efforts by the Individual and those around him to change his behavior. Adjudicative Guidelines at ¶ 23(a). The OPM investigation revealed that supervisors, co-workers, and HR representatives who interacted with the Individual in multiple positions since at least 2013 reported an adverse association between the Individual and alcohol at work, and that supervisors and HR representatives counselled the Individual against smelling of alcohol at work on numerous occasions. The Individual also sought to curb his consumption of hard alcohol through in-patient treatment in the past, only to return to consuming hard alcohol. Against these demonstrated instances in which the Individual unsuccessfully sought to change his behavior, the Individual’s unsupported claim to have significantly reduced his drinking within the month prior to the hearing is not sufficient to convince me that he will not return to problematic drinking in the future.

The second mitigating condition under Guideline G is also not applicable in this case because the Individual does not acknowledge his problematic alcohol use and has not brought forth evidence of a clear and established pattern of modified consumption or abstinence. *Id.* at ¶ 23(b). While the Individual claims to have reduced his drinking to an average of five beers each week within the last month, the Individual’s accounts of his drinking throughout the investigative process are too inconsistent for me to give any credence to the Individual’s self-reporting of his drinking. The Individual provided different accounts of the volume of his drinking to the OPM investigator, in the LOI, and to the DOE Psychologist. Moreover, the Individual failed to disclose his in-patient treatment until he responded to the LOI, and supplemented his account of his lunchtime drinking and being counseled for smelling of alcohol at work only after the OPM investigator had already collected derogatory information about the Individual’s alcohol-related incidents at work from other sources. Under the circumstances, I find that the Individual has not demonstrated a clear and established pattern of modified consumption or abstinence.

The remaining two mitigating conditions are not applicable in this case because the Individual did not follow the recommendations of the DOE Psychologist and has not abstained from alcohol, pursued counseling with a practitioner trained in substance abuse treatment, and attended AA or a comparable program to support abstinence from alcohol. *Id.* at ¶ 23(c)–(d). The DOE Psychologist explained that the Therapist lacks the necessary training and credentials in substance abuse treatment to provide the Individual with appropriate care, and in any case, the Individual only met with the Therapist on two occasions before the hearing.

For the reasons set forth above, I find that none of the mitigating conditions under Guideline G are applicable in this case. Therefore, I conclude that the Individual has not resolved the security concerns asserted by the LSO.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guidelines G of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter under Guideline G. Accordingly, I have determined that the Individual should not be granted access authorization. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Janet R. H. Fishman  
Administrative Judge  
Office of Hearings and Appeals