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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: October 9, 2019) Case No.: PSH-20-0003
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Issued: January 16, 2020

Administrative Judge Decision

Kimberly Jenkins-Chapman, 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 not be restored.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position that requires her to hold a security clearance. In December 2018, the Individual was arrested for driving under the influence of alcohol. She timely reported the incident to her Local Security Office (LSO) and, consequently, was referred to a DOE Contractor Psychiatrist for evaluation. After the evaluation, the Individual refused to take a PEth test, a blood test which could detect alcohol use for the prior 30 days, citing a fear of needles. The Psychiatrist diagnosed her with Alcohol Use Disorder-Mild, in early remission.

The LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding her eligibility to continue holding 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 October 10, 2019. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of one witness and testified on her own behalf. The LSO presented the testimony of the DOE Psychiatrist who had evaluated the Individual. *See* Transcript of Hearing, Case No. PSH-20-0003 (hereinafter cited as “Tr.”). The LSO submitted 12 exhibits, marked as Exhibits 1 through 12 (hereinafter cited as “Ex.”). The Individual submitted 11 exhibits, marked as Exhibits A through K.

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.

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 her 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).

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's overarching adjudicative goal is a fair, impartial and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a Decision. The protection of the national security is the paramount consideration.

Guideline G (Alcohol Consumption) states: "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 Guidelines at ¶ 21. The conditions set forth in the Guidelines that could raise a disqualifying security concern are alcohol-related incidents, at or away from work, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder; Alcohol Use Disorder diagnosis by a duly qualified medical or mental health professional; failure to follow treatment advice after diagnosis; alcohol consumption that is not in accordance with treatment recommendations after a diagnosis of alcohol use disorder; and failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence. Adjudicative Guidelines at ¶ 22.

The LSO alleges that the Individual was arrested and charged with Driving While Intoxicated in 2005, that the Individual was arrested and charged with Aggravated Driving While Under The Influence Of Intoxicating Liquor Or Drugs (.16 Or Above) in 2018, and that the Individual was diagnosed in May 2019 by a DOE Psychiatrist with Alcohol Use Disorder-Mild, in early remission. Accordingly, the LSO's security concerns under Guideline G are justified.

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 her 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

At the hearing, the Individual’s fiancé testified that he had known the Individual for almost 16 years. Tr. At 10. He knew of her 2005 DWI. *Id.* at 13. He testified that she stopped drinking for a long time after that and that, when she started drinking again, she drank rarely and in moderation. *Id.* at 14–16. At parties, he would observe the Individual have only one or two drinks. *Id.* at 16–17. He believed that the Individual’s 2018 DWI was not a good indicator of the Individual’s typical alcohol consumption. *Id.* at 28, 35. He speculated that the Individual was experiencing stress from end-of-year stressors at work. *Id.* at 36. He testified that this year, the Individual is keeping busy with healthy activities, such as hiking, and spending time with him to cope with the stress. *Id.*

The fiancé testified that he believed the last time the Individual consumed alcohol was in July 2019 while on a work trip. Tr. At 21. He testified that a co-worker insisted on buying her drinks and that she was uncomfortable explaining why she could not drink. *Id.* She called him that night and told him that she had consumed a couple of drinks and explained the situation. *Id.* The fiancé had advised her to keep to herself and engage in a healthy activity she enjoys, such as exercise, to keep her mind off of the situation. *Id.* He believed this was the only time the Individual had consumed alcohol since December 2018. *Id.*

Though he still drinks, the fiancé did not drink in the Individual’s presence. Tr. at 19–20. There was no alcohol in their house. *Id.* at 19. The fiancé was involved in the Individual’s treatment. *Id.* at 20. He would drop her off and pick her up from treatment and meetings, and discuss with her what she had learned. *Id.* They have discussed his starting therapy to better understand the Individual. *Id.* at 25. To his knowledge, the Individual did not identify as an alcoholic when attending Alcoholics Anonymous (AA) style meetings. *Id.* at 25–26. He knew the Individual is engaged with her recovery community and was actively working to help others in their recovery. *Id.* at 27–28. The fiancé believed that the Individual intended to abstain from alcohol permanently and that she had no plans to return to social drinking. *Id.* at 30–31. He expressed pride in the Individual’s progress. *Id.* at 31.

The fiancé testified that the Individual has a fear of needles such that she passes out when trying to give blood. Tr. At 37. He had witnessed her fainting from the mere sight of a needle on multiple occasions. *Id.*

The Individual testified that, in 2005, she was drinking a couple of mixed drinks once or twice per week. Tr. at 45–46. She abstained from alcohol for a year after her 2005 DWI as a term of her probation. *Id.* at 46–47. She started going to microbreweries three or four times per month with her fiancé in 2014. *Id.* at 48–49. She would have two or three 16 ounce beers over two to three hours and would not feel impaired. *Id.* at 49–50. She and her fiancé would arrange for his sister to pick them up or they would take a ride share home. *Id.* at 50.

On the night of her December 2018 DWI, the Individual consumed three 22 oz. beers with her fiancé over about two hours, then went home. Tr. at 52–53. Shortly after she got home, the Individual realized she needed dog food, so she drove to the store with her dog. *Id.* at 53. It was the start of the Individual’s three week vacation and she wanted to celebrate, so she went to another microbrewery and had three 10 oz. beers over one to two hours. *Id.* at 54. Realizing she was intoxicated, she called her fiancé for a ride home. *Id.* at 56–57. The Individual had anxiety about being intoxicated and about leaving her car in the parking lot, so she decided to try the five minute drive home. *Id.* at 57–58. She got in a single-car accident and was arrested. *Id.* at 58. Her Blood Alcohol Content registered at .32, four times the legal limit. *Id.* at 59.

The Individual pleaded guilty to a first offense DWI. *Id.* at 63. As part of her sentence, she had to attend a DWI school and participate in a victim impact panel. *Id.* at 64. She maintained her abstinence in accordance with her sentencing terms and completed her required community service. *Id.* at 64–66. She was not driving because she had not yet had an interlock device installed in her car. *Id.*

After the 2018 DWI, the Individual considered herself an alcoholic. Tr. at 61. Unlike her feelings after the 2005 DWI, the Individual felt she could never drink in moderation. *Id.* at 62. She signed a two year abstinence agreement with her employer, which required a monthly check-in with a counselor, random alcohol screenings over the course of the agreement, and finishing her treatment program. *Id.* She was randomly screened for alcohol at least twice monthly. *Id.* at 68. For those screenings, she was given two hours advance notice. *Id.* The Individual intended to remain abstinent for the rest of her life, considering abstinence as part of her self-care routine. *Id.* at 82, 97. She believed that accountability was key to her recovery, so when she relapsed in July 2019, she reported her alcohol use to her treatment providers and everyone to whom she was required to inform at her employer. *Id.* at 94–95. Her relapse occurred in violation of her abstinence agreement and, at the time of her relapse, she was aware that the agreement contained consequences in the event of violation. *Id.* at 95, 99.

The Individual had completed a five-session alcohol treatment program that involved one-on-one counseling. Tr. at 70–71. She also attended monthly counseling through her employer. *Id.* at 71. She had a stress coach and attended a recovery group through her church. *Id.* at 72, 83–84. She had a sponsor, but her group did not use the 12-Steps Program, despite calling itself a 12-Step group. *Id.* at 90–93. In addition, she was taking medication for an underlying mental health condition that was believed to contribute to her alcohol consumption. *Id.* at 103.

The Individual underwent random monthly urine testing for alcohol as a term of her probation. Tr. at 67. She chose not to petition to obtain the testing results from the court, but testified that testing positive for alcohol would result in jail time. *Id.* at 67, 149–50. She had not been jailed for alcohol use as a result of that testing. *See id.* at 149–50.

The Individual described intoxication as being out of control and incoherent. Tr. at 51. She described being “buzzed” as being able to think and speak with intention, while being more open. *Id.* at 93. The Individual testified that after her 2005 DWI, the 2018 DWI is the only time she had driven after having even one drink. *Id.* at 109. She described her alcohol consumption with her fiancé on the day of her DWI as “three beers,” though when asked specifically, she admitted that three 22 oz. beers equaled several more standard drinks. *Id.* at 110.

The Psychiatrist testified that he suspected the Individual had a moderate alcohol use disorder, but that due to the timeframes of various diagnostic events at the time of his evaluation, he had to give her a mild diagnosis. Tr. at 121. He believed that the Individual had developed an alcohol tolerance because most people would be unable to even operate a vehicle at a .32 BAC. *Id.* at 124. He testified that the Individual’s record of alcohol testing would only be sufficient to show alcohol use in the hours before the testing occurred. *Id.* at 130, 147–48. He also testified that it would be possible for someone to drink daily and still avoid testing positive for alcohol based on the Individual’s testing schedule as listed in Exhibit C. *Id.* at 147–48.

The Psychiatrist characterized the Individual’s July alcohol consumption to be a “lapse.” Tr. at 139–40. He was concerned that the Individual had succumbed to peer pressure, though her emotional response showed that she had internalized some of the things she had learned through her recovery program. *Id.* at 128–29. Accordingly, he believed that she had lapsed, rather than relapsed.² *Id.* at 139–40. He expressed moderate concern that the Individual had refused the PETH test because her honesty could not be confirmed. *Id.* at 130–31. The Psychiatrist recommended about two years of abstinence for the Individual, primarily due to the amount of alcohol she had been drinking, but believed that, as of the hearing date, she was rehabilitated and reformed. *Id.* at 135, 145. He gave the Individual a good to very good prognosis, assuming that she continued her treatment. *Id.* at 136.

V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such Decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all of the evidence, both favorable

² The Psychiatrist discussed how a lapse in sobriety that ends up strengthening the person’s sobriety may not really be a relapse. Tr. at 139–40.

and unfavorable, in a common sense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this Decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against restoring security clearances, I must deny restoration if I am not convinced that the LSO’s security concerns have been mitigated such that restoring the Individual’s clearance is not an unacceptable risk to national security.

Guideline G provides that security concerns arising from alcohol consumption can be mitigated when (1) the individual’s alcohol use was so infrequent or so long ago that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or judgment; (2) the individual acknowledges her pattern of alcohol abuse, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence; (3) the individual has no history of relapse and is making satisfactory progress in treatment or counseling; or (4) the individual has successfully completed a treatment program and has established pattern of modified consumption or abstinence. Adjudicative Guidelines at ¶ 23.

The Individual’s alcohol use was recent enough to cast doubt on her current reliability and judgment. Though her July 2019 alcohol use may not be considered a relapse from a medical perspective, it is still quite problematic that the Individual would choose to consume alcohol in violation of her abstinence agreement, knowing she could potentially lose her job for doing so. This recent alcohol-related infraction casts doubt over the Individual’s judgment and decision-making skills, the Individual’s trustworthiness in her commitments to DOE that she will abstain from alcohol, and the degree to which the Individual can be relied upon to follow rules without supervision.

The foregoing reasons indicate that the Individual has failed to demonstrate an established pattern of abstinence. Furthermore, the Individual’s decision to decline PEth testing has made it difficult to prove her abstinence. For instance, the Individual was able to consume alcohol in July without failing her alcohol testing and the Psychiatrist testified that her testing schedule—at least the one submitted in this case—made it possible to consume alcohol nightly while never failing a test. While there is no evidence that she failed the urine tests she took pursuant to her probation, there is also no evidence that she passed them. As a result, it is difficult to give any weight to those test results. Furthermore, the Individual’s credibility in representing her alcohol-use is weakened because of her claim that she has not driven under the influence of alcohol except for the two times she was caught. However, if we merely read the Individual’s testimony, her drive to get dog food likely occurred when she was over the legal limit. Tr. at 53. *See also* Ex. 9 at 3 (estimating the Individual’s BAC at .18, over twice the legal limit, roughly half an hour before she drove to get dog food). Whether the Individual intentionally overlooked this instance in her testimony or simply forgot, the Individual’s testimony regarding her behavior surrounding alcohol is less credible than it could be. Because the burden lies with the Individual, I cannot find that she has established a pattern of abstinence.

The Adjudicative Guidelines do not specify a definition for “relapse.” While the Psychiatrist chose to characterize the Individual’s July 2019 alcohol consumption as a “lapse,” the Individual knew her job was on the line, and yet the urge to use alcohol, no matter the reason, was strong enough that she was willing to risk her career for it. As my Decision is based on the whole person concept—

and the goal of this hearing was to meet a legal, rather than medical, standard—I find that, for purposes of the Individual’s fitness to hold a security clearance, her alcohol use in July 2019 constitutes a relapse. In the same vein, while the Individual may be medically reformed or rehabilitated according to the Psychiatrist, she has not fully reformed or rehabilitated her character and fitness such that her judgment, reliability, and trustworthiness are no longer in question.

Guideline G involves several medical issues. However, at its root, the Administrative Review process is centered on DOE’s ability to trust its clearance holders to make the right decision, even when not supervised. The Individual may have addressed many of the health concerns involved with her alcoholism; however, she has failed to rehabilitate her judgment, trustworthiness, and reliability as they pertain to the national security. The Individual’s decisions (including driving under the influence, refusing PEth testing, breaking her abstinence agreement, and choosing not to petition her convicting court for the only test records that could support her claims of abstinence) show a deficit in judgment and reliability that undermine her trustworthiness. Regardless of her current medical diagnosis, she has not reformed or rehabilitated her fitness to hold a security clearance. For the foregoing reasons, I find that the Individual has not mitigated the Guideline G security concerns.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was 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 restoring 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 restore 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.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals