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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: December 17, 2019)	Case No.: PSH-20-0022
)	
_____)	

Issued: February 20, 2020

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization 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 of Special Nuclear Material.”¹ 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 restored.

I. Background

A DOE contractor (Contractor) employs the Individual in a position that requires him to hold a security clearance. In June 2019, in response to information provided by the Individual’s girlfriend, the Local Security Office (LSO) produced an investigative report regarding the Individual’s overuse of alcohol and threats of violence toward himself and others. Ex. 2; Ex. 3. Due to the concerns arising from this report, the Individual was referred for psychological and substance abuse evaluations. Ex. 7 at 1.

As a result of unresolved security concerns, the LSO informed the Individual, in a Notification Letter, dated November 19, 2019, (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. Ex. 2. In an attachment to the Notification Letter, the LSO explained that the derogatory information

¹ Access to authorization is defined as “an administrative determination that an individual is eligible for access to classified mater 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 to authorization or security clearance.

raised security concerns under Guidelines E (Personal Conduct) and G (Alcohol Consumption) of the Adjudicative Guidelines. *Id.* at 3-4.

Upon receipt of the Notification Letter, the Individual exercised his right under Part 710 regulations by requesting an administrative review hearing. 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 eleven numbered exhibits (Exhibits 1-11) into the record. The Individual submitted sixteen exhibits (Exhibits A-P), and presented the testimony of three witnesses, including himself. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. 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.

III. Notification Letter and the 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 Guidelines E and G of the Adjudicative Guidelines. Guideline E relates to security risks arising from personal conduct. Conduct that involves questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions regarding reliability, trustworthiness, and the ability to protect classified or sensitive information. Guideline E at ¶ 15. 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.

As support for citing Guidelines E and G, the LSO relied upon the following incidents²:

1. In a May 2019 audio recording, the Individual made verbal threats to harm himself, his girlfriend, his ex-wife, and his ex-wife's boyfriend;
2. In January 2019, law enforcement was called following a domestic disturbance. An incident report indicated that the Individual was intoxicated, and the complainant reported that the Individual drove his vehicle while intoxicated;
3. In December 2018, law enforcement received a report that the Individual was consuming alcohol while with his children and that he slapped one of his children;
4. In October 2018, the Individual was involved in a "text message incident" that resulted in a protective order being issued against the Individual; and
5. In April 2013, the Individual was charged with Driving Under the Influence (DUI).

IV. Findings of Fact

At the hearing, the Individual testified on his own behalf and presented the testimony of his Employee Assistance Program (EAP) therapist, and his mother. Tr. at 13, 77, 138.

With regard to his April 2013 DUI, the Individual testified that he went to dinner with his wife and consumed four beers. Ex. 6. Upon leaving the restaurant, he did not believe he was intoxicated and opted to drive home. *Id.* Law enforcement stopped the Individual, and he was subsequently charged with DUI. *Id.* He stated that since this incident he has never driven after consuming alcohol, nor would he in the future. *Id.* The Individual testified that whenever he consumes more than one drink, he has "a plan on how to get home." Tr. at 145.

In February 2018, the Individual and his wife were divorced. The Individual testified that, following his divorce, his alcohol consumption increased and he began "drinking more vodka." *Id.* at 156. He clarified that he would consume approximately half a pint to a pint of straight vodka, over two days when he was not working and did not have custody of his children. Tr. at 156-157, 212. Around this time, he began dating another woman. Tr. at 147, 149. When the relationship ended, the Individual and the woman engaged in a text message exchange, in which the Individual used graphic obscenities to describe the woman and various sexual acts. Tr. at 150; Ex. 9 at 14-24. The Individual testified that he was not under the influence of alcohol at the time he sent the text messages. Tr. at 218-219. Following this exchange, the woman filed for, and was granted, a

² As support for citing Guidelines E and G, the LSO produced a nearly four page document detailing each concern and the resulting consequences. Ex. 4. For the purposes of brevity and clarity, the concerns are summarized in relevant part.

protective order against the Individual in October 2018. Ex. 9 at 1-13. The Individual testified that he then sought the help of the EAP over the course of two visits. Tr. at 152, 154. The Individual also noted that, following this incident, he received a letter from the LSO, cautioning that circumstances arising from his personal life could have an impact on his ability to maintain his employment, and he “took it very seriously.” *Id.* at 155.

After ending the relationship with that woman, the Individual began dating another woman (Girlfriend) that same month. *Id.* at 157. The Individual testified that they argued frequently. *Id.* at 159. According to the Individual, the Girlfriend would often falsely accuse him of being drunk. *Id.* at 159-161.

In December of 2018, the Individual’s ex-wife filed an incident report with law enforcement, alleging that he had been consuming alcohol while the children were in his custody, in violation of their divorce agreement, and that the Individual slapped one of their children. Ex. 5; Tr. at 224. The Individual testified that he had not been consuming alcohol and that he “tapped [the child] on the back of the head” while verbally disciplining him. *Id.* at 164-165. The child became very upset, and the Individual later dropped the child off with his ex-wife. *Id.*

Subsequently, after a few month of dating, the Girlfriend moved into the Individual’s home. *Id.* at 162. In January of 2019, the Girlfriend called the police, reporting that she had locked herself in the bedroom with her children, and the Individual had “kicked the door in.” Ex. 4 at 4. The police arrived and noted that “[i]t was obvious that [the Individual] was very intoxicated.” *Id.* The Individual reported to law enforcement that the altercation began because the Girlfriend was upset that he had “gone out drinking with one of his friends.” *Id.* The Girlfriend told law enforcement that after she locked the bedroom door, she told the Individual “several times to leave her alone and she would pack some items and leave,” but when she would not unlock the door, the Individual started kicking the door until it broke. *Id.* at 5. Law enforcement also reported that the Individual followed them outside and began yelling at them and calling them names. *Id.*

The Individual testified that, although he could not remember the events of the night resulting in the January 2019 incident when he was originally questioned by the LSO, he and his friend recalled that they had only had one beer each. Tr. at 166. He stated that when he arrived home at 6:00 p.m., he was not intoxicated, but when law enforcement arrived at 7:39 p.m., he had consumed approximately a pint of vodka. *Id.* at 170-171. The Individual stated that he wanted the Girlfriend to leave, and he asked her ten times to leave. *Id.* at 171-172. However, when she refused and locked herself in the bedroom, he kicked the door once and then sat on the couch. *Id.*

Regarding the May 2019 audio recording, the Individual testified that he asked the Girlfriend to move out of his house at the end of April 2019. *Id.* at 183. He moved in with his mother because he was afraid she would physically attack him or “try to get back at [him] somehow.” *Id.* Then, in late May 2019, while at his mother’s house, he began consuming a pint of vodka. *Id.* at 185-184. He then decided that he wanted to go back to his house and “get her out,” so he asked his mother to drive him over. *Id.* at 185-186. By the time he arrived at his house, he approximated that he had consumed more than half of the pint of vodka. *Id.* at 186. When he arrived, he claimed that the Girlfriend began arguing with him “from the moment [he] walked in.” *Id.* at 187. Unbeknownst to the Individual, the Girlfriend was taking an audio recording of the conversation. Ex. 3. The

transcript of the audio recording indicates that Individual stated, “I’d like to be dead. That’d be cool.” Ex. 3 at 5. He additionally stated that he “will kill” his ex-wife’s boyfriend, and “Guess who’s gonna get...murdered?” *Id.* at 7. Throughout the conversation, the Individual cries, yells, and uses lewd and obscene language, while his mother plays with a two year old child in the same room. *See* Ex. 3; Tr. at 99. The Individual explained that the threats were not “legitimate,” and were merely the result of his “alpha male,” “crude” personality. Tr. at 190.

The Individual testified that he stopped consuming alcohol on the day following the May 2019 incident, began counseling sessions with EAP, and additionally signed a Stipulation of Understanding (SOU), in which he agreed to abstain from alcohol use for a period of two years and attend couples counseling if he becomes involved in a committed relationship. Tr. at 200-201, 208; Ex. E. He stated that since abstaining from alcohol he is happier, healthier, and his children enjoy spending time with him. Tr. at 204. Since attending counseling with EAP, the Individual testified that his dating practices have changed, and he is “going a lot slower.” *Id.* at 206. However, he has not been involved in a serious relationship. *Id.* at 66. Although consuming alcohol in the future does not “appeal” to the Individual, he testified that should he decide to consume alcohol again, he would do so socially and in consultation with EAP. *Id.* at 205.

One of the Individual’s EAP therapists (Therapist) also testified on his behalf. Tr. at 14. She testified that, as a result of the investigative report, EAP referred the Individual for a psychological evaluation and a Global Appraisal of Individual Needs (GAIN) assessment.³ *Id.* at 21-23. The GAIN assessment provider found that the “Individual meets lifetime criteria for substance use disorder moderate, [and]...staff recommends referral to substance use disorder treatment.” Ex. B at 2. He further indicated that the Individual met the criteria for placement in an intensive outpatient treatment. *Id.* at 10. A separate psychological provider determined that the Individual did not “exhibit any psychological concerns;” however, he did note that it was “clear that there needs to be external control in terms of restriction of alcohol use as well as mandatory outpatient counseling.” Ex. C at 2, 5. The Therapist testified that EAP does not constitute intensive outpatient treatment and she was not aware of any treatment the Individual may have received. Tr. at 58.

The Therapist testified that the evaluations found that the Individual “did not meet the diagnostic criteria for a substance abuse problem⁴,” but given his troubling behavior under the influence of alcohol, EAP recommended that he sign the SOU. *Id.* at 30. She noted that the Individual did not show any sign of defensiveness or resistance in signing the SOU, and he has followed all counseling recommendations cooperatively. *Id.* at 30-32. She noted that the Individual continues to meet with EAP on a monthly basis and has been “perfectly cooperative” with the SOU. *Id.* at 34-36. She also stated that the Individual has never tested positive for alcohol at any time during his employment. *Id.* at 36.

³ According to the Therapist, a GAIN assessment is “an evaluation of substance use” and “is a review by someone trained in diagnosis of substance use issues.” Tr. at 23-24.

⁴ When questioned as to why the GAIN assessment provider’s opinion was not a diagnosis of an alcohol condition, the Therapist indicated that she felt that signing the SOU and the Individual’s cooperation with EAP was sufficient to address the issue. Tr. at 57. She additionally submitted a letter following the hearing stating that the GAIN assessment “does not constitute an exhaustive or infallible diagnosis,” and she must use her own “clinical judgment in receiving the results.” Ex. N.

With regard to the Individual's relationship problems, the Therapist felt that the Individual had been "baited" by the Girlfriend and questioned the Girlfriend's judgment and reliability. *Id.* at 42. She further testified that the Individual "may have made a series of poor decision in multiple relationships, but [they] were over a fairly limited period of time." *Id.* at 45. She felt that the Individual's situation was "normal" for the EAP. The Therapist noted that "one of the biggest factors...is somebody's willingness to move forward and do what [EAP] request[s] of them," and due to the Individual's "rational decision" to address the problems in his life, she opined that the Individual had demonstrated adequate rehabilitation of his alcohol and behavioral issues. *Id.* at 38, 46, 48-49.

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. Given the incidents and facts presented in this case, it is apparent that the Guideline E and G concerns arising from the Individual's questionable conduct and problematic alcohol consumption are closely intertwined. 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 asserted by the LSO with regard to Guidelines E and G. Therefore, I have determined that the Individual's security clearance should not be restored. The specific findings that I make in support of this decision are discussed below. Due to the interconnected nature of the Guideline E and Guideline G security concerns, I will analyze them together.

Alcohol offenses away from work, such as driving while under the influence, diagnosis of alcohol use disorder by a duly qualified medical professional, and habitual or binge consumption of alcohol to the point of impaired judgement, regardless of whether the individual is diagnosed with an alcohol use disorder, can render an individual ineligible for access authorization. Guideline G at ¶ 22(a), (c), (d). An individual may be able to mitigate such security concerns by acknowledging a pattern of maladaptive alcohol use, providing evidence of actions taken to overcome the problem, and demonstrating a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations. *Id.* at ¶ 23(b).

Furthermore, credible adverse information which supports a whole-person assessment of questionable judgment, including any disruptive, violent, or inappropriate behavior can raise a security concern and may disqualify a person from holding a security clearance. Guideline E at ¶ 16(d)(2). An individual may mitigate such a security concern if the offense is so minor, so much time has passed, 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. *Id.* at ¶17 (c). Additionally, if the individual has obtained counseling to change the behavior or taken other positive steps to alleviate the factors that contributed to the inappropriate behavior, and such behavior is unlikely to recur, the individual may be able to mitigate the security concerns. *Id.* at ¶17(d).

Here, the Individual appears to have begun to take steps to mitigate security concerns related to his alcohol consumption and personal conduct. He has been abstinent from alcohol for approximately eight months and has been attending EAP counseling sessions once per month. Further, he has signed an SOU, agreeing to abstain from alcohol for two years and receive couples counseling should he become involved in a serious relationship. However, I cannot find that these actions, in and of themselves, mitigate the security concerns.

While both sober and the influence of alcohol, the Individual has repeatedly engaged in violent, inappropriate, and egregious behavior, often in the presence of young children, to the extent that three separate women have felt compelled to involve law enforcement or the legal system. I cannot find that the Individual has fully acknowledged the inappropriate nature of his actions, often blaming the women in his life, accusing them of revenge. *See* Tr. at 199. My assessment of the Therapist's credibility is lessened by her testimony that seeks to characterize the Individual's behavior as "normal" and questions, not the Individual's judgment and reliability, but that of the women in his life. Despite the Individual being diagnosed with a substance use disorder from the GAIN assessment provider, "someone trained in diagnosis of substance use issues," and receiving a recommendation to attend an outpatient treatment program, neither the Individual, nor the EAP, felt that further action needed to be taken in this regard. Tr. at 23-24.

Less than one year has elapsed since the Individual ceased consuming alcohol and began reevaluating his thinking with regard to intimate relationships. Although it is commendable that the Individual has taken the first steps to rectify his problematic behavior, both in terms of his alcohol consumption and his personal relationships, he has yet to complete the recommended treatment program, or demonstrate that he can exercise good judgment while engaged in a serious relationship following his divorce. Given the connection between the Guideline E and G security concerns, I find that neither the Guideline E, nor the Guideline G concerns, have been mitigated.

VI. Conclusion

After considering all of the relevant information, favorable and unfavorable, in 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 Guidelines E and G. 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.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals