

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

In the Matter of: Personnel Security Hearing)
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Filing Date: January 6, 2020)
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Case No.: PSH-20-0026

Issued: June 26, 2020

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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.”* 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 be restored.

I. Background

A DOE contractor employs the Individual in a position that requires him to hold an access authorization. The Individual was charged with Driving While Intoxicated (DWI) in October 2015. Ex. 1. Within two days, the Individual filed an Incident Report (IR). Ex. 8. The local security office (LSO) began an investigation subsequent to the October 2015 charge and interviewed the Individual in January 2016 (PSI). Ex. 14. A DOE-consultant Psychologist (first DOE Psychologist) evaluated the Individual in March 2016, which resulted in a report in which the first DOE Psychologist found that the Individual was rehabilitated or reformed from a diagnosis of using alcohol habitually to excess. Ex. 11.

During a routine reexamination the Individual stated that, although he had been abstinent from October 2015 to April 2018, he had been consuming approximately three 12-ounce beers once a month since April 2018. Ex. 16 at 5. Because of the potentially derogatory information, the LSO

* 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.

asked a second DOE-Consultant Psychologist (second DOE Psychologist) to evaluate the Individual. Ex. 9 at 1. The second DOE Psychologist diagnosed the Individual with Unspecified Alcohol Use Disorder. *Id.* at 7. The LSO informed the Individual, by letter dated November 18, 2019 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1.

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 appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted sixteen numbered exhibits (Ex. 1–16) into the record, and presented the testimony of the DOE Psychologist at the hearing. The Individual submitted eight exhibits (Ex. A–G) into the record. In addition to his own testimony, the Individual presented the testimony of six witnesses at the hearing.

II. The 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 Guideline G of the Adjudicative Guidelines which relates to security risks arising from alcohol consumption. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an Individual's reliability and trustworthiness. Guideline G at ¶ 21.

In citing Guideline G, the LSO relied upon the fact that the second DOE Psychologist determined in her June 2019 report that the Individual suffered from Unspecified Alcohol Use Disorder without adequate evidence of rehabilitation or reformation. Ex. 1. In addition, the LSO relied upon a statement from March 2016 by the Individual that he never intended to consume alcohol again, but he began drinking again in April 2018. *Id.* Finally, the LSO relied upon the Individual's October 2015 DWI charge. *Id.*

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

In October 2015, the Individual was charged with a DWI misdemeanor after he consumed approximately seven to eight beers within seven hours. Ex. 14 at 25-27. Subsequently, the Individual was diagnosed with Alcohol Use Disorder, Mild, and completed an Intensive Outpatient Program (IOP) and Aftercare Program in July 2016. Ex. 9 at 2. After more than two years of abstinence, the Individual began consuming alcohol again in April 2018. Ex. 16 at 56. He admitted his consumption at the Enhanced Subject Interview (ESI) conducted in response to his reinvestigation for his access authorization. *Id.* In response to the ESI, the LSO sent the Individual for a psychological evaluation with the second DOE Psychologist in June 2019. During the evaluation, the second DOE Psychologist found that the Individual suffered from Unspecified Alcohol Use Disorder and needed to abstain from alcohol for six months, attend Alcoholics Anonymous (AA) two times a week, and find a sponsor. Ex. 9 at 7.

The Individual testified that he has been abstinent since he was evaluated by the second DOE Psychologist in June 2019. Tr. at 78. Immediately after the second DOE Psychologist’s evaluation, the Individual began seeing the counselor who had recommended his attendance at the 2016 IOP. *Id.* at 79. The Individual stated that he likes his counselor’s bluntness. *Id.* at 74. He accepted her recommendations, which included aftercare, even though he did not like going to aftercare because of a social anxiety problem. *Id.* at 80-81. Following aftercare, a number of fellow employees gather in the parking lot to allow them the opportunity to share what they are all experiencing. *Id.* at 82. He has only missed one aftercare session due to a dental issue. *Id.* at 84. The Individual affirmatively stated that he has not consumed any alcohol since the evaluation at the second DOE Psychologist’s office in June 2019. He underwent a Phosphatidylethanol (PEth) test in January 2020, which was negative. *Id.* at 88; Ex. B. He underwent a Nail ethyl glucuronide test, which purports to show alcohol consumption for the previous 90 days, which was also negative. *Id.* at 88; Ex. A.

The Individual’s mother, step-father, two immediate supervisors and the department manager all testified in support of the Individual. His mother confirmed that he suffers from social anxiety but is much better with medication. Tr. at 12-13. She also confirmed that he is abstinent. *Id.* at 13. His mother stated that she visits his home regularly and has dined out with him. *Id.* She has not seen him consume any alcohol since June 2019. *Id.* at 14. The Individual’s step-father asserted that the Individual learned much from his aftercare program. *Id.* at 23. The Individual talks about his aftercare program and the time spent afterwards in the parking lot. *Id.* His step-father stated that the Individual respects and trusts his counselor. *Id.* at 26. He believes the Individual has been abstinent and that he is on the correct path in life. *Id.* at 27.

Two supervisors within the Individual's department testified that the Individual is an excellent employee. Tr. at 33, 56. Their entire department has had a number of alcohol-related incidents, so the supervisor asked the Individual to give a presentation to the department regarding alcohol use. *Id.* at 39. The first supervisor testified that they have become friends and he has observed the Individual around other people who have been consuming alcohol. *Id.* at 49. "He always put out to those people 'Hey, if you're going to be driving, let me find you a ride,' or he would be the DD [designated driver] if he needed to be, or he would find somebody to help get somebody [home] safe." *Id.* at 49. The first supervisor concluded that he has never doubted the Individual's judgment, reliability, or honesty. *Id.* at 46. The second supervisor stated that the Individual is very responsible and has never had a concern about the Individual completing the jobs on time. *Id.* at 52-53. He concluded that the Individual has a positive attitude about aftercare and counseling, and that he has never had a reason to doubt the Individual's judgment, honesty, or reliability. *Id.* at 54.

The Manager of the Individual's department testified that the Individual is an employee whom she trusts completely. Tr. at 59. He has a calming influence between employees and management. *Id.* The Individual has been honest about his alcohol issues both in 2015 and in 2019. *Id.* at 61. She stated that, "He totally owns [his mistakes]. He's a very honest person." *Id.* The Manager concluded that she has no concern about the Individual's honesty and reliability. *Id.* at 64.

The Individual's counselor testified that she met the Individual again in 2019, after she had previously counseled him through his divorce and 2015 DWI. Tr. at 112. They formulated a plan for his recovery. *Id.* at 117. She indicated to him that it would be in his best interest not to consume alcohol again. *Id.* The counselor stated that he needs individual counseling because "he is a thinker, and he questions, and he needs feedback. I think he needs the kind of connection with others. I think he needs more than one perspective, as well. It kinds of broadens his -- his view and his information, his education." *Id.* at 118. She stated that she was trying to tell him previously that he had a problem with alcohol, but that he did not hear that message in 2015-2016. *Id.* at 120. After his DWI arrest, the Individual heard that he needed to have one year of abstinence which he completed. *Id.* at 121. Regarding his alcohol issue, the counselor suggested a different treatment program than that prescribed by the second DOE Psychologist. *Id.* at 123. Her plan was based on her long history working with him and his social anxiety issues. *Id.* The counselor opined that the Individual will be successful in remaining abstinent. *Id.* at 127. His employment is a significant external factor, as it plays into his identity and his social life. *Id.* at 127-28. She concluded that he is on the "right path" and has progressed in a steady, quiet way. *Id.* at 125-26. The Individual is presenting information about alcohol misuse and making public statements, both of which are difficult for him given his anxiety issues. *Id.* The counselor would describe him as a "success story." *Id.* at 127.

The second DOE Psychologist testified that although the Individual has not met her exact recommendations, each treatment program needs to be individualized. Tr. at 137. She stated "I would just want to be real clear about the fact that I agree very much that things have to be -- these treatment programs have to be individualized. I totally defer to the counselor's knowledge of and understanding of the Individual at this point." *Id.* The Individual is taking steps that are helping him. *Id.* She opined that the Individual is, in fact, engaging in two meetings a week between the

aftercare and the meetings in the parking lot after the aftercare meetings. *Id.* at 138. She asserted that the individual counseling he is receiving from his counselor is “icing on the cake.” *Id.* She concluded that in her opinion, the Individual has demonstrated adequate rehabilitation and reformation. *Id.* at 139

V. Analysis

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 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 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 granting and restoring security clearances, I must deny the security clearance unless I am convinced that the LSO’s security concerns have been mitigated such that granting the Individual’s clearance is not an unacceptable risk to national security.

The diagnosis of an alcohol use disorder by a qualified medical or mental health professional can render an individual ineligible for access authorization. Guideline G at ¶ 22(d). An Individual may be able to mitigate such security concerns the following ways:

- (1) 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 good judgement; or
- (2) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions take to overcome this problem, and has demonstrated clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations; or
- (3) the individual is participating in counseling or treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; or
- (4) 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.

Adjudicative Guidelines at ¶ 23(a-d).

The Individual has made laudable efforts to mitigate the security concerns related to his alcohol consumption. There is no question that the Individual has acknowledged his pattern of maladaptive alcohol consumption and has taken action to overcome the problem by immediately engaging in ongoing treatment with his counselor after meeting with the second DOE Psychologist. Tr. at 79. He is enrolled in aftercare, participates in further meetings after the aftercare, and engaged in individual counseling. The Individual avowed that he has been abstinent since meeting with the

second DOE Psychologist in June 2019. Although not strictly adhering to the recommendations outlined in the second DOE Psychologist's report, the Individual is following his counselor's recommendations. The second DOE Psychologist testified that the program established by the Individual's counselor is an individualized program that is working for him. She opined that he has demonstrated adequate rehabilitation and reformation.

I found the Individual to be credible in his testimony. The Individual's counselor testified that he has been active in his aftercare meetings, which is difficult for him given his social anxiety issues. His witnesses testified that he has not consumed alcohol in their presence for many months and has given presentations at work regarding his alcohol issues. Further, he is active in the group of employees who meet in the parking lot following his aftercare program. The second DOE Psychologist found this to be significant in his treatment program. With the Individual's credible testimony regarding his alcohol consumption, supported by the testimony of his witnesses and the opinions of the health care experts that he is rehabilitated and reformed, I find that the Individual has sufficiently mitigated Guideline G concerns.

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 Guideline G of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concern associated with Guideline G. Accordingly, I have concluded 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). Therefore, I find that the DOE should 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.

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