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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: February 5, 2020) Case No.: PSH-21-0014
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Issued: April 19, 2021

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (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."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 be restored.

I. Background

A DOE contractor employs the Individual in a position that requires him to hold access authorization. On June 2, 2019, the Individual was arrested and charged with three counts of Aggravated Assault and one count of Reckless Endangerment after he, in a state of intoxication, allegedly brandished and fired a firearm. Ex. 6; Ex. 7; Ex. 8. The Individual self-reported this incident, after which the Local Security Office (LSO) requested the Individual complete a Letter of Interrogatory (LOI), which the Individual signed and submitted on August 28, 2019. Ex. 9. Based on the information provided, the LSO requested that the Individual be evaluated by a DOE-contracted Psychiatrist (DOE Psychiatrist), who subsequently issued a report of his findings (Report). Ex. 10. After receiving the DOE Psychiatrist's Report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual, informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

¹ 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.

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. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of four other witnesses, along with twenty-eight exhibits, marked as Exhibits A through BB (hereinafter cited as "Ex."). See Transcript of Hearing, Case No. PSH-21-0014 (hereinafter cited as "Tr."). The DOE Counsel presented the testimony of one witness and submitted twelve exhibits marked as Exhibits one through twelve.

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 Guideline G of the Adjudicative Guidelines. Ex. 1. Under Guideline G (Alcohol Consumption), "[e]xcessive 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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are "alcohol-related incidents away from work, such as...fighting...disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use[.]" and "[d]iagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder." *Id.* at ¶¶ 22(a), (c)-(d). With respect to Guideline G, the LSO alleged that (1) the DOE Psychiatrist diagnosed the Individual with Alcohol Use Disorder (AUD), Mild, in early remission, without adequate evidence of rehabilitation or reformation; (2) the Individual was charged with three counts of Aggravated Assault and one count of Reckless Endangerment, and according to the LOI, the Individual stated he had consumed approximately ten to twelve beers and was intoxicated at the time of the incident. Ex. 1 at 1.

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) (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

The Individual does not challenge the basic facts listed in the Notification Letter; namely that, in June 2019, he was charged with three counts of Aggravated Assault and one count of Reckless Endangerment. In his LOI, the Individual stated that he had consumed approximately ten to twelve beers on the night of his arrest and confirmed that he had been intoxicated during the incident that resulted in the aforementioned charges. Ex. 8 at 6. He also stated that the charges were dismissed on August 19, 2019. *Id.*; Ex. Q at 1. The Individual enrolled in an intensive outpatient program for his alcohol disorder on June 10, 2019, during which he repeatedly tested negative for illicit substances and alcohol and completed the program on August 6, 2019. Ex. B at 1; Ex. R. Despite the ongoing pandemic, the Individual attended and remained active in an aftercare program after completing the intensive treatment program. Ex. D at 2. The Individual also began attending Alcoholics Anonymous (AA) meetings in June 2019, and as of September 23, 2020, the Individual had attended over 150 meetings, with documented active participation extending into March 2021, approximately sixteen days before the hearing. Ex. E at 1; Ex. W.

Based on the Individual's arrest and the information collected in the LOI, the LSO requested that the Individual undergo a psychological evaluation. Ex. A at 1.² The DOE Psychiatrist interviewed the Individual and issued the Report on October 30, 2019. Ex. 10. During the interview, the Individual stated that he "had a tendency to overindulge on alcohol," but that his last drink was the night of the incident in June 2019. *Id.* at 4. He also stated that he had been active in AA meetings, attending approximately two to five meetings per week, and reported his prior tendency to drink approximately five beers over two weeks. He also reported that he would consume larger quantities over weekends or on vacations. *Id.* at 5-6; Ex. C at 1; Ex. F at 1. The DOE Psychiatrist diagnosed the Individual with Alcohol Use Disorder (AUD), mild, in early remission, and recommended that the Individual remain sober for at least six months. Ex. 10 at 8.

The Individual began receiving regular outpatient psychotherapy beginning June 23, 2020, with an aim of, among other things, rehabilitating himself from his AUD, attending twenty-one appointments as of March 21, 2021. Ex. A at 1. In a March 21, 2021 letter, the Individual's treating psychologist (Individual's Psychologist) indicated that the Individual is in sustained remission, that he has been abstinent since June 3, 2019, and that he has "internalized the principles of [AA] and actively practices them on a daily basis." *Id.* Accordingly, the Individual's Psychologist opined that the Individual had demonstrated "adequate evidence of rehabilitation and reformation."

² The DOE Psychiatrist's evaluation of the Individual included two laboratory tests, an Ethyl Glucuronide (EtG) and a Phosphatidylethanol (PEth) test, both of which were negative. Ex. 10 at 7-8. The EtG urine test detects alcohol up to 80 hours after any alcoholic beverage is consumed. The PEth test detects alcohol use during the previous 28-days. *Id.* The record includes a negative EtG test on July 10, 2020, and February 23, 2021, as well as a negative PEth test on February 19, 2021. Ex. T; Ex. U; Ex. V. The Individual was also subject to alcohol breath tests on September 9, 2019, September 24, 2019, and February 18, 2020, all which were negative, and which permitted the Individual to return to duty. Ex P.

V. Hearing Testimony

The hearing began with the testimony of witnesses who either were or are directly involved in the Individual's recovery. The first witness, an employee of the aftercare program the Individual attended, met the Individual in 2019, and indicated the Individual regularly attended aftercare meetings in person, then by phone at the commencement of the ongoing COVID-19 pandemic. Tr. at 14-17. Concluding his testimony, the witness noted the Individual's commendable progress, in that the Individual has remained sober for approximately twenty-one months and has "progressed greatly." Tr. at 20.

The Individual's AA sponsor, who met the Individual in June 2019, testified that he guided the Individual through steps one through five of the twelve AA steps, despite the fact the Individual had completed these steps while in treatment, and that the Individual is currently working through steps ten through twelve to maintain his sobriety. Tr. at 32-34. The Individual "has become very active" in his AA homegroup, even chairing several meetings and making himself available to assist those in need. Tr. at 34-36. The witness stated that the Individual "understood the seriousness of his actions" in June 2019, and made it clear that he has no knowledge of the Individual relapsing, indicating that the Individual approaches his sobriety "fiercely[.]" participating in meetings prior to and after the official meeting and expressing a strong desire to remain sober. Tr. at 36-39.

The Individual's former supervisor described his work as "great," noted that she had "no problems with [the Individual,]" and that one colleague even thanked her for hiring the Individual. Tr. at 24-25. In discussing the events of June 2, 2019, with her, the Individual not only expressed remorse, but provided her with assurances that he would correct the situation. Tr. at 26.³ The Individual's former supervisor denied ever having seen the Individual act inappropriately on social occasions outside of work and testified she had never seen the Individual report to work either intoxicated or in an apparent state of hangover. Tr. at 27-28. She denied having any concerns should the Individual's clearance be restored. Tr. at 28.

The Individual testified that he last used alcohol on the night of the incident. Tr. at 46. He confirmed that he had consumed ten to twelve beers in the presence of his cousin and two of his cousin's friends on the night of the incident before blacking out. Tr. at 47-48. Not only were the charges stemming from the incident dismissed, but they were expunged from his criminal record. Tr. at 48. He indicated that his cousin, girlfriend, daughter, and parents are supportive of his endeavor to remain sober. Tr. at 49-50. Although the pandemic initially resulted in the cancellation of AA meetings, the Individual remained in contact with fellow AA members to maintain his sobriety, taking it "one day at a time[.]" Tr. at 51, 66. He remains active by attending meetings, chairing meetings, sponsoring, reading through the "Big Book of Alcoholics Anonymous," and working through the steps. Tr. at 52-54. The Individual expressed his desire to remain sober so that he can "[b]e a better individual and a better person for [his] children[.]" Tr. at 62. The Individual also testified that he no longer smokes or uses dip, and he has no difficulty spending time with either his cousin or his girlfriend while they consume alcohol. Tr. at 63-64.

The Individual's Psychologist confirmed that he had met with the Individual for approximately twenty-one appointments and noted that the Individual was an active participant during these

³ The Individual's former supervisor stated the same in a letter dated January 20, 2020. Ex. K.

meetings. Tr. at 68. He testified that the Individual does not meet an alcohol-related diagnosis at this time, that he is taking appropriate measures to remain sober, and that he is “invested in his therapy” and recovery. Tr. at 69-70. The Individual understands he has had a “problem with alcohol in the past[.]” and that alcohol use is dangerous. In the opinion of the Individual’s Psychologist, the Individual has “demonstrated adequate rehabilitation and reformation[.]” Tr. at 71-72. The Individual’s Psychologist further testified that the Individual has complied with all treatment recommendations, and he does not anticipate the Individual placing himself in a situation comparable to that which he was in on June 2, 2019. Tr. at 74, 76.

The DOE Psychiatrist testified that he first met the Individual in the fall of 2019 and had noted that the Individual had “already really taken things very seriously[.]” Tr. at 80. In retrospect, he feels he should have recommended one year of sobriety instead of only six months, but acknowledged that the Individual does not have a diagnosis of AUD based on current diagnostic criteria and that he diagnosed the Individual with a mild disorder at the time the evaluation out of an abundance of caution. Tr. at 83-85. Based on the information and testimony provided, the DOE Psychiatrist concluded that the Individual has shown adequate rehabilitation and reformation. Tr. at 85. He noted his appreciation of the fact that the Individual submitted to hair follicle tests during the pandemic which would detect alcohol use in the prior two or three months. All these tests were negative. Tr. at 87.

VI. Analysis

The Individual’s alcohol-related incidents away from work and diagnosis of AUD all raise security concerns under Guideline G of the Adjudicative Guidelines. The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if “the individual acknowledges his or her pattern of maladaptive use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established patterns of modified consumption or abstinence in accordance with treatment recommendations.” Guideline G at ¶ 23(b).

Admirably, the Individual has recognized his maladaptive alcohol use and has taken commendable steps toward mitigating the Guideline G concerns. After confronting the events that transpired on June 2, 2019, the Individual enrolled in and successfully completed an outpatient treatment program and continued to attend the recommended aftercare program. Ex. B; Ex. R. Further, the record also indicates that the Individual has been subject to various forms of substance testing since the date of the incident. Ex. 10 at 7-8; Ex. P; Ex. R; Ex. T; Ex. U; Ex. V. The Individual tested negative for alcohol and other illicit substances every time, providing objective proof of his continued sobriety during the ongoing pandemic. *Id.* Not only were all drug and alcohol tests in the record negative, but the record is devoid of any testimony suggesting the Individual had relapsed. Further, the Individual enjoys strong support from his girlfriend and family in his endeavor to remain abstinent.

By the Individual’s own credible testimony, which was strongly corroborated by other evidence in the record, he has remained abstinent since June 3, 2019, and has incorporated AA seamlessly into his life. His active participation did not go unnoticed by his AA sponsor, an employee of the aftercare program he attended, and the Individual’s Psychologist. Not only did the Individual’s Psychologist specifically note that the Individual has complied with all treatment recommendations, but also indicated that the Individual has “demonstrated adequate rehabilitation and reformation[.]” Tr. at 71-72. This opinion was also

shared by the DOE Psychiatrist. The DOE Psychiatrist also noted that the Individual was taking his sobriety “very seriously.” Tr. at 83.

The sweeping actions the Individual took to address the consequences of his alcohol misuse on the night of June 2, 2019, his ongoing abstinence, as well as expert opinions that the Individual has been rehabilitated from his AUD diagnosis, have mitigated the security concerns raised in the Notification Letter.

VII. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G of the Adjudicative Guidelines. After considering all of the evidence, both 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 brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, the Individual has 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 be restored. Either party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

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