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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: March 15, 2021) Case No.: PSH-21-0023
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Issued: May 11, 2021

Administrative Judge Decision

Steven L. Fine, 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."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 granted.

I. Background

The Individual, an applicant for a DOE security clearance, underwent a background investigation conducted by the United States Office of Personnel Management (OPM). On July 19, 2019, OPM issued a report of its findings. Ex. 9 at 5. The OPM's report indicates that an OPM investigator (the Investigator) conducted an Enhanced Subject Interview (ESI) of the Individual on June 12, 2019. Ex. 9 at 53. During this ESI, the Individual disclosed that he had: been arrested for Driving While Intoxicated (DWI) on October 16, 1997; undergone voluntary outpatient alcohol treatment from December 2018 through January 2019, and had decided to discontinue this treatment before its completion. Ex. 9 at 55-56. On October 21, 2019, a Local Security Office (LSO) issued a Letter of Interrogatory (LOI) to the Individual. Ex. 6 at 1. The Individual submitted his response to the LOI on October 23, 2019, confirming that a breathalyzer test was administered at the time

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.

of his DWI arrest and stating that this test measured his blood alcohol concentration BAC at .17 percent. Ex. 6 at 3.

Because of the concerns raised by the ESI and LOI about the Individual's alcohol consumption, the LSO requested that the Individual be evaluated by a DOE-contractor Psychiatrist (Psychiatrist) who interviewed the Individual on November 25, 2019. Ex. 7 at 4. During the interview, the Individual indicated that he had voluntarily participated in an Intensive Outpatient Program for alcohol treatment (IOP) from December 2018 through January 2019. Ex.7 at 2. The Psychiatrist, however, reviewed records from the IOP indicating that the Individual attended the IOP from October 2019 through November 2019. Ex. 7 at 2. The IOP's records further indicated that its staff had diagnosed the Individual with "Alcohol Dependence,"² and had recommended that he undergo intensive inpatient treatment, as well as an IOP, and that he attend Alcoholics Anonymous (AA). Ex. 7 at 7. The Psychiatrist further reported that the IOP records indicated that the Individual had refused to meet with the IOP's physician and had discontinued the IOP much earlier than recommended, having made little progress in treatment. Ex. 7 at 3. The Psychiatrist diagnosed the Individual with AUD, Severe, and indicated that the Individual "habitually consumes alcohol to the point of impaired judgement[.]"³ Ex. 7 at 6, 11-12. The Psychiatrist further opined that the Individual did not demonstrate adequate evidence of rehabilitation or reformation. Ex. 7 at 12. Accordingly, the Psychiatrist recommended that the Individual abstain from alcohol for one year, attend three AA meetings every week for a year, successfully complete a four-to-six week IOP, and participate in his employer's Employee Assistance Program (EAP) for alcohol. Ex. 7 at 11-13.

After receiving the Report, the LSO determined that unresolved derogatory information continued to raise significant security concerns about the Individual. Accordingly, the LSO began the present administrative review proceeding on May 19, 2020, by issuing a Notification Letter informing the Individual that the LSO possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. The Notification Letter further informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve these substantial doubts. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded his request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge. 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 submitted one exhibit marked as Exhibit A (hereinafter "Ex."). *See* Transcript of Hearing, Case No. PSH-21-0023 (hereinafter cited as "Tr."). The DOE Counsel presented the testimony of the Psychiatrist and submitted nine exhibits marked as Exhibits 1 through 9.

II. The Notification Letter and the Associated Security Concerns

² During the interview, the Individual indicated that he had not been given a diagnosis by at the IOP. Ex. 7 at 3.

³ A Phosphatidyl Ethanol (PEth) test was ordered in conjunction with the evaluation. The PEth test detects alcohol use during the previous 28-days. Ex. 7 at 6.

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance. In support of this determination, the LSO cited 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). 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 driving while under the influence[,]” “[h]abitual or binge consumption of alcohol to the point of impaired judgement[,]” and “[d]iagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder.” *Id.* at ¶¶ 22(a), (d). The LSO alleged that (1) the Psychiatrist diagnosed the Individual with Alcohol Use Disorder, Severe (AUD), using the criteria set forth in the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition* (DSM-5), without rehabilitation or reformation; (2) the Psychiatrist concluded that the Individual habitually consumes alcohol to the point of impaired judgement; (3) from 2014 through October 2018, the Individual consumed one-half to one pint of whiskey or two to four mixed drinks every two to three days on a weekly basis; and (4) police arrested and charged the Individual with DWI on October 16, 1997, after he registered a breath alcohol content of .17 percent.

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).

An 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 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. The Hearing

At the Hearing, the Individual testified that he does not dispute any of the conclusions in the Psychiatrist's Report. Tr. at 12. However, he further testified that he no longer has an active problem with alcohol, noting that he had not consumed alcohol since May 16, 2020.⁴ Tr. at 10-11. He further testified that he has no intention of ever using alcohol again and recognizes that even one drink would be "a bad idea." Tr. at 18. He believes that he can never let his "guard down." Tr. at 11. The Individual's recognition that his alcohol use could result in the loss of his family led him to stop consuming alcohol on May 16, 2020. Tr. at 11, 15, 17-18. He testified that his family life improved after he stopped using alcohol. Tr. at 17.

The Individual testified that he participated in addiction treatment, attending a total of four to five individual sessions and two AA meetings in late 2018. Tr. 18-19. Although the IOP diagnosed him with Alcohol Dependence and recommended follow-up services, the Individual did not comply with these recommendations because discussing his personal issues with strangers makes him uncomfortable. Tr. 19-20. He also testified that he has no intention of attending AA meetings or seeking further treatment but remains confident that he can maintain his sobriety without treatment and would reach out to his wife if he felt he needed help. Tr. at 25, 27-28. He testified that he avoids social situations that would likely involve the consumption of alcohol and still avoids some of his in-laws because they want him to be "their drinking buddy." Tr. at 21-22. The temptation of having a drink still strikes him occasionally, but he has successfully endured considerable physical pain and stress without using alcohol since May 16, 2020. Tr. 23-25, 27.

The Psychiatrist began his testimony by explaining why he diagnosed the Individual with AUD, Severe, and how he arrived at his treatment recommendations for the Individual. Tr. at 33-35. He testified that the Individual began his reformation on May 16, 2020, (when he stopped using alcohol) and "has high levels of motivation to stay alcohol abstinent," but would not be considered to be reformed until he had abstained from alcohol use for at least five years. Tr. at 37. He further opined that the Individual has not been rehabilitated since he did not complete a treatment program. Tr. at 34. The Psychiatrist noted that the Individual had complied with his first treatment recommendation by abstaining from alcohol use for almost a full year. Tr. at 37-38. The Psychiatrist noted, however, that the Individual had not complied with his other three treatment recommendations, noting that he needs to attend AA regularly; complete an IOP; and attend his EAP's alcohol program. Tr. at 39-40. The Psychiatrist further testified that the Individual now recognizes that he has an alcohol problem that requires him to maintain "a daily life pattern" of abstinence from alcohol use. Tr. at 38. However, the Psychiatrist expressed concern over the fact that the Individual is largely keeping his feelings to himself, stating that "this is a bit of a red flag for me in terms of how much effort [the Individual] will have to put forward on his own...to maintain himself alcohol free." Tr. at 38. The Psychiatrist opined that the Individual's risk of relapse remains high without completed treatment. Tr. at 41. He further opined that the Individual remains in early remission and is "on the cusp of having a good prognosis." Tr. at 42-44.

V. Findings of Fact

The Individual has been diagnosed by a Psychiatrist with AUD, Severe, after having been diagnosed with Alcohol Dependence by the staff of an IOP that he attended but did not complete.

⁴ The Individual testified he had an alcohol problem from 2019 to May 2020. Tr. at 11.

The Individual fully recognizes that he has an alcohol problem and that he needs to permanently abstain from alcohol use. The Individual testified that his last use of alcohol occurred on May 16, 2020. Since, the Individual's hearing testimony was highly credible, I find that he has abstained from alcohol use for almost a full year. However, the Record shows that the Individual's AUD was severe, and the Psychiatrist has convincingly opined that the Individual's rehabilitation is incomplete because of his failure to obtain treatment (in the form of an IOP), counseling (by attending his EAP's alcohol program), or support (by attending AA). Moreover, during the Individual's hearing testimony, he candidly discussed ongoing challenges to his sobriety, including family members who pressure him to share a drink with them and his continued urges to use alcohol. The Psychiatrist's testimony further convinced me that the Individual may be underestimating the challenges to his sobriety that await him. I am, therefore, not convinced that the Individual can maintain his abstinence without the assistance provided by a formal treatment program, counseling, and AA membership.

VI. Analysis

The Adjudicative Guidelines provide that 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; and
- (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.

Adjudicative Guidelines at § 23(a)-(d). While it is undeniable that the Individual has made commendable strides, I find that the none of the mitigating conditions set forth at § 23(a)-(d) are present.

The mitigating condition set forth at § 23(a) is not present. While it has been almost a full year since the Individual's last use of alcohol, the Individual's misuse of alcohol clearly occurred on a frequent basis over an extended period. The Individual has not shown that his alcohol misuse is unlikely to recur, because it is a symptom of a serious disorder, AUD, Severe, and since his recovery is tenuous at this time because of the severity of his AUD and because he has not sought, treatment, counseling, or support.

The mitigating condition set forth at § 23(b) is also not present. While the Individual forthrightly acknowledges his pattern of maladaptive alcohol use and has convinced me that he has abstained from alcohol use for almost a year, he has not fully complied with the treatment recommendations of the Psychiatrist or the IOP staff. I am not convinced that the Individual can maintain his abstinence without the assistance provided by a formal treatment program, counseling, and AA membership.

The mitigating conditions set forth at § 23(c) and § 23(d) are not present since the Individual has not completed nor is currently participating in counseling or a treatment program and that the Individual has a previous history of ineffective treatment and relapse.

VII. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G. After considering all the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has not mitigated the security concerns raised under Guideline G. Accordingly, the Individual has not demonstrated that granting 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 denied. The parties may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals