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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: April 28, 2021) Case No.: PSH-21-0045
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Issued: July 8, 2021

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX. (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

On July 3, 2019, the Individual, an applicant for a DOE security clearance, submitted a Questionnaire for National Security Position (QNSP) to a local security office (LSO), in which he reported that he had been arrested for Battery, False Imprisonment, and Interference of Communication in January 2015. Ex. 10 at 26. The Individual subsequently underwent a background investigation conducted by the United States Office of Personnel Management (OPM). On September 26, 2019, OPM issued a report of its findings. Ex. 11 at 8. The OPM's report indicates that an OPM investigator (the Investigator) conducted an Enhanced Subject Interview (ESI) of the Individual on August 6, 2019. Ex. 11 at 52. During this ESI, the Individual confirmed that he had been arrested for battery in January 2015, and claimed that this charge had been dismissed. Ex. 11 at 54. The Investigator confronted the Individual with information indicating that he had also been arrested on April 10, 2016, and the Individual denied this allegation. Ex. 11 at 54. The Individual further reported to the Investigator that he typically

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.

consumed a 12-pack of beer in a week and that he never consumes more than four beers in a 24-hour period. Ex. 11 at 56. A Federal Bureau of Investigation report cited in the OPM Report indicated that police had arrested and charged the Individual with Battery against a Household Member, and Family Abuse on February 15, 2015, and Misdemeanor Battery Against a Family Member, Misdemeanor Interfering with Communications, and Felony False Imprisonment on April 10, 2016. Ex. 11 at 72.

On December 6, 2019, the LSO issued a Letter of Interrogatory (LOI) to the Individual. Ex. 7 at 1. The Individual submitted his response to the LOI on December 22, 2019. Ex. 7 at 10. In this response, the Individual admitted that police arrested him for the offenses mentioned above and that he had consumed three to four beers prior to both arrests.² Ex. 7 at 4. The Individual initially claimed that he typically consumed six beers on weekends and one to two shots of Fireball Whiskey monthly. Ex. 7 at 5. He subsequently contradictorily claimed that he purchased a 12-pack of beer and three to four shots of whiskey each month. Ex. 7 at 8. He indicated that his future intention concerning the consumption of alcohol was “to not consume in excess.” Ex. 7 at 9.

Because the Individual’s Response to the LOI did not resolve the issues concerning the Individual’s alcohol consumption, the LSO requested that the Individual be evaluated by a DOE-contractor Psychologist (Psychologist) who interviewed the Individual on February 4, 2020. Ex. 8 at 1. At the conclusion of this interview, the Psychologist requested that the Individual undergo three blood tests. These blood tests indicated that he had consumed alcohol recently and that he had been consuming alcohol on a moderate to heavy basis. Ex. 8 at 6. During his interview with the Psychologist, the Individual stated that he consumes alcohol on Fridays and Saturdays, and that he typically consumes a six-pack of light beer and three shots of whiskey over a weekend. Ex. 8 at 4. The Individual subsequently agreed that he typically consumes 24 light beers and 16 shots of whiskey monthly. Ex. 8 at 4. The Individual also admitted that he had recently consumed five beers and two shots of whiskey over a four-hour period, which caused him to feel “a little buzzed.” Ex. 8 at 4-5. After reviewing the information obtained during his background investigation, the Psychologist opined that the Individual “habitually and/or binge consumes alcohol to the point of impaired judgment, and has minimized reports of his consumption.” Ex. 8 at 7. The Psychologist further opined:

For [the Individual] to demonstrate adequate evidence of rehabilitation, he should abstain from alcohol for a period of not less than six months and attend alcohol rehabilitation counseling, either on an individual basis with a therapist specializing in alcohol/substance abuse counseling, or by attending A.A. meetings at least twice per week with the support of a sponsor (or another evidence based treatment approach such as SMART, Motivation-Enhanced Therapy, or 12-Step Facilitation Therapy). To support [the Individual’s] sobriety and demonstrate his abstinence, alcohol testing using the PEth is recommended and should be conducted not less than three times throughout the six months of his treatment.

Ex. 8 at 8.

² At the Hearing, the Individual admitted that he had consumed four or five beers before his 2016 arrest. Tr. at 21.

On August 6, 2020, the LSO began the present administrative review proceeding by issuing a Notification Letter informing the Individual that it 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 Notification Letter cited the Psychologist's conclusion that the Individual "habitually and/or binge consumes alcohol to the point of impaired judgment, and his two alcohol-related arrests as derogatory information creating substantial doubt regarding his eligibility to hold a security clearance.

The Individual requested a hearing on November 10, 2020, and on April 28, 2021, 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. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual and the Psychologist. *See* Transcript of Hearing, Case No. PSH-21-0034 (hereinafter cited as "Tr."). The DOE Counsel submitted twelve exhibits marked as Exhibits 1 through 12. The Individual submitted no exhibits.

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 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), the LSO cites the Individual's two alcohol-related arrests and the Psychologist's conclusion that the Individual habitually and/or binge consumes alcohol to the point of impaired judgment. This information adequately justifies the LSO's invocation of Guideline G. The Adjudicative Guidelines state: "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. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern, under Guideline G, are "alcohol-related incidents away from work, such as, . . . spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder," and "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder." Guideline G at §§ 22(a) and (c).

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 did not believe that alcohol was a causative factor in either of his alcohol-related arrests. Tr. at 16-17. He admitted that he had four or five beers before his 2016 arrest. Tr. at 21. The Individual further admitted that he would typically consume four to five beers in a two-hour period, without feeling intoxicated. Tr. at 21-22. The Individual also admitted that he had recently consumed 18 beers and ten shots of whiskey during a four-day camping trip, and that he typically consumes two or three beers every night. Tr. at 23-24. He further testified that he would consume six beers and four shots a night when camping. Tr. at 27. The Individual affirmed that he had read the Psychologist’s recommendations. Tr. at 25. He didn’t comply with these recommendations because they were not mandatory or court-ordered. Tr. at 25-26. He testified that he does not consider his alcohol use to be a problem, because it has not affected his life or career. Tr. at 25, 26, 30-32.

The Psychologist testified at the hearing after observing the individual’s testimony. The Psychologist testified that the Individual’s testimony showed that he is not taking any steps to address his problematic alcohol consumption and that he is consuming alcohol in greater quantities than he has previously admitted. Tr. at 35. After observing his testimony, she would not change any of her previous conclusions or recommendations. Tr. at 35-36. She opined that the Individual’s prognosis was “poor.” Tr. at 36.

V. Analysis

The Individual’s hearing testimony served to amplify the security concerns raised under Guideline G in the Notification Letter, since they showed that the Individual: is now consuming alcohol in much greater quantities, does not consider his alcohol consumption to be a problem, and has taken no action to address the concerns cited in the Notification Letter.

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; or
- (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.

Guideline G at § 23(a)-(d).

The mitigating condition set forth at § 23(a) is not present. The Individual continues to engage in excessive and frequent alcohol consumption. The Individual's failure to address this issue casts doubt on his current reliability, trustworthiness, and judgment. The mitigating condition set forth at § 23(b) is also not present. The Individual has not acknowledged his pattern of maladaptive alcohol use and has not provided any evidence of actions taken to overcome this problem. Nor are the mitigating conditions set forth at § 23(c) and § 23(d) present, since the Individual has not enrolled in any treatment or counseling program.

VI. 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 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 not be granted. 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