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

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| In the Matter of: Personnel Security Hearing |) | |
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| Filing Date: May 10, 2021 |) | Case No.: PSH-21-0058 |
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Issued: July 19, 2021

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXX (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 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 be denied.

I. Background

The Individual submitted a Questionnaire for National Security Positions (QNSP) to a Local Security Office (LSO) on August 20, 2019. Ex. 7. In this QNSP, the Individual reported that he failed a drug test in June 2016 which he claimed occurred after a single use of cocaine “for a substitution for pain relief.” Ex. 7 at 24, 38-40. (On August 13, 2020, he provided a conflicting account of his cocaine use when he informed a psychiatrist that he “became drunk and used cocaine at a party.” Ex.5 at 3.) The Individual further reported that he underwent substance abuse treatment from June 2016 to September 2016, which he successfully completed. Ex. 7 at 41.

Because of the Individual’s history of substance abuse and treatment, the LSO requested that he undergo an evaluation by a DOE-contracted Psychiatrist (Psychiatrist), who interviewed the Individual on August 13, 2020. Ex. 5 at 2. During his evaluation of the Individual, the Psychiatrist obtained copies of the Individual’s treatment records from his 2016 substance abuse treatment. Ex. 5 at 4. After interviewing the Individual, reviewing his medical records, and reviewing his

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

security file, the Psychiatrist issued a report of his findings (the Report) on August 27, 2020. Ex. 5 at 2. In the Report, the Psychiatrist noted that the Individual's treatment records indicated that the Individual's treating counselor had diagnosed him with Alcohol Dependence.² Ex. 5 at 4. The Psychiatrist diagnosed the Individual with Alcohol Use Disorder (AUD), Mild. Ex. 5 at 8.³ The Psychiatrist opined that the Individual was neither reformed nor rehabilitated from his AUD, and therefore the Individual needed to: remain sober for at least six months, "engage in an alcohol-based treatment program, such as a therapist-facilitated weekly-attend aftercare program," and participate in a program like Alcoholic Anonymous (AA). Ex. 5 at 8, 10.

After receiving a copy of the Report, the Individual contacted his employer's Employee Assistance Program which referred him to a counselor (the Counselor) who the Individual met with on eight occasions from November 19, 2020, through June 17, 2021. Ex. A at 1-2. A June 17, 2021, Clinical Diagnostic Assessment Report prepared by the Counselor indicates that he diagnosed the Individual with AUD, Moderate, and recommended that the Individual continue to abstain from alcohol, adhere to work requirements, attend AA meetings, and undergo a drug and alcohol screen.⁴ Ex. A at 1-2.

After receiving the 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.

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 three other witnesses, along with ten exhibits marked as Exhibits A through J (hereinafter cited as "Ex."). *See* Transcript of Hearing, Case No. PSH-21-0058 (hereinafter cited as "Tr."). The DOE Counsel presented the testimony of one witness and submitted twelve exhibits marked as Exhibits 1 through 12.

Prior to the Hearing, the Individual submitted sign-in sheets from a local AA chapter showing that he attended 14 AA meetings from May 17, 2021, through June 17, 2021. Ex. B. The Individual also submitted written statements vouching for the Individual's good character. Ex. C; Ex. D.

² During his interview with the Psychiatrist, the Individual claimed to be unaware of this diagnosis. Ex. 5 at 4.

³ The Psychiatrist speculated that the Individual may have Moderate or Severe AUD because the Individual's reported rate of alcohol consumption was inconsistent with test results. Ex. 5 at 8.

⁴ The Counselor further noted that the Individual appears to have "a strong and stable family support and reports no legal history," that a battery of standardized psychological tests he administered to the Individual revealed no significant issues, and that the Individual "appeared stable, insightful, aware and forthcoming with his history, and seems to have benefitted from the psychoeducation and cognitive/behavioral strategies to ameliorate any future risks of problem drinking." Ex. A at 2.

After the Hearing, The Individual arranged to have an ethyl glucuronide (EtG) test administered to him on June 24, 2021. That test was negative, indicating that the Individual had not consumed alcohol during the three previous days. Ex. J; Ex. 5 at 7.

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, citing the Psychiatrist's finding that the Individual met the criteria for AUD, Mild, without adequate evidence of rehabilitation and reformation. This information adequately justifies the LSO's invocation of Guideline G. Under Adjudicative 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 is a "[d]iagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder." Adjudicative Guidelines at ¶ 22(d).

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 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. Hearing Testimony

The first witness, a coworker who has known the Individual for approximately two years, acknowledged that she has not spent time with the Individual outside of work, but she has discussed his alcohol use with him. She denied having ever seen the Individual report to work in a hungover state or having ever noticed the smell of alcohol about him. Tr. at 17-19. The witness

also indicated that in the context of the rules they are required to follow while on the job, the Individual “has done everything that has been asked of him. I’ve never seen him deviate[.]” Tr. at 20-21. She testified that the Individual is “honest to a fault.” Tr. at 21-22.

A former coworker and friend of the Individual testified that he has never had any concerns over the Individual’s alcohol consumption, and stated that “[it has] been awhile” since he has seen the Individual consume alcohol Tr. at 29-30. He further stated that the Individual’s honesty is one of the reasons why they get along, and explained that the Individual is hard worker and forthcoming. Tr. at 31. Although the Individual informed the witness of his AA attendance, the witness clarified that he had not discussed the Individual’s alcohol consumption in detail, as there was no cause to discuss such matters. Tr. at 32-34.

The Individual’s wife, who does not cohabitate with the Individual but speaks to him daily, testified that she had never been concerned about the Individual’s alcohol consumption and last saw him consume alcohol at the end of 2020, stating that they would previously drink socially. Tr. at 37-39. Having access to the Individual’s finances, she confirmed that she was unaware of any alcohol purchases made by the Individual and last saw him use alcohol before he began counseling. Tr. at 40-41. She confirmed that the Individual had expressed his intention to never consume alcohol again, although he had never admitted having a problem. Tr. at 42-43.

The Individual testified that he stopped consuming alcohol after receiving the Psychiatrist’s report and prior to his first meeting with the Counselor, although he could not provide a specific date. Tr. at 51-52, 67-68. The Individual testified that he began meeting with the Counselor on November 19, 2020. Tr. at 50-51. The Individual met with the Counselor on eight occasions. Tr. at 54, 59-61. At the time of the Hearing, the Individual did not have any additional meetings with the Counselor scheduled but stated that he has assured the Counselor that he would “check back with him.” Tr. at 66. The Individual testified that the Counselor convinced him that his drinking was “leading up to a problem . . .” Tr. at 50, 53-54. The Individual denied any difficulties avoiding alcohol use, denied having any urges to use alcohol, and stated that he informs others that he no longer consumes alcohol. Tr. at 57-58. When the Individual was asked if he has a problem with alcohol, he stated: “After sitting down in these [AA meetings and counseling sessions], yes. I had what was leading up to a problem or would have led up to maybe a problem because of the pattern that I had.” Tr. at 53. The Individual opined that he may not be an alcoholic but “could be headed in that direction.”⁵ Tr. at 54. The Individual testified that he no longer keeps alcohol in his home. Tr. at 56. The Individual further testified that he started attending AA meetings on-line at “the beginning of the year,” where he was more of a listener than an active participant. Tr. at 61, 77-78. About a month before the Hearing, the Individual began attending AA meetings in person. Tr. at 61. The Individual claimed that he reads the AA’s “Big Book” every morning, that he tries to work on the AA Twelve-Step Program every week, and that he is working on each of the Twelve Steps. Tr. at 62, 70. However, the Individual admitted that he could not identify any of the Twelve Steps. Tr. at 70. When the Individual was asked if he had an AA sponsor, he stated “I have one.”

⁵ The Individual consistently spoke of his alcohol problem as if it was only in the past. Tr. at 63-65. When the Individual was asked if he is an alcoholic, the Individual stated, “I was.” Tr. at 79. When the Individual asked whether he plans to use alcohol again, he stated, “No, I don’t. At this point, no, I don’t.” Tr. at 65. While the Individual acknowledged that his drinking was a problem, he claimed that his alcohol use was not comparable to the use described by others in his AA group. Tr. at 63-65, 78, 80-82.

Tr. at 66. However, he subsequently admitted that he does not have a sponsor and stated that while a fellow AA member had recommended a specific person to sponsor the Individual, he had not yet contacted this potential sponsor. Tr. at 67. When the Individual was asked to identify his AA sobriety date, he responded by asking for an explanation of that question and then responded that he had received a 24-hour chip, and claiming that he had not received any additional chips “because I haven’t taken a drink.” Tr. at 84. The Individual also testified that he was shocked by the fact that the August 13, 2020, EtG test revealed that he had been drinking more alcohol than he reported to the Psychiatrist. Tr. at 68-70, 79. Having taken on the additional responsibility of caring for and supporting his parents and disabled brother, the Individual stated that he now “ha[s] no room for alcohol[.]” Tr. at 70-73.

The Psychiatrist observed the testimony of each of the other witnesses during the Hearing. In his testimony, the Psychiatrist reaffirmed his previous conclusion that the Individual meets the criteria for AUD, Mild, opining that it was possible that the Individual’s AUD was actually “in the moderate or even severe range.” Tr. at 89. The Psychiatrist noted that the Individual continued to drink after treatment providers had informed him that he had a problem with alcohol and that his alcohol consumption may have contributed to his need for two hip replacements. Tr. at 90-91. The Psychiatrist testified that while the Individual had received counseling, the Individual only met with the Counselor on eight occasions during a six-month period, despite the Psychiatrist’s recommendation that the Individual participate in “a weekly attended therapist-facilitated program.” Tr. at 93.

The Psychiatrist further testified that although the Individual began attending virtual AA meetings at an earlier date, he had just started to meaningfully engage in AA within the previous month. Tr. at 94-95. He also questioned whether the Individual had abstained from alcohol use, noting the paucity of corroboration for the Individual’s claim of sobriety. Tr. at 95-96. The Psychiatrist opined that the Individual’s stated intention to engage an AA sponsor and removal of all alcohol from his home were positive factors, but expressed concerns about the Individual’s unwillingness to state that he is an alcoholic. Tr. at 98-99. The Psychiatrist opined that the Individual has not shown adequate evidence of rehabilitation but has shown reformation if he really has been sober since November 2020, and the Psychiatrist stated that the Individual is, at best, in early remission based on the approximate date of the Individual’s last drink. Tr. at 100-101, 109, 111-12, 121. Further, the Psychiatrist stated the Individual’s prognosis is potentially good but acknowledged he still has reservations about the Individual’s recovery. Tr. at 110-11.

V. Analysis

At least three mental health professionals have diagnosed the Individual with an alcohol disorder, and two mental health professionals, the Counselor and the Psychiatrist, have recently diagnosed him with AUD. Moreover, the Individual has a previous history of an unsuccessful treatment for a substance abuse disorder in 2016. The Individual has attended eight counseling sessions and listened to an indeterminate number of online AA meetings since the beginning of the present year and has recently attended at least 14 in-person AA meetings. The Individual also asserts, without meaningful corroboration, that he has abstained from alcohol use since November 2020, about seven months prior to the present Hearing. However, evidence in the record suggests that the Individual’s credibility concerning his substance abuse issues is questionable. For example, he

has provided differing accounts of the circumstances surrounding his cocaine use in 2016. However, even if I were to conclude that the Individual has completely abstained from alcohol use during the past seven months, I am not sufficiently convinced that the Individual's recovery has progressed to the point where I can be confident that he will be able to maintain his sobriety going forward. The Individual has only attended eight counseling sessions, far short of the "therapist-facilitated weekly-attended aftercare program" recommended by the Psychiatrist. While the Individual has recently engaged in AA, he has not been involved with AA for a sufficient period of time to have allowed him to obtain a sponsor, make significant progress in a Twelve Step Program, or to be able to demonstrate more than a passing familiarity with AA. Moreover, during the Individual's hearing testimony he repeatedly minimized the significance of his alcohol problem and expressed the sentiment that this alcohol problem was completely in the past, therefore showing that he had not fully internalized the lessons taught by AA, the treatment programs he has attended, and his counseling.

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).

Because I have found that the Individual has not been reformed or rehabilitated from his AUD, and has not been successfully treated for that disorder, he has not shown that it is unlikely to recur or that it does not cast doubt on his current reliability, trustworthiness, or judgment. Accordingly, I find that he has not satisfied the mitigating conditions under § 23(a).

While the Individual somewhat acknowledges his pattern of maladaptive alcohol use and has provided evidence of some actions taken to overcome this problem, I have found those actions to be inadequate to show that he has been rehabilitated or reformed. Moreover, he has not sufficiently demonstrated a clear and established pattern of abstinence. Therefore, I find that the Individual has not satisfied the mitigating conditions under § 23(b).

The Individual is participating in counseling and an AA program. However, he has a previous history of treatment and relapse. Therefore, I find that the Individual has not satisfied the mitigating conditions under § 23(c).

Since the Individual continued to use alcohol after completing a treatment program in 2016, he has not shown that he has successfully completed a treatment program along with any required aftercare, and he has not sufficiently demonstrated a clear and established pattern of abstinence. Therefore, I find that the Individual has not satisfied the mitigating conditions under § 23(d).

Accordingly, I find that the Individual has not provided adequate evidence of rehabilitation or reformation to mitigate and resolve the security concerns raised under Guideline G by his AUD diagnosis.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G. After considering all of 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