*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing	)	
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Filing Date: May 10, 2021	)	Case No.: PSH-21-0054
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Issued: September 9, 2021

Administrative Judge Decision

James P. Thompson III, 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 should not be granted a security clearance.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires possession of a security clearance. The DOE Local Security Office (LSO) requested that the Individual be evaluated by a DOE-consultant psychiatrist ("Psychiatrist") who provided the LSO with a report that included opinions and conclusions regarding the Individual's alcohol consumption and psychological profile. Subsequently, the LSO informed the Individual by letter ("Notification Letter") that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns, the LSO explained that the derogatory information raised security concerns under Guideline G and Guideline I of the Adjudicative Guidelines.

[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 exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. *See* Transcript of Hearing (Tr.). At the hearing, the Individual testified on his own behalf and submitted eight exhibits, marked Exhibits A through H. The LSO presented the testimony of the Psychiatrist and submitted eight exhibits, marked Exhibits 1 through 8.[2]

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline G (Alcohol Consumption) and Guideline I (Psychological Conditions) of the Adjudicative Guidelines as the bases for concern regarding the Individual's eligibility to possess a security clearance. Ex. 1.

Guideline G provides that "[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. Conditions that could raise a security concern include "[h]abitual or binge consumption of alcohol to the point of impaired judgment" and "[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist . . .) of alcohol use disorder[.]" *Id.* at ¶ 22(c), (d). The Notification Letter cited the Psychiatrist's conclusion that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders, 5th Edition*, (*DSM-5*) criteria for Alcohol Use Disorder (AUD), Mild, in early remission, and the Individual binge consumed alcohol to the point of impaired judgment. Ex. 1 at 5. The allegations justify the LSO's invocation of Guideline G.

Guideline I provides that "[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness." Adjudicative Guidelines at ¶ 27. A condition that could raise a security concern is "[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness[.]" *Id.* at ¶ 28(b). The Notification Letter cited the Psychiatrist's conclusion that the Individual met the *DSM-5* criteria for Other Psychotic Disorder, Auditory Hallucinations, which is an emotional, mental, or personality condition that can impair judgment, stability, reliability, or trustworthiness. Ex. 1 at 5. The allegations justify the LSO's invocation of Guideline I.

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

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[2] The LSO's exhibits were combined and submitted in a single, 149-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This decision will cite to the LSO's exhibits by reference to the exhibit and page number within the combined workbook where the information is located as opposed to the page number that may be located on the page itself.

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 or her 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. *Id.* at § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

The Individual stated, in his written request for administrative review, that he had stopped consuming alcohol in the Summer of 2020. Ex. 2 at 7. He also stated that he had attempted to attend Alcoholics Anonymous (AA) but found that the sessions were suspended due to the COVID-19 pandemic. *Id.*

The record includes the report that contains the Psychiatrist's conclusions. Therein, the Psychiatrist recounted information provided by the Individual and the Individual's ex-wife. The ex-wife stated that she left the Individual in large part due to his excessive drinking. Ex. 6 at 27; Ex. 8 at 123. The report includes a history of the Individual's alcohol use that includes three alcohol-related arrests, the most recent of which occurred in 2013. Ex. 6 at 27; Ex. 8 at 123. The Psychiatrist also noted that the Individual provided conflicting information regarding his alcohol consumption by refencing the statements the Individual provided during two separate Office of Personnel Management (OPM) interviews in 2019.[3] Ex. 6 at 27. The record reflects that the Individual stated during the first interview that he was presently consuming only one to two beers every two or three weeks; during the second interview, he told the investigator that he was consuming four or five alcoholic drinks at a time once a week.[4] Ex. 8 at 109, 111. The Individual stated during the evaluation that he drinks alcohol occasionally and intends to continue doing so on "holidays" as "a nightcap." Ex. 6 at 28. He further stated that he does not intend to consume alcohol to intoxication. *Id.*

The Psychiatrist's report included information regarding the Individual's psychiatric history. The Individual stated that he initially received mental health treatment in 2013 after his then-wife "tricked" him into going to a doctor under a different pretense. *Id.* at 29. The Individual confirmed

[3] The OPM interviews were conducted as part of the security clearance application process.
[4] The Psychiatrist testified at the hearing that, while he conceded that the Individual's statements may not be inconsistent, it is commonly the case that "the more people that hammer away at this subject, the more and more drinks start emerging with each interview." Tr. at 104.

that he had received the diagnosis of Auditory Hallucinations. *Id.* The Psychiatrist noted that the Individual sometimes "denied hearing voices, but at other times he gave ambivalent answers to questions about hallucinations, or vague denials." *Id.* The Individual stated that he was not taking medication or participating in counseling to treat his condition. *Id.* at 31. The Psychiatrist noted that the Individual "had a high degree of denial with respect to the problems that alcohol . . . have caused him[,] "[h]e showed little insight into his psychological problems (auditory hallucinations) and was defensive or in denial with respect to this symptom reported by mental health professionals and family members[,]" and "[h]is judgement regarding seeking treatment and taking his medication has not been good." *Id.* at 32.

The Psychiatrist diagnosed the Individual as meeting the *DSM-5* criteria for AUD, Mild, in early remission, and Other Psychotic Disorder, Auditory Hallucinations. *Id.* at 33. The Psychiatrist also concluded that the Individual has binge consumed alcohol to the point of impaired judgment. *Id.* For rehabilitation or reformation of the AUD, the Psychiatrist recommended outpatient treatment of moderate intensity for at least a year with a practitioner also treating the "psychotic disorder" with medication. *Id.* at 35. The report did not include any additional recommended course of action for managing the Other Psychotic Disorder, Auditory Hallucinations.

The record includes a letter from the Individual's psychiatric treatment provider who provides and manages the Individual's medication. Ex. A. Therein, the provider states that the Individual has been attending appointments regularly, every four to six weeks, since November 2020. *Id*. The letter recounts the Individual's self-reported compliance with his medication regimen, the medication's success in treating his auditory hallucinations, and his abstinence from alcohol. *Id.* The provider opined that the Individual would have "the best opportunity for long-term management of [his] condition" if he continues to attend treatment, abstain from alcohol, and take prescribed medication. *Id.*

At the hearing, the Individual testified regarding his diagnosis of auditory hallucinations. He testified that he received the diagnosis approximately ten years ago. Tr. 12-13. He testified that, at that time, he was also prescribed medication that would prevent him from "talking to himself." *Id.* at 13. He also confirmed his compliance with his medication regimen, which he stated is supposed to "keep him calm." *Id.* at 52. He explained that, when suffering from symptoms, he talks or argues with himself in response to hearing questions being asked. *Id.* at 17. He explained that he talks to himself when he grows frustrated, and he grows frustrated when he cannot answer the questions. *Id.* at 27. He also indicated that the symptoms occurred when he was not consuming alcohol. *Id.* at 16.

The Individual testified that he occasionally had symptoms until, prompted by the Psychiatrist's report, he met with his treatment provider in 2020, who is the same provider who treated him in 2017. *Id.* at 18-19. He testified that over the last few months preceding the hearing, he requested and received an increase in the dosage of his medication because he had been experiencing symptoms.[5] *Id.* at 20-21. The Individual testified that his current medication dosage appears to be working, he has not suffered any instances of speaking to himself, and he no longer feels frustrated. *Id.* at 27-28. He also stated the following: "I try to no longer speak out loud in front of people. If there is [sic] any thoughts that I'm having, I try to keep them within myself in terms of talking, if

[5] The provider increased his dose by 200%. Tr. at 21.

I get frustrated or something." *Id.* at 53. He stated that he intends to continue his current treatment regimen until his provider recommends otherwise. *Id.* at 28, 31-32.

The Individual also testified regarding his alcohol use. He admitted that alcohol had been a problem in his past. *Id.* at 33. More recently, however, he has been abstaining from alcohol since the summer of 2020. *Id.* at 37. He testified that he stopped consuming alcohol because it was causing problems in his life. *Id.* at 37. He also testified that he has been remotely attending AA sessions for a few months: first attending a session every day for a couple of weeks before reducing his attendance to twice a week. *Id.* at 44. He also testified that he does not have an AA sponsor, but he has learned about all of the AA Steps and worked through some, but not all, of them. *Id.* at 45-46. He testified that he intends to go through all of the AA Steps, attend live meetings when they are available, and obtain a sponsor. *Id.* at 46.

Lastly, the Individual confirmed that he has not pursued treatment for his AUD other than AA. *Id.* at 47-48. He admitted that he continues to have urges to consume alcohol, but he rebuts the urges by thinking of the reasons that he should remain abstinent. *Id.* at 48. He also enjoys activities such as hunting and fishing without alcohol. *Id.* at 42-43. He testified that he no longer associates with the same people with whom he used to consume alcohol. *Id.* at 48.

The Psychiatrist testified that his diagnosis of the Individual's psychological condition is consistent with the diagnosis provided by the Individual's treatment provider.[6] *Id.* at 73. He explained that Other Psychotic Disorder, Auditory Hallucinations, is a type of psychosis that indicates a condition where the Individual is out of touch with reality. *Id.* at 73. He explained that individuals experiencing such hallucinations can inadvertently disclose information. *Id.* at 81. He also explained that a person experiencing psychosis will consequently have questionable judgment and reliability. *Id.* at 110. The Psychiatrist opined that Individual's testimony failed to show that the hallucinations are under control despite taking medication. *Id.* at 89-90, 97-98. The Psychiatrist opined that the medication will likely need some more adjustments to eliminate the auditory hallucinations.[7] *Id.* at 90. The Psychiatrist testified that the Individual demonstrated a lack of insight into his condition by referencing the Individual's explanation that he is prescribed medication because he has a problem talking with himself instead of admitting it is to treat auditory hallucinations. *Id.* at 92. The Psychiatrist gave the Individual a fair prognosis regarding the psychological condition and testified that the prognosis would be more positive if the Individual can better manage or eliminate the symptoms of his condition. *Id.* at 98-99.

The Psychiatrist also agreed with the diagnosis of the Individual's treatment provider and stated that the Individual's AUD is currently in sustained remission because a year had passed since the Individual last consumed alcohol. *Id.* at 85. However, the Psychiatrist still gave the Individual's AUD a fair prognosis. *Id.* at 85. In reaching his conclusion, the Psychiatrist noted that Individual's treatment has not been very frequent or potent, referencing that the Individual has only been attending AA for about four months and did not yet have an AA sponsor. *Id.* at 83-84. As part of his testimony, the Psychiatrist stated that the value of a sponsor is that sponsors can see through

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[6] The Psychiatrist also stated, however, that his diagnosis differed in that he did not rule out that his condition could have been caused by alcohol or substance use. Tr. at 74.

[7] The Psychiatrist also noted that the prescribed dosage is on the low end of the treatment spectrum. Tr. at 88-89.

deception, provide resources during difficult periods, and they "will walk you through the 12 Steps." *Id.* at 105.

V. ANALYSIS

A. Guideline G Considerations

Under Guideline G, the following relevant conditions could mitigate security concerns based on alcohol consumption:

(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 . . . abstinence in accordance with treatment recommendations[.]

Adjudicative Guidelines at ¶ 23.

Based on the record in this case, I conclude that the Individual did not put forth sufficient evidence to resolve the Guideline G security concerns under ¶ 23(a) or ¶ 23(b). My rationale equally applies to both mitigating conditions. While it is true that the Individual acknowledged his pattern of maladaptive alcohol use at the hearing by stating it has caused problems in his life, I do not find that the Individual has taken sufficient actions to overcome his problem, nor has he established a pattern of abstinence in accordance with treatment recommendations. The Individual's testimony indicates he has remained abstinent for over a year, but he has not complied with the treatment recommendations of the Psychiatrist nor pursued alternative means of supporting his abstinence from alcohol. Furthermore, the Psychiatrist, who evaluated his recent progress, declined to give the Individual a positive prognosis based on the Individual's relatively short AA participation without the benefit of a sponsor. For these reasons, I find that the Individual has not resolved the Guideline G security concerns.

B. Guideline I Considerations

Under Guideline I, the following relevant conditions could mitigate security concerns based on a psychological condition:

(a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) The individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional[.]

Adjudicative Guidelines at ¶ 29.

I conclude that the Individual did not put forth sufficient evidence to resolve the Guideline I security concerns under ¶ 29(a) or ¶ 29(b). There is little evidence that the Individual's condition is readily controllable with treatment, and I find that neither the Individual's treatment provider nor the Psychiatrist provided a positive prognosis for the Individual's psychological condition. On the first point, the Individual's treatment provider's statement that the medication has been successful in treating his auditory hallucinations is based on the Individual's self-report, and the Individual confirmed that, about two months before the hearing, he requested an increase in his dosage in order to manage the symptoms of his condition. If true, the Individual has only been symptom-free for a short period of time even though he had been taking his medication as prescribed since the end of 2020. That relatively short, symptom-free period does not alleviate my concern that the symptoms will likely recur, and I do not conclude that his condition is readily controllable. As to the prognosis, I do not find that the Individual's treatment provider's statement that continuing the current treatment regimen will create the best opportunity for long-term management to be a positive prognosis; instead, I find that it is an endorsement of the positive potential of his current regimen. Similarly, I do not find that the Psychiatrist's fair prognosis to be a positive prognosis because the Psychiatrist remained guarded and concerned by the Individual's lack of insight and treatment progress. Accordingly, I conclude that the Individual has not resolved the Guideline I security concerns.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised a security concern under Guidelines G and I 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 not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual should not be granted access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals