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

In the Matter of: Personnel Security Hearing)

Filing Date: May 10, 2021)

Case No.: PSH-21-0061)

_____)

Issued: October 25, 2021

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should be granted.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position which requires that he hold a security clearance. During a background investigation, derogatory information was discovered regarding the Individual’s alcohol consumption and a recent mental health diagnosis. The Local Security Office (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 presented the testimony of one witness and testified on his own behalf. The LSO presented the testimony of the DOE psychologist who had evaluated the Individual. *See* Transcript of Hearing (hereinafter cited as “Tr.”). The LSO submitted nine exhibits, marked as Exhibits 1 through 9 (hereinafter cited as “Ex.”). The Individual submitted six exhibits, marked as Exhibits A through G.

¹ Under the regulations, “Access authorization” means 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). Such authorization will also be referred to in this Decision as a security clearance.

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 Guidelines G and I 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). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process.

Guideline G (Alcohol Consumption) states 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. The conditions set forth in the Guidelines that could raise a disqualifying security concern are alcohol-related incidents, at or away from work, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder; Alcohol Use Disorder diagnosis by a duly qualified medical or mental health professional; failure to follow treatment advice after diagnosis; alcohol consumption that is not in accordance with treatment recommendations after a diagnosis of alcohol use disorder; and failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence. Adjudicative Guidelines at ¶ 22.

The LSO alleges that the Individual backed his car into a tree while under the influence of alcohol in April 2018; pretended, while under the influence of alcohol, to pour water on his girlfriend while she was driving in April 2017; and was arrested and held overnight in jail, while under the influence of alcohol, in the United Kingdom in March 2014. The LSO further alleges that in February 2020, a DOE Contractor Psychologist (the DOE Psychologist) opined that the Individual consumed alcohol in a habitual manner to a level that has been found to impair judgment. Accordingly, the LSO's security concerns under Guideline G are justified.

Guideline I (Psychological Conditions) states that “[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” Adjudicative Guidelines at ¶ 28. The conditions that could raise a security concern and may be disqualifying include behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline, that may indicate an emotional, mental, or personality condition; an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness; voluntary or involuntary inpatient hospitalization; failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness; and pathological gambling. Adjudicative Guidelines at ¶ 28.

The LSO alleges that the DOE Psychologist diagnosed the Individual with Generalized Anxiety Disorder in February 2020. Given the information described above, the LSO's security concerns under Guideline I are justified.

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 entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. 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), cert. denied, 499 U.S. 905 (1991) (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.

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's spouse testified that she does not see the Individual as an anxious person and stated that he had a "heart of gold." Tr. at 22, 27. She further testified that she did not recall seeing the Individual consume alcohol since before her pregnancy in early 2020. *Id.* at 23. She believed that he intended to remain abstinent. *Id.* She also committed to supporting the Individual's abstinence. *Id.* at 26. She testified that there had not been alcohol in their home since early 2020, before she was pregnant, and that she and the Individual want to set a good example for their child by abstaining from alcohol permanently. *Id.* at 27–28, 35–36.

The spouse testified that the incident in which the Individual pretended to pour water on her while she was driving was not a serious incident. Tr. at 24. She recalled that the Individual sprayed some water on her and she lightly hit him to make him stop because it was cold. *Id.* She testified that it was a joke and that she apologized to the Individual for hitting him. *Id.*

The spouse testified that the Individual backed his car into a tree after driving home under the influence of alcohol. Tr. at 25. The next day, she received a phone call from the Individual. *Id.* She described him as being upset about his actions. *Id.* The spouse recalled being surprised that the Individual had driven under the influence of alcohol because she had never observed him do that

before. *Id.* at 39–41. She added that she had never seen the Individual drive under the influence of alcohol since that time either. *Id.* She stated that, typically, the Individual would either have a designated driver or use a ride share application when he drank alcohol outside the home. *Id.*

The spouse recalled that the Individual began abstaining from alcohol after being evaluated by the DOE Psychologist. Tr. at 32–33. She stated that he had appeared surprised that he was being sent for an evaluation by the DOE Psychologist and that, afterward, he took his abstinence very seriously. *Id.* at 31–32. She testified that the Individual attended an Intensive Outpatient Program (IOP) after meeting with the DOE Psychologist. *Id.* at 33.

The spouse believed the Individual was not having difficulties with anxiety or excessive worry. Tr. at 43–44. She recalled that the Individual learned several skills in the IOP, such as meditation and better listening skills, that he continued after completing the program. *Id.* at 34, 41. She described her relationship with the Individual, in terms of stress management, as being a partnership in which she and the Individual would support each other by giving each other space initially and then regrouping later to talk through issues they were experiencing, whether with each other or with someone else. *Id.* at 42.

The Individual testified that in the weeks following his 2020 psychological evaluation he would occasionally have one alcoholic drink with coworkers after work. Tr. at 61. He stated that he disagreed with his wife’s testimony that he had not consumed alcohol since she became pregnant and testified that he had not attempted to hide his alcohol consumption from her. *Id.* at 123. In late May 2020, the Individual started the IOP, which required him to pick a date to stop drinking completely. *Id.* at 61–62. He picked June 1, 2020, and testified that he had not consumed any alcohol since that date. *Id.* The Individual testified that he started the IOP on his own, before receiving the DOE Psychologist’s recommendation to do so, because he wanted to demonstrate his commitment to resolving his alcohol issues and wanted to be accountable. *Id.* at 63. After completing the IOP, the Individual attended aftercare and continued urinalysis testing until his daughter was born. *Id.* at 63–65. At that time, he continued his abstinence with caring for his newborn consuming his time. *Id.* at 66.

The Individual had also attended Alcoholics Anonymous (AA) as part of the IOP and continued attending the program for about six months after finishing the IOP. Tr. at 78–80. He also attended AA briefly in 2018 after the incident in which he backed his car into a tree. *Id.* at 79–80. During his time in AA in 2020, the Individual had a sponsor and worked the 12 Steps, but had stopped attending the program after his daughter was born. *Id.*

The Individual testified that he was enjoying his alcohol-free life and that he considered abstinence to be part of keeping his daughter safe and secure. Tr. at 76. He stated that alcohol was a “problematic substance” for him and that he intended to remain abstinent permanently. *Id.* at 76–78. He described practicing skills learned in the IOP in his daily life, particularly mindfulness and meditation skills, which he called “game-changer[s].” *Id.* at 77, 88–89. He stated that he practices these skills with his wife as well. *Id.*

The Individual testified that all three alcohol-related incidents described in the Summary of Security Concerns occurred during celebrations. Tr. at 72. He added that, after moving to his current location, he had intentionally chosen friends that do not regularly consume alcohol. *Id.* at

108. He described celebrating his recent birthday with a board game night during which no one consumed alcohol. *Id.* He also described a recent visit to play board games with friends during which his friends consumed wine, but he abstained. *Id.* at 108–09. He noted that, on that occasion, he was aware of how his friends’ alcohol consumption was negatively affecting the social occasion and that this reinforced his desire to remain abstinent. *Id.* The Individual also testified that, instead of attending happy hours, he socializes with colleagues by going on hikes with them. *Id.* at 109–10. He further noted that his colleagues also hold security clearances and are all careful about their alcohol use if they chose to drink at all. *Id.* at 110.

At the hearing, the Individual described his stress management techniques. Tr. at 111–12. He noted that he had used them during one of the breaks because he noticed that he was becoming “a little too elevated.” *Id.* at 111. The Individual testified that, when feeling stress in the moment, he will take a brief pause to practice deep breathing. *Id.* He stated that situations that were more stressful may take more mindfulness to work through. *Id.* at 111–12. He also stated that he found it helpful to triage multi-part issues, identifying and focusing on tasks requiring immediate attention before worrying about problems that could or should be handled later. *Id.* at 112. The Individual described confronting worst case scenarios internally by envisioning outcomes, which helped him gain perspective on situations. *Id.* at 112–113. He testified that doing this type of reality testing helped him realize that most issues are less consequential than they first appear. *Id.*

The Individual testified that he is now past the “once-in-a-lifetime” stressors—such as planning his marriage and dealing with the onset of a pandemic—that he faced in previous years and now only encounters ordinary stressors, which he handles appropriately and without difficulty. Tr. at 115, 118. When asked how he would handle a sudden “once-in-a-lifetime” stressor, the Individual stated that he would seek therapy immediately to help him form a plan to manage his mental health appropriately as he dealt with the stressor. *Id.* at 115–16. He noted the importance of asking for help when going through difficult times. *Id.* at 116.

After the conclusion of the Individual’s testimony, the DOE Psychologist testified that, in his opinion, the Individual showed adequate evidence of rehabilitation or reformation regarding his use of alcohol. Tr. at 145. He testified that he did not, at the time of his report nor at the time of the hearing, believe the Individual’s anxiety posed a threat to the Individual’s judgment, trustworthiness, or reliability. *Id.* at 146. He gave the Individual a very good prognosis for remaining abstinent. *Id.* at 147.

V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable

and unfavorable, in a commonsense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO’s security concerns have been mitigated such that granting the Individual’s clearance is not an unacceptable risk to national security.

Guideline G provides that security concerns arising from alcohol consumption can be mitigated when: (1) the individual’s alcohol use was so infrequent or so long ago that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or judgment; (2) the individual acknowledges his pattern of alcohol abuse, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence; (3) the individual has no history of relapse and is making satisfactory progress in treatment or counseling; or (4) the individual has successfully completed a treatment program and has established pattern of modified consumption or abstinence. Adjudicative Guidelines at ¶ 23.

The Individual has shown that mitigating criteria (2) and (4) are applicable in this case. The Individual described multiple real-life instances in which he saw how alcohol caused difficulties in his life and acknowledged that his alcohol use was problematic. He attended an IOP and continued attending treatment after completing the program. His commitment to abstinence was reinforced not just by his desire to avoid the harms of alcohol abuse, but also by his commitment to the health and safety of his family, his colleagues, and the public. The Individual has remained abstinent for well over a year, and the testimony of the DOE Psychologist supports the evidence that he has established a pattern of abstinence. For these reasons, I find that the Individual has mitigated the Guideline G security concerns.

Guideline I provides that security concerns arising from psychological conditions can be mitigated when: (1) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan; (2) the individual has voluntarily entered and is currently receiving counseling or treatment, if the condition is amenable to treatment, and the individual currently has a favorable prognosis by a duly qualified mental health professional; (3) a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government has recently opined that an individual’s previous condition is under control or in remission, and has a low probability of recurrence or exacerbation; (4) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and (5) there is no indication of a current problem. Adjudicative Guidelines at ¶ 29.

The Individual has shown that mitigating criteria (3) and (5) are applicable in this case. The DOE Psychologist opined that the Individual’s anxiety did not pose a threat to his judgment, trustworthiness, or reliability. Furthermore, the Individual has sufficient self-awareness to identify when he is experiencing elevated stress levels and has developed coping mechanisms to manage that stress in the moment and on an ongoing basis. He has maintained this practice while undergoing the difficult conditions that accompany caring for a newborn child during a global pandemic, indicating that he is currently, and will continue, managing his stress appropriately such

that there is no indication of a current problem. Accordingly, I find that the Individual has mitigated the Guideline I security concerns.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for a security clearance under Guidelines G and I of the Adjudicative Guidelines. I further find that the Individual has succeeded in fully resolving those concerns. Therefore, I conclude that granting DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should grant access authorization to the Individual at this time.

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

Kristin L. Martin
Administrative Judge
Office of Hearings and Appeals