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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: January 17, 2020) Case No.: PSH-20-0030
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Issued: December 28, 2020

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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 requiring that he hold a security clearance. An investigation into his background revealed derogatory information related to the Individual’s past alcohol use. He was evaluated by a DOE-Contractor Psychologist, whose conclusions raised further concerns. 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 on January 17, 2020. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of four witnesses and testified on his own behalf. The LSO presented the testimony of the DOE-Contractor Psychologist, who had evaluated the Individual. *See* Transcript of Hearing, Case No. PSH-20-0030 (hereinafter cited as “Tr.”). The LSO submitted nine exhibits, marked as Exhibits 1 through 9 (hereinafter cited as “Ex.”). The Individual submitted seven 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: “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.” 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, in 2010, the Individual’s commanding officer ordered him to attend an alcohol treatment program after he failed a fitness for duty examination due to excessive alcohol consumption. The LSO further alleges that the Individual regularly consumed 6-15 beers per night around that time. Finally, the LSO alleges that, in 2019, a DOE-Contractor Psychologist diagnosed the Individual with Unspecified Alcohol-Related Disorder. Accordingly, the LSO’s security concerns under Guideline G are justified.

Guideline I (Psychological Conditions) provides 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, in 2019, a DOE-Contractor Psychologist (hereafter “the Psychologist”) concluded that the Individual’s “lack of candor and inclination to elaborate the untruths upon which he relied is a mental condition which can, and has, impaired his judgment, reliability, and trustworthiness.” Ex. 1 at 2. Accordingly, 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

At the hearing, the Individual presented the testimony of his friend, who was a retired DOE protective force supervisor; his current supervisor; his sponsor; and his co-sponsor.

The friend testified that he previously met with the Individual multiple times per week and, due to the pandemic, spoke with the Individual several times per month more recently. Tr. at 11–12. He knew the Individual only outside of the workplace. *Id.* at 11. The friend considered the Individual a close family friend and testified that the Individual considered him to be a father figure. *Id.* at 13, 16. He testified that they often conversed about the Individual's struggles with alcohol, including his Alcoholics Anonymous (AA) attendance and leadership activities, his spiritual growth, and his abstinence. *Id.* at 12–13. The friend had not witnessed the Individual consume alcohol. He testified that he asked the Individual if he had consumed alcohol since beginning abstinence and the Individual had said he had not. *Id.* at 13, 18. The friend believed that the Individual intended to abstain indefinitely. *Id.* at 18. He was confident in the Individual's character, believing him to be honest, trustworthy, and in possession of sound judgment. *Id.* at 15. The friend had also been the Individual's landlord for a time in recent years and described him as a model tenant. *Id.* at 16.

The supervisor testified that the Individual was an excellent performer and an honest individual. Tr. at 22–23. He had no reservations about the Individual’s ability to perform his job or protect the United States government. *Id.* at 22–23. He believed that the Individual had sound judgment and a strong moral character, based on his involvement in his church and AA attendance. *Id.* at 23–24. The supervisor testified that the Individual was honest and had also discussed his recovery with him. *Id.* at 24–25. He was not sure of the Individual’s sobriety date, but believed he had been abstinent for over 10 months. *Id.* at 26. The supervisor described the Individual as a team player, who went above and beyond his duties, and was a valuable asset to the team. *Id.* at 23–24.

The co-sponsor testified that he had known the Individual since December 2019. Tr. at 28. He interacted with the Individual every day and testified that the Individual attends three AA meetings per week. *Id.* He believed the Individual to be fully invested in the AA program and his abstinence. *Id.* at 28–29. The co-sponsor described the Individual as a member of the chapter’s core group, which helped other members on a regular basis, worked the 12 steps, and volunteered within the program. *Id.* Based on his experience with AA over several years, the co-sponsor believed that the Individual was at low risk for relapse and that he was doing the things that successful AA members do. *Id.* at 30. He believed that the Individual was honest and trustworthy and had sound judgment and strong moral character. *Id.* He testified that the Individual considered his sobriety date to be December 14th or 15th, 2019. *Id.* at 32. He further testified that the Individual chaired AA meetings, which was outside his comfort zone. *Id.* The co-sponsor testified that the Individual had utilized him as a support when the Individual was having a hard time, and he felt that this was a good indicator of the Individual’s future success with abstinence. *Id.* at 34–35.

The sponsor testified that he had known the Individual for just over 10 months and that they typically interact once or twice per week. *Id.* at 38–39. He had never seen the Individual consume alcohol. *Id.* at 38. Based on his 24 years in AA and his experience sponsoring about 30 people, he believed that the Individual was at a low risk for relapse. *Id.* at 39–40. The sponsor testified that the Individual was a full participant in AA, volunteering at meetings and helping others. *Id.* at 40. He had worked with the Individual on completing the 12 steps and testified that the Individual was very open with him when they spoke. *Id.* at 41. The sponsor described the Individual as honest and trustworthy with sound judgment and strong moral character. *Id.* at 42. He testified that friends like the Individual are not common, and that he was proud to have the Individual as a friend. *Id.*

The Individual testified that he had previously held a security clearance when he was in the Navy. Tr. at 44. He testified that he was seeking substance abuse treatment through the Department of Veterans Affairs, and he attended the subsequent aftercare, as well as AA three times per week. *Id.* at 46. Since abstaining from alcohol, he had taken 10 medical tests to detect alcohol, nine of which were designed to detect alcohol use within the preceding 30 days. *Id.* at 47. All had shown negative results, indicating no alcohol consumption. *Id.* He attends group counseling sessions every other week because his work schedule conflicts with weekly attendance. *Id.* at 60. He also meets with a counselor one-on-one. *Id.*

In 2009, the Individual attended alcohol treatment after failing his fitness for duty after consuming 18 beers. *Id.* at 48. However, his eventual discharge was honorable, and he was eligible to re-enlist. *Id.* at 48–49. The Individual testified that, after his divorce, he had tried to abstain intermittently, attending AA from time to time but never working any of the 12 steps. *Id.* at 52. The Individual testified that he believes he is an alcoholic and will always need to deal with that condition, but that, at the time of the hearing, he was not drinking and was not suffering from the adverse effects

of being an active alcoholic. *Id.* at 50–51. The Individual stated unequivocally that he intends to abstain from alcohol permanently and stated that he knows he will need to work every day to maintain his sobriety. *Id.* at 73. He also testified to the difference between being “dry” and being “sober,” characterizing “dry” as simply the act of not drinking and “sober” as a lifestyle that includes healing and dedication. *Id.* He stated that he was committed to sobriety. *Id.* at 74.

The Individual began attending AA in December 2019, submitted exhibits documenting his attendance at nearly 150 meetings and testified that he had attended 10 more since submitting his exhibits. Tr. at 53; Ex. B. He described AA as a major backbone to his recovery and spoke of his strong relationships with his sponsors. Tr. at 54–55. They acted as mentors and friends, as well as accountability backstops for him. *Id.* He testified that he had just completed the ninth step, which involved speaking with those he had wronged in the past, and apologizing to them. *Id.* at 55.

The Individual testified about the impact of his alcoholism on his life and his wellbeing, describing a mental and spiritual fog. Tr. at 58. Since abstaining from alcohol, he has experienced significant growth and enjoys the clarity that abstinence brings. *Id.* at 59. He testified that he volunteers at his church by playing in the band for services and that he volunteers at AA by chairing meetings every week. *Id.* at 58–59, 63. He testified that he is reliable and trustworthy and has overcome his lack of candor. *Id.* at 64–65.

The Individual testified that he was grateful for the Psychologist’s assessment, stating that it helped him realize that he was not in control at that time and had been lying to himself. Tr. at 65. He had tried to stop drinking before, but he had never committed to abstinence until this time. *Id.* at 67. He stated that he drank for many reasons, including boredom and loneliness. *Id.* Now, he spends his time making music, caring for his dogs, going to AA meetings, and going to church. *Id.* at 68. He counted among his support system his church family, his AA group, and his colleagues. *Id.* at 72. He testified that abstinence has rejuvenated his friendships and that he can tell that his friends are proud of him. *Id.* at 68.

The Psychologist testified that, based on her observation of the hearing testimony, she would no longer diagnose the Individual with an alcohol use disorder. Tr. at 79. She further testified that she no longer held concerns about his candor. *Id.* She described the Individual as having gone above and beyond her expectations for his recovery efforts and testified that she believed him to be rehabilitated. *Id.*

The Psychologist noted that, at the time of the original assessment, the Individual exhibited significant denial and minimization of his drinking. Tr. at 81. However, she believed that the Individual’s efforts toward recovery, as of the hearing date, indicated a high likelihood of success and gave him a good prognosis. *Id.* at 81. She noted that the testimony of the witnesses was some of the most superlative she had heard in a Personnel Security Hearing and that it reflected well on the Individual, particularly the assessments of his sponsors. *Id.* at 80–81.

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 a pattern of modified consumption or abstinence. Adjudicative Guidelines at ¶ 23.

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 a treatment program, 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 accepted his pattern of unhealthy alcohol use and has made significant efforts to change his behavior. He has pursued a multi-pronged treatment plan and built a multi-faceted support system that is available to him at all times. He has provided evidence that he has demonstrated a pattern of abstinence through medical testing and witness testimony. He has met the treatment recommendations of the Psychologist, and she believes that he is fully rehabilitated. The Psychologist, a duly qualified mental health professional contracted by the U.S. Government, also opined that the Individual’s alcohol consumption and lack of candor are no longer concerning to her. The Individual has practiced rigorous honesty as part of his recovery and is open with others, including his supervisor, about his efforts. I find him honest, trustworthy, and reliable. His judgment appears sound. For these reasons, I find that the Individual has met the mitigating conditions for Guideline G at ¶ 23 (2), and Guideline I at ¶ 29 (2)–(3). Accordingly, I find that the security concerns under Guidelines G and I are resolved.

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.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals