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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: February 5, 2020) Case No.: PSH-20-0039
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Issued: December 28, 2020

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility XXXXXX (hereinafter referred to as “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, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or 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

The Individual is employed by a DOE contractor in a position that requires her to hold a security clearance. In November of 2018, the Individual completed an Electronic Questionnaire for Investigations Processing (e-QIP) and revealed that, in 2010, she voluntarily sought treatment for the use of narcotics and presently remained in treatment. Ex. 8 at 28. In March 2019, the Individual underwent an interview by the National Background Investigations Bureau (NBIB). Ex. 9. The interviewer reported that the Individual began taking the medication, Suboxone, in 2010 in order to “avoid opiate withdrawals.” *Id.* at 52. According to the NBIB report, the Individual explained to the interviewer that “there are emphatic warnings about mixing [Suboxone] with alcohol” as “it can be fatal.” *Id.* Despite having this information, the Individual reported that, although she had decreased her alcohol consumption, she continued to consume alcohol. *Id.* In response to this information, a DOE consulting psychologist (DOE Psychologist) evaluated the Individual in September 2019. Ex. 6.

Due to unresolved security concerns related to the Individual’s alcohol consumption, the LSO informed the Individual, in a Notification Letter dated November 26, 2019 (Notification Letter),

¹ Access authorization is defined 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). Such a authorization will be referred to variously in this Decision as access authorization or security clearance.

that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1.

Upon receipt of the Notification Letter, the Individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted nine numbered exhibits (Exhibits 1-9) into the record and presented the testimony of the Psychologist. The Individual introduced nine lettered exhibits (Exhibits A-I) into the record, and presented the testimony of two witnesses, including herself. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.

II. Regulatory Standard

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), 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.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the Individual's eligibility for access authorization. The information in the letter specifically cites Guideline G of the Adjudicative Guidelines. Guideline G relates to security risks arising from excessive alcohol consumption. 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. In citing Guideline G, the LSO relied upon the evaluation of the DOE Psychologist, who determined that "laboratory results show that [the Individual] is habitually consuming alcohol to the point of impaired judgment" and had not demonstrated adequate evidence of reformation or rehabilitation. Ex. 1. As further bases for citing Guideline G, the LSO relied upon the NBIB report, indicating that the Individual continued to consume alcohol while taking the medication, Suboxone, despite her awareness that the medication should not be used in conjunction with alcohol. *Id.*

IV. Findings of Fact

As stated above, in November of 2018, the Individual completed an e-QIP in which she disclosed that she entered treatment for narcotic use in 2010, and was using the medication, Suboxone, in conjunction with her treatment. Ex. 8. In March 2019, the Individual underwent an NBIB interview, and, according to the NBIB report, she explained to the interviewer that "there are emphatic warnings about mixing [Suboxone] with alcohol," including warnings that the mixture could be "fatal." Ex. 9 at 53. However, the Individual reported that she continued to consume approximately one to two glasses of wine on a monthly or bi-monthly basis. *Id.* The Individual indicated that the nurse practitioner who treats her "considers this minimal consumption to be dangerous and she wants [the Individual] to abstain while she is taking Suboxone." *Id.*

In September 2019, the DOE Psychologist conducted an evaluation of the Individual. Ex. 6. During the evaluation the Individual reported that she consumes approximately one to two glasses of wine one or two times per month; however, she additionally stated that two to three times per year she becomes "buzzed." *Id.* at 6. The DOE Psychologist noted that the Individual reported last consuming "1.5 glasses of sparkling white wine" four days prior to the evaluation. *Id.* at 7. The Psychologist ordered a Phosphatidylethanol (PEth) test, which was positive at a level of 221 ng/mL.² *Id.* at 8. The DOE Psychologist opined that the PEth test does not support the Individual's contention that she consumes a "moderate amount of alcohol." *Id.* at 9. Rather, he noted that he believes her to be "a regular and heavy consumer of alcohol." *Id.* He ultimately determined that the "laboratory results show that [the Individual] is habitually consuming alcohol to the point of impaired judgment" without adequate evidence of rehabilitation or reformation.³ *Id.* The DOE Psychologist recommended that the Individual abstain from alcohol for a minimum of 12 months, submit to random alcohol testing, attend psychotherapy, and participate in Alcoholics Anonymous, or a similar program, for a minimum of 12 months. *Id.* at 10.

The Individual submitted a letter from her treating nurse practitioner, which noted that when she first met the Individual in 2014, the Individual reported that she would "drink alcohol once a week with a six-drink limit." Ex. D. The nurse practitioner noted that this amount of consumption is "excessive." *Id.* She additionally added that at an early visit with the Individual, the Individual "was advised that abstaining from alcohol, as well as all other substances[,] was what she needed to do." *Id.* The nurse practitioner reported that as of March 2020, the Individual had been abstinent from alcohol for three months. *Id.*

² The Psychologist noted that the detection limit of a PEth test is 20 ng/mL. Ex. 6 at 8.

³ The DOE Psychologist noted that a DOE consultant psychiatrist was responsible for interpreting the results of the PEth test. Tr. at 69.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual has not sufficiently mitigated the security concerns noted by the LSO with regard to Guideline G. I cannot find that granting the Individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual's security clearance should not be granted. The specific findings that I make in support of this decision are discussed below.

At the hearing, two witnesses testified on the Individual's behalf: her psychologist and the Individual herself. The Individual testified that she began using the medication, Suboxone, approximately eight years ago because it prevented her from forming any "cravings or any need to...take pain pills or opioids." Tr. 13-14. She noted that although the nurse practitioner who prescribes her the Suboxone has never ordered her to abstain from alcohol, she has recommended that she abstain from alcohol. *Id.* at 14-15. When asked why her nurse practitioner recommended that she abstain from alcohol, the Individual replied that it was because she would prefer that no one consumed alcohol. *Id.* at 15. She further indicated that, based upon discussion with her doctor, she does "not believe that it is a problem to drink while taking Suboxone." *Id.* at 27.

In turning to her interview with the DOE Psychologist, the Individual stated that she informed him that she had consumed "some alcohol" about a week prior to the evaluation. *Id.* at 16. She then went to take the PEth test he ordered; however, that PEth test was misplaced by the laboratory. *Id.* As such, a week later, the DOE Psychologist informed her that she would need to take a second test. *Id.* at 17. However, in the week between the first and second PEth tests, the Individual testified that she consumed "a large amount of alcohol." *Id.* at 17. She did not recall how much exactly, but she noted that she did become intoxicated. *Id.* at 17, 30.

The Individual testified that when the DOE's concern about her alcohol consumption arose, she decided to undergo twice weekly alcohol tests for a period of three months.⁴ *Id.* at 20-21. She additionally added that she had been attending substance abuse group sessions with her nurse practitioner's practice for approximately seven months. *Id.* at 21, 34. However, she noted that she has not discussed her use of alcohol or any of her personal details. *Id.* at 32. The Individual testified that she was aware that the DOE was concerned with her use of alcohol, but she went on to say that she "felt that the concern wasn't with [her] actual...drinking per se." *Id.* at 35-36. She felt that the DOE's concern was "based on an incorrect report" of her alcohol consumption. *Id.* at 36.

When asked why she continued to consume alcohol even after reading the DOE Psychologist's report, she stated that she felt that his report and recommendation were based upon incorrect information, being that the first PEth test was lost. *Id.* at 41. The Individual clarified that she is not

⁴ Each of the alcohol tests was negative for alcohol. Ex. F.

currently abstaining from alcohol. *Id.* at 40. She added, however, that she “could go back to not drinking if that’s what makes you more comfortable or, ... the DOE more comfortable.” *Id.*

The Individual’s psychologist testified, stating that he had performed a psychological evaluation of the Individual. *Id.* at 46. He reported that he determined that, with regard to alcohol, the Individual does not have a diagnosable condition and does not require treatment. *Id.* at 47. He stated that her alcohol consumption “is consistent with the social use of alcohol, which is considered normal in our society.” *Id.* When asked about the results of the PEth test, the Individual’s psychologist noted that an article that he read on the subject indicated that the PEth test cannot provide information as to the frequency of one’s alcohol consumption.⁵ *Id.* at 48.

The Individual’s psychologist further noted that he was aware that the Individual used Suboxone in order to maintain the sustained remission of her opioid use disorder. *Id.* at 57. He testified that he cannot prescribe medication and was not aware of its counterindications. *Id.* at 58. When asked about the Individual’s decision to continue to use alcohol after the DOE Psychologist recommended that she abstain, the Individual’s psychologist differentiated as to whether the DOE Psychologist’s recommendation was truly a recommendation or if it was a requirement for her employment. *Id.* at 64-65. He further remarked that the DOE Psychologist was not her treating provider and that his recommendation of abstinence from alcohol was “irrelevant and unfounded” in the Individual’s case. *Id.* at 62.

The DOE Psychologist, after observing the hearing and listening to the testimony offered by the Individual and her psychologist, testified that his assessment of the Individual remains unchanged. *Id.* at 67. He clarified that he does not believe that the Individual has an alcohol use disorder, but his testing and evaluation brought up questions regarding the Individual’s “pattern of use of alcohol,” which he “designated as habitual consumption to the point of impaired judgment.” *Id.* at 69. When asked about the Individual’s PEth test results, the DOE Psychologist testified that, based on his understanding, the PEth test cannot “attest to the pattern of drinking, it can merely attest to the quantity.” He clarified that his use of the word “habitual” arose, not solely from the PEth test, but from his evaluation of the Individual and the information that she provided about her alcohol consumption in conjunction with the laboratory result. *Id.* at 84. The DOE Psychologist noted that the Individual had not adequately followed his treatment recommendations, and he added that the Individual’s choice to consume alcohol against the recommendation or wishes of her nurse practitioner, along with her decision to ignore his recommendations, raises questions about her judgment. *Id.* at 71-72, 85.

Guideline G

Habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with an alcohol use disorder, is a condition that may raise a disqualifying security concern. Guideline G at ¶ 22(c). If an individual acknowledges her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has

⁵ The Individual’s psychologist noted that he is not a medical doctor, and it is outside the scope of his practice to offer opinions about laboratory tests. Tr. at 48. However, he indicated that he relied upon an article by a medical doctor in providing this testimony. *Id.*; see Ex. C.

demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, she may be able to mitigate the security concern. *Id.* ¶ 23(b). In this case, the DOE Psychologist determined that the Individual “is habitually consuming alcohol to the point of impaired judgment.” Ex. 6 at 9. Furthermore, she is consuming alcohol in conjunction with Suboxone, with a clear awareness that “there are emphatic warnings about mixing this drug with alcohol,” as it can be fatal. Ex. 9 at 52. Further, her nurse practitioner has stated that she informed the Individual that “she needed to” abstain from alcohol. Ex. D. The Individual’s characterization of the nurse practitioner’s admonition against drinking as based in the nurse practitioner’s preference that no one drink alcohol, rather than the dangers of drinking any amount of alcohol while using Suboxone, as the Individual told the NBIB investigator, suggests she will look for excuses to justify her decision to drink rather than acknowledge her maladaptive behavior.

Despite knowing of the DOE’s concerns about her alcohol consumption and warnings that she needs to abstain from alcohol, the Individual did not abide by the DOE Psychologist’s recommendations, nor did she completely abstain from alcohol. In fact, the Individual’s own testimony demonstrates that within a week of completing a PEth test in response to the DOE’s concerns about her alcohol consumption, she became intoxicated. Furthermore, the fact that DOE only learned of this behavior due to the laboratory’s loss of the first PEth test calls into question the Individual’s willingness to fully disclose the extent of her alcohol consumption in the absence of monitoring. Rather than face the implications raised by the second PEth test, the Individual chose to dismiss the DOE Psychologist’s recommendation to abstain from alcohol on the basis that he would not have made that recommendation but for her having to retake the PEth test. This raises substantial concerns about the Individual’s judgment. It is only now, at the hearing, that the Individual appears to be taking this matter seriously, offering to abstain from alcohol. Based upon this information, I cannot find that the Individual acknowledges her maladaptive alcohol use or has demonstrated a clear and established pattern of abstinence in accordance with the DOE Psychologist’s or her nurse practitioner’s recommendations. *Contra* Guideline G at ¶ 23(b).

Based upon the evidence in the record before me at this time, I cannot find that the Individual has adequately established that granting her security clearance will not endanger the common defense and security, and that doing so is clearly consistent with the national interest. Thus, I conclude that the Individual has not sufficiently resolved the security concerns set forth in the Notification Letter with respect to Guideline G.

VI. Conclusion

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 have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline G. Accordingly, I have determined that the Individual’s access authorization should not be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals