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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: November 12, 2020) Case No.: PSH-21-0002
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Issued: January 29, 2021

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of 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 be restored.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In October 2018, the Individual’s employer issued him a written reprimand for misuse of the sick leave policy when he used sick leave, instead of vacation time, to attend a company hosted event, to which the Individual brought and consumed alcohol. Ex. 3; Ex. 6. In response to this incident, the Local Security Office (LSO) provided the Individual with a Letter of Interrogatory (LOI), which he completed in July 2019. Ex. 7. He later underwent a psychological evaluation by a DOE consultant psychiatrist (Psychiatrist) in December 2019. Ex. 8.

Due to unresolved security concerns related to the Individual’s conduct and alcohol use, the LSO informed the Individual, in a Notification Letter, 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 E (personal conduct) and Guideline G (alcohol consumption) of the Adjudicative Guidelines. Ex. 1.

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 authorization will be referred to variously in this Decision as access authorization or security clearance.

Upon receipt of the Notification Letter, the Individual exercised his 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 eleven numbered exhibits (Exhibits 1-11) into the record and presented the testimony of the Psychiatrist. The Individual introduced five lettered exhibits (Exhibits A-E) into the record, and presented the testimony of seven witnesses, including himself. 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) (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.

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 E and Guideline G of the Adjudicative Guidelines. Guideline E concerns “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules or regulations.” Guideline E at ¶ 15. This conduct can call into question an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. *Id.* 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 E, the LSO relied upon the Individual's admission in the LOI that his employer issued him a written reprimand due to a misuse of the sick leave policy, which resulted in a suspension without pay. Ex. 1. The Individual later revealed, during the psychological evaluation, that the disciplinary action was also taken because he brought beer to a company hosted event in August 2018, information that was absent from the LOI. *Id.* The LSO also cited the Individual's statements in the LOI that, apart from verbal arguments, he had never had any alcohol-related incidents. *Id.* However, during the psychiatric evaluation, the Individual explained that he was involved in a serious motor vehicle accident in August 2013, "in which alcohol was a factor because he was intoxicated at the time." *Id.*

The LSO additionally cited Guideline G, relying on the Psychiatrist's determination that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) criteria for Alcohol Use Disorder, Moderate, in Early Remission, without adequate evidence of reformation. *Id.* In addition to the aforementioned 2013 motor vehicle accident and the 2018 company hosted event, the LSO cited two additional alcohol related-incidents: (1) a July 2017 physical altercation, occurring while in the Individual was under the influence of alcohol, and (2) an April 2015 incident in which the Individual was charged with Driving Under the Influence of Alcohol (DUI). *Id.*

IV. Findings of Fact

As stated above, after receiving a written reprimand from his employer for the misuse of the sick leave policy, the Individual completed an LOI in July 2019. Ex. 6; Ex. 7. In the LOI, the Individual stated that he attended a company hosted event with alcohol and became intoxicated. Ex. 7 at 1. The Individual stated that he was unaware that alcohol was not permitted at the event. *Id.* He further noted that the written reprimand for the misuse of the sick leave policy was the result of leave he had taken to attend the company hosted event. *Id.* at 1-2. He explained that he "thought sick leave and vacation were all the same and didn't matter," and he was trying to save "vacation time for an upcoming vacation." *Id.* at 1.

The Individual clarified that he no longer consumed alcohol and did not plan to consume alcohol in the future. *Id.* at 6. He noted that he last consumed alcohol in September 2018, having approximately two or three beers on a hunting trip. *Id.* The Individual reported that he enrolled in and completed an outpatient treatment program and planned to join a recovery program. *Id.* at 5; see Ex. C.

In early December 2019, the Psychiatrist conducted an evaluation of the Individual. Ex. 8. In his report, the Psychiatrist explained that the Individual encountered his first significant alcohol-related incident in August 2013 while driving an all-terrain type vehicle, under the influence of alcohol.² Ex. 8 at 1. The vehicle ultimately flipped, permanently injuring the Individual. Ex. 8 at 1. The Psychiatrist reported on a second alcohol-related incident in April 2015, wherein the Individual was arrested for DUI upon wrecking his car in a ditch after he had consumed alcohol in a bar. *Id.* at 3. During the evaluation, the Individual additionally revealed that, in May 2017, he was consuming alcohol at a wedding and became involved in a physical altercation with another man. *Id.* at 4. The most recent alcohol-related incident occurred in August 2018, when the Individual

² The information surrounding this event was absent from the LOI. Ex. 7.

brought beer to a company hosted event. *Id.* The Individual explained to the Psychiatrist that he was not aware that alcohol was prohibited, and although he did not recall how many beers he consumed, he did become intoxicated. *Id.* He also added that his “boss noted that he was obviously intoxicated..., and wrote him up.” *Id.*

The Psychiatrist reported that the Individual completed a three-month alcohol education and treatment program, beginning in October 2018. *Id.* at 5. The Individual also reported that, following the work event, he was required to undergo random alcohol screenings, all of which had been negative. *Id.* The Psychiatrist noted that although the Individual indicated in the LOI that he intended to abstain from alcohol and join a recovery program, at the time of the evaluation, he had not attended any of the recovery meetings and had chosen to consume approximately ten beers over the course of a November 2019 weekend hunting trip. *Id.* at 1. When the Psychiatrist inquired about the Individual’s future intent with respect to alcohol consumption, the Individual stated that he would not “go back to what it was,” and that if he did consume alcohol, it would only be during hunting trips. *Id.* at 6.

In his report, the Psychiatrist ultimately diagnosed the Individual with Alcohol Use Disorder, Moderate, in Early Remission. *Id.* at 10. However, he did not feel that the Individual had demonstrated adequate evidence of rehabilitation or reformation and determined that, in order for the Individual to show adequate evidence of rehabilitation or reformation, he would need to show a desire to enter a treatment program. *Id.* The Psychiatrist recommended a treatment program of moderate intensity, such as a group outpatient program, meeting at least twice per week, or individual alcohol abuse counseling. *Id.* Finally, the Psychiatrist recommended at least six months of abstinence from alcohol, and he noted that at the time of the evaluation, the Individual’s prognosis was “only fair.” *Id.* at 1, 10.

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 sufficiently mitigated the security concerns noted by the LSO with regard to Guideline E and Guideline G. I find that restoring 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 be restored. The specific findings that I make in support of this Decision are discussed below.

At the hearing, seven witnesses testified on the Individual’s behalf: an Employee Assistance Program (EAP) counselor (Counselor), his aunt, his uncle, a friend, his recovery group leader, a colleague from his recovery group, and the Individual himself. The Individual’s Counselor testified that when the Individual initially engaged in EAP, he was seeing a counselor who has since retired. Tr. at 11. The Individual was then transferred to her care, and she began working with him in January 2020. *Id.* She noted that, at that time, the Individual reported that he had last consumed alcohol approximately six weeks prior during a hunting trip. *Id.* at 14. She reported that the Individual began working with EAP after completing an external alcohol recovery program and

that, in addition to her individual counseling, the Individual participated in and completed an alcohol education and awareness group she conducts. *Id.* at 11-12; Ex. B. She noted that, at the time she first met with the Individual, he was already participating in a recovery program, and she recommended that he attend Alcoholics Anonymous (AA) as well, which he began in January 2020. Tr. at 13,15.

The Counselor testified that she had met with the Individual for six counseling sessions so far, and they were meeting “fairly regularly” from January through March of 2020 until the COVID-19 pandemic struck. *Id.* at 14-15. She explained that, in her time working with the Individual, he “always participated, very verbal, very active, he always initiated.” *Id.* at 19. She indicated that she felt that the Individual had begun serving as a role model to other group participants. *Id.* The Counselor noted that when she met with the Individual in November 2020, the Individual reported a year of sobriety from alcohol, and he maintained his abstinence despite being subjected to leave without pay for several months, going through a divorce, and ending an unhealthy relationship with his mother due to her own alcohol consumption. *Id.* at 17. She explained that through this time, he continued to engage in his recovery group and work through the AA steps with his sponsor. *Id.*

The Individual’s co-worker and friend (Friend) also testified on his behalf. *Id.* at 28. The Friend testified that he and the Individual interacted approximately three to four times per week, hunted together, and socialized outside of work. *Id.* at 29. The Friend noted that the last time he saw the Individual consume alcohol was during a hunting trip in November 2019. *Id.* at 30. He elaborated, stating that when the two went hunting together in 2020, the Individual did not consume any alcohol. *Id.* He further explained that he invited the Individual to Christmas dinner, and despite the presence of alcohol, the Individual did not consume it. *Id.* The Friend testified to the Individual’s commitment to AA and his sobriety. *Id.* at 31.

The Individual’s aunt (Aunt) testified and explained that a series of tragic events in the Individual’s life “precipitated a downward spiral” for him, and she began to notice that his alcohol consumption was becoming excessive. *Id.* at 46. She noted that she had been abstinent from alcohol for 27 years, so the Individual did not consume alcohol around her, but she noticed that “his behavior was quite different” and concerning. *Id.* at 47. The Aunt explained that once the Individual lost his clearance, “he decided to get serious about the quitting drinking, and he started going to AA” and church. *Id.* She noted that he became abstinent from alcohol on November 19, 2019. *Id.* at 54. The Aunt revealed that, at that time, she began daily walks with the Individual, during which they would have long conversations. *Id.* at 48. They also began talking on the phone, and she noticed “a huge change in him.” *Id.*

The Aunt additionally explained that the Individual’s mother, her sister, is an alcoholic, and that the mother had recently moved in with the Individual. *Id.* at 49-51. The Aunt stated that the Individual felt so strongly about his own recovery that he “just flat out told her she couldn’t drink and...he couldn’t be around her drinking,” at which point she moved out of the Individual’s house. *Id.* The Aunt noted that the Individual attends daily AA meetings, sometimes attending twice a day,³ and she added that “he knows drinking is not the solution to any problems anymore.” *Id.* at 52.

³ The Individual’s AA log sheets support the Aunt’s testimony, reflecting consistent daily attendance. Ex. A.

The Individual's recovery group leader (Leader) also testified and explained that the Individual began attending the program over a year prior to the hearing and has been in attendance "every time that [they] are open." *Id.* at 59-60. The Leader noted that the Individual is doing well in the program, participates, and is willing to contribute. *Id.* at 62-63. He explained that he believes that the Individual has become abstinent from alcohol with the purpose of "chang[ing] his life." *Id.* at 64.

The Individual testified on his own behalf. In addressing the August 2013 motor vehicle accident, the Individual explained that he did not list the incident on the LOI as "alcohol-related" because, although he had consumed alcohol on the day of the accident, the cause of the accident was "that a bunch of people jumped on" the vehicle causing it to flip. *Id.* at 78. The Individual acknowledged that he should have listed the incident on the LOI. *Id.*

Turning to the written reprimand, the Individual clarified that it was his understanding that the reprimand was based solely upon the misuse of leave for the work-sponsored event. *Id.* at 78. He stated that he told the Psychiatrist that the reprimand was also related to the possession and consumption of alcohol because he "wasn't too clear" about the specifics of the reprimand, and "everything was a blur." *Id.* However, upon examining the reprimand, it is clear that it was based solely upon the misuse of leave. *Id.*; see Ex. 6.

With regard to the August 2018 work sponsored event, the Individual acknowledged that he did bring alcohol to the offsite event as he did not believe it would be a problem, but that he now knows that "it was definitely a misjudgment...to even take alcohol or think of that." Tr. at 79. The Individual additionally acknowledged the May 2017 altercation at the wedding and the April 2015 DUI, noting that both were incidents in which alcohol created problems in his life. *Id.* at 80-81.

The Individual explained that after he met with the Psychiatrist, he became aware that his alcohol consumption was problematic, and he needed to seek treatment. *Id.* at 84. The Individual testified that he became abstinent from alcohol on November 19, 2019, and he did not intend to consume alcohol in the future. *Id.* at 101-102. He attributed the changes in his life to his attendance at AA and his recovery program. *Id.* He explained that although he had abstained from alcohol between his September 2018 and November 2019 hunting trips, he was not involved in a formal recovery program, and he realized that if he did not "get involved with a program or make changes in [his] own life," he would not be successful in recovery. *Id.* at 86. He stated, "you can be dry from not drinking, but if you're not changing all of your other behaviors...it's just a matter of time before you slip back into it." *Id.*

The Individual testified that he has now successfully completed all AA steps and regularly reaches out to his Aunt and his Leader for support in stressful times. *Id.* at 90-91; see Ex. D. In addressing the stress of the past year, and becoming abstinent from alcohol during the COVID-19 pandemic, the Individual stated that although "it's been a struggle...It's amazing how my life's turned around with working through the steps and...sorting the ideas of temptation out of [my] head." *Id.* at 95.

The Psychiatrist, after observing the hearing and listening to the testimony offered by the Individual and all other witnesses, testified that he felt that the Individual had "exceeded" all of the Psychiatrist's requirements. *Id.* at 108. The Psychiatrist opined that "there is now adequate evidence of rehabilitation or reformation" from the Alcohol Use Disorder. *Id.* at 111. He explained

that his diagnosis has changed from partial remission to full sustained remission. *Id.* at 112. The Psychologist explained that the basis for this new opinion arises from the Individual's: (1) acknowledgement that he has a problem with alcohol; (2) full participation in a structured treatment; and (3) completion of more treatment for a longer duration than was recommended. *Id.* The Psychiatrist testified that he felt that the Individual's prognosis was "good for his maintaining his freedom from alcohol use problems." *Id.* He also elaborated that he felt that the Individual's self-report of his alcohol use "is more reliable than most," as the Individual disclosed that he had consumed alcohol on a recent elk hunting trip, an incident of alcohol consumption that would have never been revealed had the Individual not reported it. *Id.* at 109. As such, the Psychiatrist opined that it was "more likely" that the Individual's testimony, with regard to his alcohol consumption, was credible. *Id.* at 110.

Guideline E

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. *See* Guideline E at ¶ 15. Deliberately omitting, concealing, or falsifying relevant facts from any personnel security questionnaire can disqualify an individual from holding access authorization. *Id.* at ¶ 16(a). In the event that an individual makes prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts, the individual may be able to mitigate the security concerns. *Id.* at ¶ 17(a). Additionally, if information is unsubstantiated, the security concern may also be mitigated. *Id.* at ¶17(f).

Here, security concerns arose regarding Guideline E as it appeared that the Individual may have concealed the August 2013 motor vehicle accident and from the LOI. Additionally, a security concern arose due to the Individual's revelation to the Psychiatrist that his possession and consumption of alcohol at the work-sponsored event was the cause of his written reprimand, information that was absent from the LOI. However, upon examining the record, the Individual freely shared this information with the Psychiatrist without being confronted with the adverse information. *See id.* at ¶ 17(a). With regard to the August 2013 incident, he clarified that he did not believe it was an "alcohol-related incident," as alcohol was not the cause of the accident, but he freely acknowledged that, upon reconsideration, he should have listed the event on the LOI. I additionally note that although the Individual's possession and consumption of alcohol was not permitted at the work sponsored event, it was not the cause of the written reprimand and subsequent disciplinary action, as the reprimand was solely related to the misuse of sick leave. *See Ex. 6; id.* at ¶ 17 (f).

Guideline G

Diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder is a condition that could raise a security concern and may disqualify an individual from holding a security

clearance. Guideline G at ¶ 22(d). Additionally, alcohol-related incidents away from or at work could raise disqualifying security concerns. *Id.* at ¶ 22(a), (b). If an individual acknowledges his 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, he may be able to mitigate the security concern. *Id.* at ¶ 23(b). Additionally, alcohol-related incidents away from or at work could raise disqualifying security concerns. *Id.* at ¶ 22(a), (b).

In this case, the Individual had a history of four concerning alcohol-related events: (1) bringing and consuming alcohol, to the point of intoxication, at a work hosted event, (2) the May 2017 physical altercation, (3) the April 2015 DUI, and (4) the August 2013 motor vehicle accident. Additionally, the Psychiatrist diagnosed the Individual with Alcohol Use Disorder, Moderate, in Early Remission. However, the Psychiatrist testified that the Individual “exceeded” all treatment recommendations and opined that the Individual is in full sustained remission with a “good” prognosis. Furthermore, the Individual has acknowledged that he had a problem with alcohol and has completed the EAP treatment program and continues to seek EAP counseling services. He has been abstinent from alcohol for over one year and consistently attends and meaningfully engages in daily AA meetings, as well as his recovery group. *See* Guideline G at ¶ 23(b).

It is clear, based upon the evidence in the record and the testimony presented at the hearing, that the Individual has taken substantial steps to overcome the concerns regarding his alcohol consumption. Additionally, given the Individual’s openness and candor during the psychiatric evaluation, as well as his willingness to acknowledge his mistakes and lapses in judgment, I find that the Individual has adequately established that restoring his 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 sufficiently resolved the security concerns set forth in the Notification Letter with respect to Guideline E and 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 brought forth sufficient evidence to resolve the security concerns associated with Guideline E and Guideline G. Accordingly, I have determined that the Individual’s access authorization should be restored. 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