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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-21-0004
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Issued: January 29, 2021

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (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 not be restored.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position which requires him to hold a security clearance. During a routine reinvestigation, the Individual admitted derogatory information relating to his alcohol consumption. After further investigation, 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 continue holding 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), and the Director of OHA appointed me as the Administrative Judge. At the hearing I convened pursuant to 10 C.F.R. § 710.25, the Individual presented the testimony of five witnesses and testified on his own behalf. The LSO presented the testimony of the DOE psychologist who had evaluated the Individual. Transcript of Hearing, Case No. PSH-21-0004 (“Tr.”). The LSO submitted nine exhibits, marked as Exhibits 1 through 9 (“Ex.”). The Individual submitted four exhibits, marked as Exhibits A through D.

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 Guideline G (Alcohol Consumption) 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).

Guideline G 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 relevant conditions set forth in Guideline G that could raise a disqualifying security concern are “[d]iagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder,” “failure to follow treatment advice once diagnosed,” or “[a]lcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.” *Id.* at ¶ 22. The LSO alleges that, in 2019, a DOE-Contractor psychologist (“Psychologist”) diagnosed the Individual with Severe Alcohol Use Disorder without evidence of rehabilitation or reformation. Accordingly, the LSO’s security concerns under Guideline G 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 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 or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 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 in this case.

IV. FINDINGS OF FACT

At the hearing, the Individual presented the testimony of a colleague who is also a friend, a former roommate and close friend, a current roommate, his brother with whom he lives, and his supervisor.

The friend and colleague testified that he had seen the Individual consume alcohol in the past, but never in an alarming amount. Tr. at 13. However, in the preceding 18 months, he observed that the Individual was not consuming any alcohol at social occasions, including events where others were consuming alcohol. *Id.* at 14. He testified that the Individual informed him that he does not drink alcohol anymore. *Id.* at 15. He believed the Individual to be honest, trustworthy, and reliable. *Id.* at 15.

The close friend testified that he held concerns about the Individual in the past over his alcohol consumption. Tr. at 21. They were roommates at the time of his concerns, and they had discussed the health effects of the Individual's drinking. *Id.* at 20–21. The close friend testified that the Individual no longer consumes alcohol, including in situations in which others are drinking. *Id.* at 22. He had not seen the Individual consume alcohol in over a year. *Id.* at 24–25. Based on discussions with the Individual regarding the Individual's abstinence and efforts to improve his health, the close friend had the impression that the Individual was committed to his lifestyle change. *See id.* at 26.

The Individual's roommate testified that he entrusted the Individual with his house while out of town on a long-term work assignment. Tr. at 32. He stated that he has never seen the Individual consume alcohol. *Id.* at 34. He believed that the Individual might be attending counseling. *Id.* at 35. He found the Individual very reliable and trustworthy. *Id.* at 36–37.

The Individual's brother testified that he lives with the Individual and has not seen him consume alcohol in recent months. Tr. at 46. He testified that the Individual has replaced his alcohol consumption with new lifestyle changes, such as gardening and exercise. *Id.* at 51–53.

The Individual's supervisor testified that he had not seen evidence of the Individual consuming alcohol in the past year, though he had only observed the Individual outside of work once during that time. Tr. at 56. He believed that the Individual had completely stopped consuming alcohol. *Id.* at 57. He too found the Individual reliable and trustworthy. *Id.* at 58–59.

The Individual testified that he agreed with DOE and the Psychologist that his drinking had become concerning. Tr. at 65. His alcohol consumption had gradually increased over the years until he was drinking six to nine beers every evening. *Id.* at 67–68. He was experiencing significant stress and was using alcohol to cope. *Id.* at 68. He had abstained from alcohol for a week or so at a time in the past just to prove to himself that he could, but he had chosen to abstain permanently after learning more about the severity of his alcohol use from the Psychologist. *Id.* at 70, 75. He also confirmed that, during the evaluation, the Psychologist provided recommendations consistent with the recommendations for rehabilitation or reformation included in the Psychologist's report. *Id.* at 75.

Regarding his path to abstinence, the Individual testified that he had tapered his alcohol use to avoid withdrawal and had his last drink on December 12, 2019. Tr. at 73–74. In February 2020, the Individual realized that he needed to do something to document his abstinence in preparation for this hearing, so he began attending Alcoholics Anonymous (AA) meetings. *Id.* at 75–76. Before

attending AA, the Individual believed he was an alcoholic. However, after hearing others at AA speak, he became unsure whether he was an alcoholic. *Id.* at 76. As of the hearing, he believed that his drinking had been problematic, particularly because he had been unable to abstain in the past. *Id.*

The Individual stopped attending AA when pandemic-related stay-at-home orders caused his group to stop meeting. Tr. at 77. He began relying on friends and family instead. *Id.* He did not seek out online AA meetings or the intensive outpatient program (IOP) that the Psychologist recommended. *Id.* at 78. He began individual counseling instead. *Id.* at 79–80. He met with his counselor only twice, once in July 2020 and once in December 2020, but did not find it any more helpful than speaking to friends and family. *Id.* at 80–81, 89. He stopped participating in activities during which he used to consume large amounts of alcohol, such as gaming, and started activities such as gardening and quilting. *Id.* at 84. He submitted into evidence two blood tests showing that he had been abstinent from mid-July to mid-August 2020, and from mid-October to mid-November 2020. Ex. A; Ex. B. The Individual intended to abstain for another six months to one year and believed that he could do so with his current support system. Tr. at 88. The Individual also stated that he intends to consume alcohol responsibly in the future. *Id.*

The Psychologist testified that the Individual, at the time of his initial examination, had a severe alcohol use disorder from which he was not rehabilitated or reformed. Tr. at 100–01; Ex. 7 at 13. In his report, the Psychologist had recommended that the Individual remain abstinent from alcohol for one year; attend AA at least three times per week for one year; work through the 12 Steps of AA with an AA sponsor; participate in a four to six week intensive outpatient treatment program; participate in DOE’s Employee Assistance Program and undergo PETH blood testing at least three times through that program; and undergo sleep apnea testing. Ex. 7 at 13. The Psychologist testified that he had tailored his recommendations to give the Individual a sense of structure. Tr. at 105–06. While the Psychologist was encouraged by the Individual’s abstinence, he was concerned that the purported abstinence was not supported by a system backed by substance abuse expertise, such as AA or substance abuse counseling. *Id.* at 110. He described the Individual’s current abstinence as “a force of will” fueled by the social stigma of alcoholism and an unhealthy lifestyle. *Id.* He was concerned that an increase in the Individual’s daily stress, or a loss of forward momentum, could lead to a relapse if the Individual continued without an experienced support system. *Id.* He believed that while the Individual had started the process, the Individual was not yet rehabilitated.² *Id.* at 111. He testified that the Individual’s two blood tests were the only measure of his continued abstinence because he had not continued with AA. *Id.* at 120–21. He believed that the Individual still had an alcohol use disorder as of the hearing date. *Id.* at 125. The Psychologist stated that if the Individual completed the originally recommended treatment plan, he could have a good prognosis. *Id.* at 129. He also stated that a good prognosis was contingent on future activities and could not be given as of the hearing date because the Individual had not completed the treatment plan. *Id.* at 132–33. The Psychologist did not believe that the Individual could safely consume alcohol in the future. *Id.* at 133.

V. ANALYSIS

² The Psychologist stated that the Individual was reformed, which, by his definition, meant that the Individual had accepted that he had a problem with alcohol. Tr. at 127. He testified that reformation alone was not sufficient in this case for him to consider the Individual’s alcohol issues to be resolved. *Id.* at 127–28.

Guideline G provides that security concerns arising from alcohol consumption can be mitigated when:

- (a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and
- (d) The individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.”

Adjudicative Guidelines at ¶ 23.

First, I do not conclude that the Individual’s alcohol use was so infrequent or so long ago that it is unlikely to recur. The evidence is clear that prior to his recent period of abstinence, his alcohol use was quite frequent and extensive. Furthermore, the circumstances surrounding his use were not unusual. While he testified that he has maintained abstinence for a year, and his testimony is supported by witness testimony and two of the recommended three laboratory tests, I find the opinion of the Psychologist that the Individual is not yet rehabilitated persuasive, and I am therefore not convinced that the Individual’s prior pattern of alcohol use is unlikely to recur.

Second, I do not find that the Individual mitigated the security concerns based on his acknowledgement that his alcohol consumption was problematic and his recent period of abstinence. His abstinence, while not insignificant, occurred without the benefit or support of a treatment program or AA. The Individual eschewed the recommendations of the Psychologist and relied instead on the advice and support of family and friends. While family and friends are important parts of a support system, the Individual has presented no evidence that any of his family or friends is trained in substance abuse treatment. Furthermore, the Individual expressed his intent to consume alcohol in the future, but he has not presented evidence that he has developed substantial skills to cope with the circumstances and stresses of life that triggered his concerning alcohol consumption in the past. These preceding facts, coupled with the Psychologist’s less-than-positive prognosis, prevent me from concluding that the Individual has mitigated the Guideline G security concerns stemming from his Alcohol Abuse Disorder.

Finally, the Individual is not participating in, nor has he completed, a treatment or counseling program. Therefore, the final two Guideline G mitigating factors are inapplicable. For these reasons, I cannot find that the Individual has resolved the Guideline G 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 Guideline G of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that restoring 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 not restore 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.

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