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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: August 23, 2021) Case No.: PSH-21-0104
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Issued: January 10, 2022

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 restored.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position that requires that he hold a security clearance. DOE learned derogatory information regarding the Individual’s mental health and alcohol use. 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). 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 two witnesses 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 15 exhibits, marked as Exhibits A through O.

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) provides 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.

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 the Individual's then-wife filed an Order of Protection after the Individual struck her while under the influence of alcohol. The LSO further alleged that the Individual was disciplined while in the Navy for reporting to duty while smelling of alcohol and having a breath alcohol concentration of .36/210L. Finally, the LSO alleged that, in January 2021, a DOE Contractor-Psychologist (the Psychologist) opined that the Individual binged alcohol or habitually drank to excess and that the Individual met certain diagnostic criteria for Bipolar Disorder. Accordingly, the LSO's security concerns under Guidelines G and 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 prescribing nurse practitioner testified that she had been seeing the Individual since August 2021, when she assumed the caseload of the Individual's previous prescriber. Tr. at 11–12. During that time, she ordered phosphatidylethanol (PEth) blood tests for him, the results of which showed that the Individual had not used alcohol in the three months prior to the hearing. *Id.* at 14. She testified that the Individual had not reported any symptoms of mania while she had been treating him and that she believed, based on laboratory testing, that the Individual was compliant with his medication regimen to treat his Bipolar Disorder. *Id.* at 16–17. She believed that the Individual had good insight, which was helpful in his treatment. *Id.* at 18. The nurse practitioner was also prescribing the Individual a medication that helped reduce alcohol cravings and testified that the Individual was actively participating in recovery programs. *Id.* at 15, 19. She opined that the Individual's alcohol use issues are in remission. *Id.* at 12. She also testified that she believed the Individual's support system was robust, including therapy, Alcoholics Anonymous (AA) meetings, and active involvement in his church. *Id.* at 20.

The Individual's spouse testified that she had known the Individual for six months and that they had been married for three months. Tr. at 24–25. She testified that during the three months she and the Individual had lived together, there had been no alcohol in the house. *Id.* at 25. She was familiar with the Individual's past struggles with alcohol. *Id.* at 26. She testified that she and the Individual were very involved in their church, which encourages alcohol abstinence, and described an active social life within the church community. *Id.* at 26–28. The spouse had observed the Individual attending psychiatric appointments because he did them at home via telemedicine. She and the Individual had discussed his recovery activities, including AA attendance and his work with an AA

sponsor. *Id.* at 30. She testified that the Individual regularly took his medication and had always been stable since she had known him. *Id.* at 30. She checked in with the Individual regularly to gauge his mood and was able to notice when the Individual was “feeling down.” *Id.* at 35. When that happened, she and the Individual were able to discuss his feelings and stressors openly. *Id.* at 39–36. She further testified that if the Individual appeared to be unstable, she would call a member of their church for advice and assistance. *Id.* at 30. She believed that the Individual was honest, reliable, and trustworthy. *Id.* at 32.

The Individual testified that he was diagnosed with Bipolar Disorder in March 2020, when he began mental health treatment in response to the incident with his previous spouse. Tr. at 41. After the incident, he sought out mental health treatment on his own and, upon receiving his diagnosis, began treatment immediately. *Id.* at 62. He testified that after abstaining from alcohol, he relapsed in July 2020. *Id.* at 41. He called a church member for support right after notifying his employer and has not consumed alcohol since July 18, 2020. *Id.* The Individual initially attended AA once or twice a week and had completed the 12 Steps with his sponsor. *Id.* at 43. He testified that he attended AA less frequently now and relied more on his wife² and his church to support him, but he still attended weekly. *Id.* He testified that he is active in his church and that he has a strong support system there. *Id.*

The Individual testified that in 2016, he had not started treatment and his alcohol consumption was uncontrolled. Tr. at 45. He was drinking to impairment nightly, which resulted in the 2016 incident with the U.S. Navy. *Id.* at 45–46. After attending a military substance abuse program, he remained abstinent from alcohol for 19-20 months. *Id.* at 50. He began consuming alcohol in small amounts shortly after leaving the military. *Id.* His alcohol consumption escalated and within a year he was consuming large quantities of alcohol. *Id.*

The Individual testified that he looks for signs such as paranoid thoughts or sleeplessness to determine if he is experiencing a hypermanic episode. Tr. 52–53. If he cannot resolve the symptoms within 24 hours, he begins a medical intervention, in accordance with his treatment plan, to prevent further mood disruption. *Id.* at 53. The Individual felt that his Bipolar Disorder was well-controlled and testified that his quality of life was improved by his treatment. *Id.* at 56. He described insights into his treatment plan that demonstrated a thorough understanding of both his medication regimen and personal experience with his mental health condition. *Id.* at 52–56.

The Individual described attending an Intensive Outpatient Program (IOP) that included 12 weeks of anger management programming, 12 weeks of substance education programming, and 24 weeks of group therapy. Tr. at 54. The program ran for a total of 24 weeks, but he attended group therapy sessions for an additional six weeks. *Id.* at 58. He completed the IOP in July 2021. *Id.* at 54. The Individual identified stress as a major trigger for his alcohol use and described using alcohol as a “social lubricant.” *Id.* at 64. He testified that when he is triggered, he can attend an online AA meeting at any time or talk to his family and members of his church. *Id.*

The Individual testified that he was currently looking for a therapist but was having difficulty finding one who was accepting new patients. Tr. at 59. The Individual had a counseling relationship

² He testified that while the length of his courtship to his wife may seem short, it was common for a member of his faith tradition. *Id.* at 42.

with his bishop and some ministerial members of his church and intended to fully comply with any recommendations for further clinical therapy that his nurse practitioner recommended. *Id.* at 60. The Individual testified that he was fully compliant with his current medication and treatment regimens. *Id.* at 63. He also testified that he can access all of his psychiatric treatments through telemedicine, if needed. *Id.* at 64–65.

The Psychologist testified that he did not give the Individual a formal alcohol diagnosis in January 2021 because the Individual did not meet the diagnostic criteria in the DSM-5. Tr. at 71. He testified that, as a descriptive diagnosis, the Individual had a severe alcohol use disorder that is now in remission. *Id.* at 72. The Psychologist testified that the Individual’s Bipolar Disorder is a type that many men experience as excessive anger, as the Individual did, and that this makes treatment easier because most people do not want to continue feeling that anger. *Id.* at 74. He gave the Individual a good prognosis for both his alcohol use and his Bipolar Disorder. *Id.* at 75. He testified that the Individual is reformed and rehabilitated from his alcohol problems. *Id.* at 75. He further testified that the Individual’s Bipolar Disorder was under control and that the Individual had a low probability of recurrence or exacerbation of his extreme symptoms. *Id.* at 76–77. The Psychologist had additional confidence in the Individual because he was able to identify changes in himself that indicated a slide into a manic episode. *Id.* at 77. He testified that this allows the Individual to intervene before he has a manic episode. *Id.*

The Individual submitted into evidence the results of alcohol and drug screenings administered from February to August 2021 and a blood test for alcohol covering a 4-week period preceding December 3, 2021. Ex. N; Ex O. All tests had a negative result. Ex. N; Ex. O.

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 of 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 restoring 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.

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 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.

Guideline G's mitigating factors (2) and (4) are applicable in this case. The Individual successfully completed an IOP and continued attendance for several weeks after completion. He has maintained his abstinence for over a year and complied with his nurse practitioner's treatment plan. He has an extensive support network on which he can rely when he is struggling. While relapse is not ideal, the Individual demonstrated that he was able to utilize his support system to recover from his July 2020 relapse and maintain his continued abstinence. The Individual continues to attend AA and is open and honest with his family regarding his struggles. For these reasons, I find that the Individual has mitigated the Guideline G concerns.

Guideline I's mitigating factors (1), (2), and (3) are applicable in this case. The Individual's Bipolar Disorder is well-controlled through medication and the Individual has demonstrated compliance with and understanding of his treatment plan. He sought out a mental health assessment before being required to do so and immediately began treatment upon receiving his diagnosis. He can identify signs that he may soon experience a manic episode and has a concrete plan of action to prevent such an episode. He is under regular care with his nurse practitioner, and neither she nor the Psychologist indicated that further clinical intervention was required at this time. The Psychologist gave the Individual a good prognosis and was confident in the Individual's ability to recognize his symptoms before experiencing a manic episode. For these reasons, I find that the Individual has mitigated the Guideline I 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 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 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.

Kristin L. Martin
Administrative Judge
Office of Hearings and Appeals