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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 27, 2021) Case No.: PSH-21-0109
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Issued: January 4, 2022

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Procedures for Determining Eligibility for Access to Classified Matter of 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 restored.

I. Background

The Individual is employed by a DOE Contractor in a position which requires that he hold a security clearance. The Individual began the process of applying for his clearance by signing and completing a Questionnaire for National Security Positions (QNSP) on August 30, 2017. Ex. 10. In the QNSP, the Individual disclosed that he had been charged with Driving While Impaired (DWI) in May 2012 and Domestic Violence (DV) in March 2013. Ex. 10 at 27-28. After receiving his clearance, the Individual self-reported an incident that took place on May 13, 2019, stating that he had been “placed under arrest” after being suspected of driving under the influence of alcohol. Ex. 6 at 1. He had been observed traveling approximately thirty miles per hour above the posted speed limit. Ex. 6 at 3. Accordingly, the Individual’s access was restricted on May 16, 2020. Ex. 6 at 7.

¹ Access to authorization is defined as “an administrative determination that an individual is eligible for access to classified mater 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.

The Individual was directed to complete a Letter of Interrogatory (LOI), which he signed and submitted on October 1, 2020. Ex. 7. Based on the information provided, the LSO requested that the Individual undergo a psychiatric evaluation, which was conducted by a DOE-contractor Psychiatrist (DOE Psychiatrist), who issued a report of his findings on October 1, 2020. Ex. 8.² After receiving the DOE Psychiatrist's report, the 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 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 Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of three other witnesses, along with eight exhibits, marked as Exhibits A through H (hereinafter cited as "Ex."). *See* Transcript of Hearing, Case No. PSH-21-0109 (hereinafter cited as "Tr.") The DOE Counsel presented the testimony of one witness and submitted eleven exhibits marked as Exhibits 1 through 11.

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 substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline G of the Adjudicative Guidelines. Ex. 1. Under Guideline G (Alcohol Consumption), "[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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are "alcohol-related incidents away from work, such as driving while under the influence[,] and "[d]iagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder." *Id.* at ¶¶ 22(a), (d). With respect to Guideline G, the LSO alleged that (1) the Individual was arrested and charged with DWI in May 2019; (2) the Individual was arrested and charged with Careless Driving While Under the Influence of Alcohol (CDWUI) in May 2012; and (3) the Individual was arrested and charged with DV in March 2013 while in a state of intoxication. Ex. 1 at 1. I find that the LSO's concerns under Guideline G are justified.

III. Regulatory Standards

² In conjunction with the examination, two laboratory tests were performed, a Phosphatidylethanol (PEth) test and an Ethyl Glucuronide (EtG) test. Ex. 8 at 8. The EtG test was negative, indicating he was "abstinent or consumed an amount of alcohol that would not produce an EtG level above the screen cutoff, which would be a small amount of alcohol." Ex. 8 at 8. However, the PEth test was positive at a level of 211 ng/mL, suggesting heavy levels of alcohol consumption. Ex. 8 at 8. The Individual had consumed alcohol the evening prior to the evaluation. Ex. 8 at 8. The Individual submitted four PEth tests from August, September, October, and November 2021, all of which were negative. Exs. C, D, E, and H.

A DOE administrative review process under Part 710 requires me, as Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgement, made after consideration of all of the relevant evidence, favorable or 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 to permit the introduction of a very broad range of evidence at personal 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.

IV. Findings of Fact

The Individual does not challenge the facts listed in the Notification Letter; namely that, in May 2019, law enforcement stopped the Individual, who was in his vehicle, administered field sobriety tests, and arrested the Individual on suspicion of DWI. Ex. 7 at 1.³ The matter was ultimately dismissed. Ex. 7 at 2. The Individual also acknowledged a previous arrest and charge in May 2012 for Careless Driving While Under the Influence of Alcohol/Drugs, after which he became subject to routine testing and counseling. Ex. 7 at 2. The aforementioned charges came on the heels of a March 2012 DV charge that also involved alcohol use. Ex. 7 at 2.

The Individual did not consume alcohol after the May 2019 arrest until November 2019, and at the time he completed his LOI, he was drinking approximately one-to-three beers "a couple times a week." Ex. 7 at 3. He denied ever being made aware of any concerns regarding his alcohol consumption, feeling any concern over his alcohol consumption, or any need for treatment for his alcohol consumption. Ex. 7 at 4.

The DOE Psychiatrist, who also examined the Individual's personnel security file, conducted an in-person psychiatric evaluation of the Individual. Ex. 8 at 2. During the evaluation, the DOE Psychiatrist confirmed the events of May 2019 and May 2012 and noted that the Individual had a history of three prior DV incidents that involved alcohol consumption. Ex. 8 at 3-5. The Individual informed the DOE Psychiatrist that he did not consume any alcohol from May 2019 to November 2019, and at the time of the evaluation, was consuming alcohol "intermittently," sometimes going

³ During this incident, the Individual refused to submit to a blood test. Ex. at 1. The Individual stated that he had consumed one shot of liquor and had taken cold medicine, as he "was not feeling well that day." Ex. 7 at 2.

without alcohol for several weeks, and sometimes consuming eight alcoholic beverages in one week. Ex. 8 at 4-5. The DOE Psychiatrist determined that the Individual habitually consumes alcohol to the point of impaired judgment and opined that there was no evidence of rehabilitation or reformation. Ex. 8 at 9. He recommended that the Individual engage in outpatient treatment for six months, “starting with weekly sessions[,]” attend Alcoholic Anonymous (AA) or similar meetings for one year, and submit to his employer’s alcohol testing as well as participate in voluntary PEth testing for one year. Ex. 8 at 9. Finally, the DOE Psychiatrist recommended that the Individual abstain from alcohol for one year. Ex. 8 at 9.

V. Hearing Testimony

The first witness, a counselor with the Individual’s employer’s Employee Assistance Program (EAP), first met the Individual in early July 2021, although the Individual had first sought EAP services in late May 2019. Tr. at 11-13. The counselor testified that she had seen the Individual five times for individual counseling, and referred him to outside counseling, and she indicated that the Individual began attending an alcohol education class in July 2021. Tr. at 13-14. In September 2021, the Individual also began attending a group geared toward helping participants maintain their altered relationship with alcohol, which he last attended in December 2021, for a total of nineteen group sessions. Tr. at 14.⁴ The counselor stated that the Individual attends the maintenance group as an “alumni” member, and “has done an amazing job in opening up” and discussing his experience with alcohol. Tr. at 14, 17. Based on what the Individual has told her, she believes the Individual’s ongoing sobriety has supported his endeavor to keep his children safe and happy. Tr. at 20-21. He has also “learned about himself and his triggers, and how he can cope with life and stressors[.]” Tr. at 21. The counselor’s groups focus on the various stages of change in terms of recovery, and the Individual was in the last stage, maintenance. Tr. at 23-25. To the best of the counselor’s knowledge, the Individual began abstaining from alcohol after his May 2019 DWI, and although he relapsed in November 2019, she believes he “has adequate support mechanisms in place[.]” Tr. at 26-27. She described the Individual’s prognosis as “excellent,” as long as the Individual continues to recognize triggers and “high-risk” situations and remains honest. Tr. at 28-29.

In his testimony, the Individual confirmed the accuracy of the allegations contained in the Notification Letter but stated that he would be six months sober on December 7, 2021. Tr. at 34, 36-37. To this end, he has completed two six-week courses, one of which he continues to attend weekly, has moved closer to his family, and takes regular PEth tests. Tr. at 35. While acknowledging the diagnosis he received from the DOE Psychiatrist, he denied receiving the same or a similar diagnosis from another professional and indicated that he does not consider himself an alcoholic. Tr. at 38. He did, however, indicate that he has an alcohol problem. Tr. at 38.

Regarding the May 2012 incident, the Individual stated that he was speeding on his way home after taking one celebratory shot with his best friend. Tr. at 38-39. The law enforcement officer who stopped him on that occasion accused him of being under the influence of illicit substances,

⁴ The Individual submitted two certificates of completion, dated August 26, 2021, and October 20, 2021, for the respective programs he attended. Exs. F and B.

which he denied. Tr. at 39. The Individual failed a field sobriety test, and as he was in a rush to get home, he refused to undergo any blood work at the hospital, resulting in his arrest. Tr. at 39-40. The Individual also did not deny that he had been consuming alcohol the night he was arrested for a DV charge in 2012, but was adamant that he did not strike his then-partner. Tr. at 41-43. He continued to drink “to cope with what [he] went through[.]” Tr. at 43. On another occasion, after leaving the aforementioned friend’s home in an intoxicated state, the Individual’s vehicle collided with a mailbox, causing a neck fracture. Tr. at 43.

The Individual began attending weekly hour-long counseling sessions outside of the EAP in July 2021, and he intends to see his outside counselor for at least a year, as he has been learning about his triggers and the role alcohol has played in his life. Tr. at 45-46, 61-62. He attended only two online AA meetings, as he does not feel he is an alcoholic and feels disconnected in large meetings. Tr. at 64-65. His current girlfriend abstains from alcohol as well and serves as a support. Tr. at 47. Since becoming sober, he has become more involved with his children, has removed himself from “boring” and “lonely” situations that trigger his drinking, and has surrounded himself with a good familial support system. Tr. at 45-50, 58.

His November 2019 relapse occurred after he had two drinks during the Thanksgiving holiday and began reintroducing alcohol into his life. Tr. at 51-52. When the pandemic began, he began drinking in increasing amounts, consuming approximately a six-pack of beer a day. Tr. at 52. He experienced “some guilt” while drinking after seeing the DOE Psychiatrist, as the evaluation had made him reexamine his relationship with alcohol. Tr. at 53. He stopped drinking on June 7, 2021, the day he read the DOE Psychiatrist’s report, and intends to remain sober. Tr. at 53-54, 59. He denied any cravings, especially after realizing alcohol “[does not] work for [him].” Tr. at 59.

The Individual’s supervisor, who confirmed he believes the Individual to be trustworthy and reliable, stated that he never suspected any alcohol use by the Individual. Tr. at 69-72, 75. He also confirmed his belief that the Individual has good judgment. Tr. at 72. The Individual’s outside counselor, who he was referred to by his EAP counselor, testified that he began seeing the Individual in July 2021 and has seen the Individual approximately seventeen times. Tr. at 79-80.⁵ The outside counselor has seen significant changes in the Individual, noting that the Individual can identify his triggers and has avoided falling back into his old patterns, and he stated that the Individual has expressed his intention to remain sober. Tr. at 81, 87. He described the Individual’s prognosis as “very positive” and indicated the Individual should continue participating in group and individual therapy. Tr. at 82-83, 85. The outside counselor diagnosed the Individual with Alcohol Use Disorder (AUD), Mild, in remission, and stated that “the risk of relapse is pretty low.”

⁵ The Individual’s outside counselor also submitted a November 24, 2021, letter indicating that the Individual had been participating in weekly counseling since July 12, 2021. Ex. G. In an effort to understand his triggers and identify high-risk situations, the Individual completes written materials. Ex. G. The Individual’s participation remains consistent. Ex. G.

Tr. at 83, 85.⁶ He stated that he is not concerned that the Individual does not identify himself as an alcoholic, as it is “consistent with the way [he] formulated that diagnosis.” Tr. at 88.

The DOE Psychiatrist noted that he did not find enough symptoms to diagnose the Individual with AUD and recommended individual therapy as well as monthly PEth testing. Tr. at 92-94. He also recommended one year of abstinence. Tr. at 94. The DOE Psychiatrist acknowledged that the Individual had met the monthly PEth test requirement, and although he believes the Individual’s prognosis is “good to very good” and has a “low risk” of relapse, the Individual had not remained abstinent for the recommended one-year period. Tr. at 94-96. Although the outside counselor diagnosed the Individual with AUD, Mild, in remission, the DOE Psychiatrist stated that full remission takes one year, and accordingly, he “would like to see a somewhat longer period of abstinence and sobriety before saying... [that the Individual has] met the criteria for rehabilitation and reformation.” Tr. at 98.

VI. Analysis

The Adjudicative Guidelines provide that an Individual can mitigate security concerns under Guideline G if:

- (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(a)-(d).

While the Individual identified his maladaptive alcohol use, had been abstinent for nearly six months at the time of the hearing, and submitted four negative PEth tests, I cannot find that the Individual has mitigated the Guideline G concerns at this time. As an initial matter, the Individual’s maladaptive alcohol use reached as far back as 2012 and there is nothing in the record to indicate that it took place under unusual circumstances. Accordingly, the mitigating condition set forth at ¶ 23(a) is not present.

⁶ The outside counselor qualified the diagnosis by indicating he must provide a diagnosis for insurance purposes. Tr. at 83.

Pursuant to the recommendations made by the DOE Psychiatrist, the Individual appropriately sought treatment, seeing a counselor and engaging in group sessions. Although these actions provide evidence that the Individual has taken steps to overcome the problem of his maladaptive alcohol consumption, he does have a history of a prior November 2019 relapse, and importantly, he has not remained abstinent for a complete year, as recommended by the DOE Psychiatrist. Accordingly, the Individual has failed to demonstrate an established pattern of abstinence pursuant to treatment recommendations. It is for this reason that the DOE Psychiatrist could not find that the Individual met the criteria for rehabilitation or reformation. Therefore, I cannot find that the mitigating conditions set forth in ¶ 23(b)-(d) have been met.

VII. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G. 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. Therefore, I cannot 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 not restore access authorization to the Individual at this time. The parties may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals