

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
)
Filing Date: September 30, 2021) Case No.: PSH-21-0120
)
)
_____)

Issued: January 27, 2022

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (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 the DOE in a position which requires that he hold a security clearance. Derogatory information was discovered regarding the Individual’s 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 on September 30, 2021. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of one witness and testified on his own behalf. The LSO presented the testimony of a DOE-contractor psychologist (Psychologist) who had evaluated the Individual. *See* Transcript of Hearing (hereinafter cited as “Tr.”). The LSO submitted 11 exhibits, marked as Exhibits 1 through 11 (hereinafter cited as “Ex.”). The Individual submitted 10 exhibits, marked as Exhibits A through J.

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 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) 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 conditions set forth in the Guidelines that could raise a disqualifying security concern are:

- (1) 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;
- (2) Habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;
- (3) Alcohol Use Disorder diagnosis by a duly qualified medical or mental health professional;
- (4) Failure to follow treatment advice after diagnosis;
- (5) Alcohol consumption that is not in accordance with treatment recommendations after a diagnosis of alcohol use disorder; and
- (6) Failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Adjudicative Guidelines at ¶ 22.

The LSO alleged that the Individual was arrested for Driving Under the Influence of Alcohol (DUI) with a blood alcohol concentration (BAC) of 0.22 g/L in August 2019; was arrested for DUI and Reckless Driving on Highway in November 2003; was arrested for DUI in January 2003; and was arrested for Disorderly Conduct of Intoxicating Drug/Alcohol in December 2000. The LSO further alleged that, in February 2021, the DOE Psychologist concluded that the Individual binged or habitually consumed alcohol to the point of impairment such that his judgment, reliability, and trustworthiness could be impaired. 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 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 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 supervisor testified that he has never suspected the Individual of having been intoxicated at work. Tr. at 13. He had seen the Individual consume one or more drinks in an evening at workplace Christmas parties but did not believe the Individual had consumed alcohol to impairment on those occasions. *Id.* at 12. He further testified that he would not have allowed the Individual to drive home if he had believed the Individual was impaired. *Id.* at 14–15. He believed the Individual to be honest, trustworthy, and reliable.

The Individual testified that he was arrested for DUI in 2021 after consuming about eight standard drinks over about four hours. Tr. at 18–20. He consumed alcohol at home and then went to a restaurant with his son, where he consumed two 22 oz. beers. *Id.* When he was pulling out of his parking space to leave the restaurant, a police officer knocked on his window and stopped him to administer a field sobriety test. *Id.* at 18. The Individual was then arrested and charged with DUI. *Id.* When tested that night, his BAC was 0.22 g/L, nearly three times the legal limit. *Id.* The Individual testified that, at the time, he did not feel impaired to the point that he should not drive, but acknowledged that his BAC was over the legal limit. *Id.* at 21. Regarding his two prior DUI arrests, the Individual testified that the arrests occurred nearly two decades before the hearing and the Individual did not remember many details. However, he recalled that both arrests occurred when he was leaving a restaurant. *Id.* at 23–25. He received the Disorderly Conduct charge after getting into an altercation with a bar bouncer while under the influence of alcohol. *Id.* at 25–26.

The Individual testified that, before his evaluation with the Psychologist, he was consuming four to five drinks per night, four nights per week. Tr. at 33. He received the Psychologist's report in

May 2021. *Id.* at 38. The Psychologist's report stated that for her to have confidence in the Individual's ability to control his alcohol use, the Individual should abstain from alcohol for 12 months with blood tests every two months to confirm his abstinence, and that he should complete an Intensive Outpatient Program (IOP) of eight to twelve weeks. Ex. 8 at 13. The Individual testified that he decided to "take her word for it" and called his healthcare provider to enroll in an IOP. *Id.* at 39.

The Individual testified that his healthcare provider first referred him to a physician for assessment and that the doctor told him to taper his alcohol use because the amount he had been drinking made withdrawal a concern. Tr. at 42–42. The physician called weekly to monitor his symptoms and the Individual did not report having withdrawal symptoms. *Id.* at 43–44. After three weeks, the physician referred the Individual to an IOP, which he began in August 2021. *Id.* at 40, 43, 77–78. The IOP included alcohol education classes and group therapy twice per week. *Id.* at 44, 46. He testified that he had learned coping mechanisms such as biking, reading, or taking a walk, and had replaced alcohol with carbonated beverages at social events. *Id.* at 48. He did not undergo any blood testing to confirm his abstinence, but on the Tuesdays and Thursdays that he attended the IOP he was subject to random urine tests. *Id.* at 48–49. The Individual had also attended seven sessions of an alcohol abstinence support group similar to Alcoholics Anonymous. *Id.* at 49, 58–59. The Individual testified that he was unsure if he had completed the 12-week IOP. *Id.* at 66, 82.

The Individual began abstaining from alcohol in July 2021, but consumed two glasses of wine later in 2021 on Christmas Day. Tr. at 42, 64–65. When asked why he had chosen to drink over the holidays, the Individual responded:

Well, I thought to have a glass of wine, not go overboard, and that's pretty much it. Nothing—not that I—you know, not that I—you know, it's not like some people say, "Oh, you know, I—I haven't had a drink for so long, and then I had a drink, and I feel really bad about it." Well, I wasn't feeling bad about it. I was like I can have a drink, I can have a glass of wine or two and not have it be a problem, which it isn't.

Id. at 64. He testified that he had not told his support group that he drank on Christmas Day and had not been back to his IOP group therapy in the three weeks since then. *Id.* at 65. When asked about his future plans for drinking alcohol, the Individual responded:

Well, to not. ... Not—not as much as I have in the past. If I—if I have a drink, I—like I said, I'm not going to get down on myself about it. But I'm not going to search it out, and it's not going to be anything that I—you know, I'd rather stay on the path I'm on.

Id. at 65–66. He later added that he "didn't feel it was noteworthy. And it's not like I was trying to hide anything. It's just I didn't feel it was that big of an issue." *Id.* at 91. The Individual testified that his wife continues to keep wine in their home and she consumes it with dinner regularly. *Id.* at 68.

The Psychologist testified that she was concerned that the Individual had not completed 12 months of abstinence and that he had demonstrated a lack of insight into his alcohol problem by drinking

alcohol on Christmas Day. *Id.* at 97. She also testified that he had demonstrated overconfidence in his conscious decision, without hesitation or reflection about the possible consequences of not remaining abstinent, to consume alcohol on Christmas Day. *Id.* at 97–98. She believed that the Individual was inconsistent and demonstrated a lack of clarity about the severity of his alcohol problem, particularly in light of the serious legal and professional consequences he had suffered as a result of his alcohol consumption. *Id.* at 99–99. She expressed concern that the Individual’s wife continued consuming alcohol in front of him. *Id.* at 99. The Psychologist testified that she did not believe the Individual was rehabilitated or reformed from his alcohol issues. *Id.* at 100. When asked what her prognosis for the Individual was, she testified that she thought there was a moderate chance that he would relapse into problematic alcohol use. *Id.*

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 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.

None of the mitigating factors are applicable in this case. The Individual's history of alcohol related arrests and unsafe behavior reaches back decades and he continued consuming large quantities of alcohol several nights per week even after being sent to the Psychologist for evaluation for alcohol issues. His decision to consume alcohol on Christmas Day casts serious doubt on his reliability and judgment. Similarly, the Individual has not fully acknowledged the severity of his alcohol abuse. His decision to consume alcohol mere weeks before a hearing to decide if his alcohol use should preclude him from holding a security clearance is evidence that he has not established a pattern of modified consumption or abstinence. The Individual relapsed less than a month before the hearing and was unsure if he had completed the 12-week IOP nearly six months after beginning it. Therefore, based on the evidence, I cannot find that the Individual has resolved the Guideline G 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.

Kristin L. Martin
Administrative Judge
Office of Hearings and Appeals