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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-21-0101
)	
_____)	

Issued: February 25, 2022

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (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 which requires that he hold a security clearance. Derogatory information was discovered related to his alcohol consumption. The Local Security Office (LSO) then 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 a DOE contractor psychologist who had evaluated the Individual. *See* Transcript of Hearing (hereinafter cited as “Tr.”). The LSO submitted 14 exhibits, marked as Exhibits 1 through 14 (hereinafter cited as “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 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) state: “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.” 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.

The LSO alleges that in March 2020 the Individual was arrested and charged with “Aggravated Driving under the Influence (DUI) of Alcohol or drugs with a Blood Alcohol Concentration of .16 or over”; in April 2019 the Individual tested positive for alcohol while at work; later that month, a partially filled bottle of liquor and a bottle of mixed liquor and cola were discovered inside the Individual’s vehicle at his work site; and in April 1999 the Individual was charged with being a Minor in Possession of Alcohol. Ex. 1 at 1. 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 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 introduced into evidence the results of three blood tests, which showed that he had not consumed alcohol in the three months before the hearing. Ex B; Ex. C; Ex. D.

The Individual had seen a psychologist working for his employer (Individual’s Psychologist). The Individual’s Psychologist had been working with him since March 2020 and was seeing him for a fitness for duty evaluation. *Id.* at 11. She had recommended a psychiatric assessment and alcohol assessment in the community so he could receive further treatment. *Id.* In her initial assessment, she noted that the individual suffered from combat-related post-traumatic stress disorder (PTSD), which was being treated by a Veteran’s Affairs (VA) provider (treatment provider), along with other personal stressors. *Id.* at 13.

The Individual’s Psychologist checked in with the Individual periodically to assess his progress, initially once every other week. Tr. at 14. She testified that the Individual was acting on her recommendations. *Id.* She also checked in with the Individual’s treatment provider regarding his progress. *Id.* at 15. She testified that the treatment provider reported that the Individual had good progress, engagement, and attendance. *Id.* The Individual’s Psychologist testified that the Individual had fulfilled all of her fitness for duty recommendations and that the Individual was fit for duty. She based her conclusions on his participation in the programs she recommended and positive feedback from his supervisor. *Id.* at 16. While her official contact with the Individual ended when his fitness for duty issues were resolved in June 2020, she had informal contact regarding his progress because of his participation in the Employee Assistance Program’s (EAP) alcohol education and support group. *Id.* at 12, 16.

The Individual’s EAP Counselor had met with the Individual in 2019 and began working with him at least once daily in March 2020. Tr. at 22. In April 2020, the Individual began attending an Intensive Outpatient Program (IOP) for alcohol treatment and was no longer meeting with her. *Id.* at 24, 26. In June 2021, the Individual began attending weekly group therapy classes with the EAP Counselor and had attended consistently ever since. *Id.* at 26–27. The classes were focused on alcohol recovery and used a “stages of change” methodology. *Id.* at 22, 27, 39.

The Individual had sought out the group voluntarily in response to an internal announcement sent to site employees. *Id.* at 27. The EAP Counselor testified that the Individual is a mentor within the

group and regularly participates in sharing and workbook assignments. *Id.* at 28–29. She had heard the Individual discuss experiencing and dealing with triggers. *Id.* at 36. She testified that the Individual is committed to his recovery and has changed his habits, activities, and social circle to support his abstinence. *Id.* at 29. The EAP Counselor further testified that the Individual had been very clear with her about his intent to remain abstinent indefinitely and that his discussions about that in the group were sufficient to provide some accountability for him. *Id.* at 32, 35. She believed that the Individual was in the “maintenance stage” of the group’s stages of change method. She gave the Individual an excellent prognosis and testified that she had noticed a significant improvement in the Individual’s mood, demeanor, and goals. *Id.* at 33, 41.

The Individual testified that he has learned how to identify his triggers and how to cope with them, strategies for refusing alcohol when offered, how to identify people to avoid, and other skills to support his abstinence. *Tr.* at 48. The Individual testified that he tried AA but struggled to connect with the people in the program. *Id.* at 45. When he finished the IOP, the Individual went to individual counseling. *Id.* at 46. When he saw the announcement for the EAP weekly group therapy, he wanted to try it because it was maintenance-focused and he had already been abstinent for several months by that time. *Id.* at 49. He testified that he attended the 90-minute group sessions every week. *Id.* at 57.

The Individual testified that when he tested positive for alcohol at work, he experienced significant consequences at work. *Tr.* at 50. He acknowledged that the consequences made him think about abstinence, but at that time he did not have the tools to pursue it. However, after his arrest for DUI, he was required by the court to become abstinent. *Id.* at 50–51. He had not consumed alcohol since his DUI on March 26, 2020. *Id.* at 46. The Individual testified that he intends to remain abstinent indefinitely. *Id.* at 46. He further testified that he has seen his entire life improve as a result of abstinence. *Id.* His relationships had improved, and he was able to go back to school and pass his classes. *Id.* at 53, 55. He had become more involved with his family, attending his children’s sporting events and spending one-on-one time with his wife. *Id.* at 53–55.

The Individual had learned conflict management skills that helped him avoid triggers for using alcohol. *Tr.* at 55. He had learned to slow down and listen when in conflict with his wife and had learned skills to communicate openly. *Id.* The Individual had changed his relationship with the friend with whom he was drinking on the night before his DUI. *Id.* at 56. He spoke to the friend only once or twice a year, and testified that he had to substantively end that relationship in support of his abstinence.² *Id.*

When he was in the IOP, the Individual was also attending individual therapy and the VA group therapy for a total of nine therapeutic sessions per week. *Tr.* at 61. The Individual had to pay for the IOP out of pocket, so he chose to leave the program when he was declared fit for duty. *Id.* at 62. When he left the IOP, he had completed 10 of 12 weeks of the program. *Id.* After the IOP, he continued individual therapy, but had to stop due to a scheduling conflict. *Id.* at 64. As of the hearing, he was attending the weekly EAP group therapy, as well as the VA group therapy every other week. *Id.* at 57. He saw a psychiatrist once per month and was diligent about taking his medications as prescribed. *Id.* at 64, 76, 80–82. The Individual kept the VA crisis line phone

² The Individual testified that the friend had baptized his son and maintained an appropriate relationship with him, so he did not cut off contact completely. *Tr.* at 56.

number in his phone and had developed sponsor-like relationships with multiple members of his therapy groups. *Id.* at 66–67.

The VA group therapy focused on PTSD and the Individual found it helpful. Tr. at 56–57, 74–75. He stated that he liked being able to meet with people who had similar experiences because he could learn from them. *Id.* at 75. The Individual detailed how certain everyday experiences could trigger his PTSD and how he had learned to manage his symptoms. *Id.* at 75–78. The Individual found mindfulness and breathing techniques particularly helpful. *Id.* He detailed instances when he had successfully used the intervention methods he had learned. *Id.* at 78–79.

The DOE Psychologist testified that she would revise her diagnosis of the Individual to Alcohol Use Disorder-Severe, In Sustained Remission. Tr. at 87. She gave the Individual an excellent prognosis and testified that the Individual is reformed and rehabilitated. *Id.* at 88. The Psychologist noted that she values the EAP Counselor’s opinion and knows her to be candid regarding her patients. *Id.* at 89. She noted that the Individual had not consumed alcohol in two years and had made extensive lifestyle changes to support his abstinence. *Id.* at 89–90. She testified that “he’s not just someone who isn’t drinking anymore. He is someone who has reformed and changed his life.” *Id.* at 90.

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.

Mitigating factors 2, 3, and 4 are applicable in this case. The Individual acknowledged that his alcohol consumption was problematic and stated his intent to abstain, both to his peers and in the hearing. He has already abstained for two years, a clinically significant length of time and longer than what was recommended by the DOE Psychologist. He has also undertaken a variety of therapeutic activities to address alcohol abstinence as well as underlying issues that contributed to his problematic alcohol consumption. The Individual does not appear to have a history of relapse and, despite not completing his IOP, has made sufficient progress in treatment for both the EAP Counselor and DOE Psychologist to give him an excellent prognosis. The DOE Psychologist testified that the Individual is clinically rehabilitated and reformed and is now in sustained remission. For the foregoing reasons, I find that the Individual has mitigated 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 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