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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: October 27, 2021) Case No.: PSH-22-0004
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Issued: February 3, 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 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 Local Security Office (LSO) discovered derogatory information regarding the Individual’s alcohol consumption and 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 his friend and his supervisor and testified on his own behalf. The LSO presented the testimony of the DOE-contracted Psychologist (the Psychologist) who had evaluated the Individual. *See* Transcript of Hearing (hereinafter cited as “Tr.”). The LSO submitted 12 exhibits, marked as Exhibits 1 through 12 (hereinafter cited as “Ex.”). The Individual submitted three exhibits, marked as Exhibits A through C.

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: “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 the Individual was arrested for and charged with Driving Under the Influence (DUI) in March 2020 after consuming three to four beers and three shots in a six-hour timeframe. The LSO also alleges that the Psychologist diagnosed the Individual with Alcohol Use Disorder-Moderate in March 2021. 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 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 friend testified at the hearing. The friend stated that he had known the Individual for about 30 years and had worked with the Individual for over 15 years. Tr. at 17. In the past they worked together daily, but they did not work in the same area currently. *Id.* at 18–20. They saw each other socially once every month or two, with the frequency slightly decreased when the pandemic began. *Id.* at 20–21. Both the Individual and the friend had participated together in activities such as camping and attending sporting events, and the friend had seen the Individual consume alcohol. *Id.* The friend testified that he had not observed the Individual binge drink or drink to excess. *Id.* at 21. The friend also testified that he had not observed the Individual consuming alcohol for 12-18 months after he was diagnosed with diabetes around 2017. *Id.* at 22.

The friend was aware of the Individual’s DUI, but testified that he had never personally seen the Individual drive when he had consumed too much alcohol to safely do so. Tr. at 23. He testified that the Individual still consumed alcohol socially, though he believed the Individual had abstained for a period after his DUI in March of 2020. *Id.* at 24. He believed the Individual was committed to not driving after consuming alcohol. He found the Individual very trustworthy, both personally and professionally. *Id.* at 23–24.

The supervisor testified that the Individual is very reliable, and stated that he had not had reason to question the Individual’s trustworthiness or character. Tr. at 35–36. He was confident in the Individual’s fitness for duty. *Id.* at 38. He was also able to rely on the Individual to be on call during off-duty hours. *Id.* at 40. He described a time when the Individual had accidentally damaged a taillight on the supervisor’s truck when the supervisor had parked improperly. *Id.* at 42. In that incident, the Individual took responsibility for his role in the incident and did not try to divert blame. *Id.* at 42. The supervisor trusted the Individual to self-report any incidents or mistakes. *Id.*

The Individual challenged the Psychologist’s characterization of him as a nightly drinker on the grounds that his urinalysis results came back negative for alcohol. *Id.* at 59. He also stated that he had read an article that described a result of 138 from a PEth test (blood test) as being consistent with social drinking.² *Id.* at 60. He described feeling shocked when reviewing the Psychologist’s report because he was not consuming three to four drinks daily. *Id.* at 67. He testified that he

² DOE Counsel objected to this statement as expert testimony because the Individual is not a medical professional. The objection was sustained, and the statement is considered lay testimony describing a non-peer reviewed article he had read.

consumed two or three beers every other weekend socially, both at the time of the hearing and at the time of his psychological examination. *Id.* at 68–69. He disagreed with the Psychologist’s characterization of the amount of alcohol he consumed, as well as her questioning of his trustworthiness, reliability, and judgment. *Id.* at 74.

The Individual testified that he was not convicted of the 2020 DUI. *Id.* at 63. He testified that he had gone to a restaurant for a friend’s birthday and had consumed some shots of alcohol. *Id.* at 63. Afterward, he drove about a mile to his then-girlfriend’s house and waited about two hours before driving home. *Id.* at 96–97, 100. When he arrived at his house, a floor mat in his vehicle became stuck between the brake pedal and the accelerator, and his vehicle struck the garage. *Id.* at 64. The police did not arrive until after he had been in his home for a short time. *Id.* at 63. However, the Individual admitted that his blood alcohol content was over the legal limit at the time of the incident and that he was driving under the influence of alcohol. *Id.* at 79–80.

The Individual was diagnosed with diabetes around 2017. Tr. at 65. He testified that his physician told him that he could consume alcohol in moderation and that he had stopped consuming alcohol for about a year after receiving his diagnosis. *Id.* at 66, 87. He had been very concerned about his health at that time, but eventually decided to reintroduce alcohol, as well as some favorite foods, back into his diet. *Id.* at 87–89. He testified that while it might be better not to consume alcohol while having diabetes, it was no worse for him than the other dietary choices, such as frequently eating pizza. *Id.* at 71. After the March 2020 DUI, the Individual was evaluated by a substance abuse counselor and attended counseling and Alcoholics Anonymous (AA) meetings because his employer required him to do so. *Id.* at 73–74. The Individual testified that he abstained from alcohol for six months after the DUI. After about six months, a friend offered to drive him home, so he decided to have one beer. *Id.* at 81, 89–90.

The Individual last consumed alcohol about three weeks before the hearing. Tr. at 75. He testified that he would abstain from alcohol if that was a requirement of holding a security clearance. *Id.* Otherwise, he intended to consume alcohol only in moderation and committed to never driving under the influence of alcohol. *Id.* The Individual received the Psychologist’s report around August 2021. *Id.* at 76. Though the report stated that “it is recommended that adequate evidence of rehabilitation be at least 12 months of abstinence,” the Individual did not consider the report to be a directive not to drink, particularly because he did not agree with the report. Ex. 9 at 8; Tr. at 77. He did not complete the other report recommendations, including AA attendance and urine and blood testing. Tr. at 78. The Individual admitted that he was concerned by his alcohol tolerance and had, therefore, stopped drinking hard liquor. *Id.* at 98–99.

The Psychologist testified that her diagnosis was not predicated on the amount of alcohol the Individual consumed because the diagnostic criteria are concerned with the behaviors surrounding alcohol consumption, and the ability to control it. Tr. at 105–06. She acknowledged that one factor, regarding tolerance, did consider the amount of alcohol consumption, but her use of this factor was based on the amount of alcohol the Individual reported consuming on the night of his DUI and the Individual’s statement that he did not feel intoxicated when he drove that night. *Id.* at 106–07.

The Psychologist testified that her diagnosis would not change based on what she heard at the hearing because the Individual: continued to consume alcohol despite being encouraged to abstain and having a medical condition that is affected by it; craved alcohol in a mild manner similar to

cravings for a certain type of food; was unable to maintain abstinence after his DUI; had a significant tolerance for alcohol such that he did not feel intoxicated while being over the legal limit on the night of his DUI; and continued to consume alcohol despite experiencing social consequences such as public embarrassment from his DUI. Tr. at 107–11. She testified that the Individual's choice to continue consuming alcohol despite her report stating that he should abstain could be considered an additional criterion for alcohol use disorder because he was choosing to drink alcohol at the expense of an important occupational activity, holding a security clearance. *Id.* at 109. She further testified that the addition of this criterion would increase the diagnosis classification from Moderate to Severe but for the fact that evidence of the Individual's tolerance, the DUI, was more than 12 months old. *Id.* at 112–13, 121–22. She reiterated her recommendations for 12 months of abstinence, 12 months of AA attendance; and 12 months of random urine and blood screenings. *Id.* at 114.

The Psychologist testified that, typically, at a blood alcohol level of 0.08 g/L, a person would have noticeable levels of intoxication but would have impaired judgment that could lead them to believe that they are able to drive. Tr. at 115–16. The Psychologist calculated that the Individual's blood alcohol concentration would have been about 0.2 g/L at the time he drove to his then-girlfriend's house.³ The Psychologist testified that, at that level of intoxication, a person would typically experience difficulty walking, severe confusion, and possible loss of consciousness. *Id.* at 117–18. She testified that the mild symptoms of intoxication the Individual described having at the time he left the restaurant can only be attributed to an alcohol tolerance developed through a sustained pattern of consuming a significant amount of alcohol. *Id.* at 118–20.

The Psychologist further testified that her questioning of the Individual's judgment and reliability was based on more than his alcohol use. Tr. at 123–24. She explained that the Individual's choices to continue consuming alcohol and reject recommendations for AA and alcohol screening suggest unreliability and poor judgment. *Id.* at 124–25. She further explained that the Individual appeared to be relying on external factors to know what is acceptable (*e.g.*, consuming alcohol and pizza as long as his diabetes remains in control) rather than taking initiative to ensure that he is within the rules (*e.g.*, abstaining from alcohol and pizza to ensure that his diabetes remains in control). *Id.* at 126. She likened this to the Individual's decision to drive because he felt able to do so, even though he knew he had consumed several drinks in a short amount of time. *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.

³ The Psychologist's calculation was based on the Individual's height and weight, the Individual's reported time span for consuming alcohol, the average alcohol content for the type of alcohol the Individual reported consuming, and the amount of alcohol the Individual reported consuming. Tr. at 117–18.

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 occurred 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 apply to this case. The Individual continues to consume alcohol. His decision to do so despite having diabetes, despite having been arrested for DUI, and despite being at risk of losing his security clearance, indicates that the Individual’s relationship to alcohol clouds his judgment and casts doubt on his reliability. Essentially, the Individual has not changed his relationship with alcohol since the night of his DUI. He testified that he consumed the same amount of alcohol before and after his psychological evaluation. He has not changed his social circle, which led to his decision to resume drinking alcohol six months after his DUI. The Individual does not consider his continued alcohol consumption to be problematic and has not participated in treatment or counseling beyond what was mandated by his employer. Even though he stated at the hearing that he would abstain if it was required for his clearance, he chose to continue drinking after receiving the Psychologist’s recommendation to abstain. The Psychologist testified that the Individual’s diagnosis remains in place, with a possible aggravating factor of his decision to continue drinking during the Administrative Review process. For these reasons, I find that the Individual’s alcohol use continues to cast doubt on his judgment and reliability. Therefore, I cannot 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 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