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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: November 30, 2021) Case No.: PSH-22-0016
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Issued: March 9, 2022

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 certain level security clearance.² The Individual began the process of applying for an upgraded security clearance by completing and signing a Questionnaire for National Security Positions (QNSP) on January 6, 2021. Ex. 7. In the QNSP, the Individual indicated that while serving in the military, he was advised by a superior to seek assistance through a military “alcohol control program.” Ex. 7 at 54. The Individual estimated that he entered the program in October 2018 and completed the program in March 2019. Ex. 7 at 54. As part of the security clearance investigation process, the Individual underwent an Enhanced Subject Interview (ESI) conducted by an Office of Personnel Management (OPM) investigator on January 15, 2021. Ex. 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

² The Individual previously held a security clearance during his military service. *See* Transcript of Hearing, Case No. PSH-22-0016 (cited as “Tr.”) at 55-56.

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Based on the information provided, the LSO requested that the Individual undergo a psychological evaluation, which was conducted by a DOE-contractor Psychologist (DOE Psychologist), who issued a report of his findings on May 10, 2021. Exhibit (Ex.) 5.³ 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 his security clearance was suspended because the LSO was in possession of information creating a substantial doubt as to his continued eligibility to possess a security clearance. The Individual was informed 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 one exhibit, marked as Ex. A. *See* Transcript of Hearing, Case No. PSH-22-0016. The DOE Counsel presented the testimony of one witness and submitted seven exhibits marked as Exs. 1 through 7.

II. The Notification Letter and 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 (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1. Under Guideline G, “[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 is a “[h]abitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder[.]” *Id.* at ¶¶ 22(c). With respect to Guideline G, the LSO alleged that the DOE Psychologist determined that the Individual “habitually or binge consumes alcohol to the point of impaired judgement[.]” and that the Individual has not shown adequate signs of reformation or rehabilitation. Ex. 1 at 1. Given this, I find that the LSO had sufficient justification to invoke Guideline G in the present case.

III. Regulatory Standards

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 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

³ In conjunction with the examination, a Phosphatidylethanol (PEth) test was performed. Ex. 5 at 5-6. The PEth test was positive at a level suggesting moderate to heavy levels of alcohol consumption. Ex. 5 at 5-6. The results indicated to the DOE Psychologist that the Individual consumed alcohol in amounts greater than that reported by the Individual during the evaluation. Ex. 5 at 6.

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.

IV. Findings of Fact

During the ESI, the Individual told the OPM investigator that he first consumed alcohol in March 2018 and continued drinking through October 2018. Ex. 7 at 69. From March 2018 to October 2018, the Individual was consuming alcohol to intoxication on a near daily basis, but at the time of the interview, the Individual had become intoxicated only three times since completing military sponsored treatment in 2019. Ex. 7 at 69.

During the psychological evaluation, the Individual indicated that he began drinking upon his return from a military deployment, consuming approximately twenty-four to thirty, twelve-ounce cans of beer every day, four days per week. Ex. 5 at 4. The Individual drank at this rate for approximately five months and missed work on one occasion due to his alcohol consumption. Ex. 5 at 4. The Individual recognized that his alcohol consumption was problematic and sought assistance from his commanding officer, who had to “order him into treatment[,]” so that he could receive the help he was seeking. Ex. 5 at 4. The Individual completed nine weeks of a military outpatient treatment program, and although he had stopped drinking while attending the program, he did intend afterward to resume drinking in moderate amounts. Ex. 5 at 4. The Individual remained abstinent for three months after leaving treatment but then began consuming approximately three beers on Friday or Saturday nights. Ex. 5 at 4. The Individual then embarked on another period of abstinence until he was discharged from the military in early 2020. After his discharge, he then began to consume approximately two beers on social occasions, engaging in this behavior about once per month. Ex. 5 at 4. At the time of the DOE Psychologist’s evaluation, he had, however, consumed approximately six beers in a twenty-four-hour period on two separate occasions. During the evaluation, he stated that his home remained free of alcoholic beverages and that he did not consume hard liquor. Ex. 5 at 4.

The DOE Psychologist opined that the Individual “drink[s] habitually or binge consume[s] alcohol to the point of experiencing impaired judgement.” Ex. 5 at 6. In coming to this conclusion, the DOE Psychologist considered the fact that the PEth test result suggested that the Individual was consuming more alcohol than he reported. Ex. 5 at 6. Further, this consumption continued after the Individual had completed an alcohol treatment program. Ex. 5 at 6-7. The DOE Psychologist

recommended that the Individual discontinue consuming alcohol and specifically recommended that the Individual engage in substance abuse group therapy treatment with an appropriately licensed therapist. Ex. 5 at 7. The DOE Psychologist stated that the treatment program should be of four months duration consisting of group therapy that meets for an hour each week. Ex. 5 at 7. Further, the DOE Psychologist recommended that the Individual, after completing the recommended substance abuse group therapy program, “attend relapse prevention sessions at least every two weeks for two months and at least monthly following that [program] for the duration of one year since the start of treatment.” Ex. 5 at 7. It was then recommended that the Individual attend Alcoholic Anonymous (AA) or a similar group “for the duration of three months at least twice a week and the following nine months at least weekly.” Ex. 5 at 7.

V. Hearing Testimony

The Individual confirmed that he began drinking when he returned from deployment and consumed alcohol with more regularity to the point where “it got progressively worse[.]” Tr. at 18-19, 50-51. The Individual denied ever missing work due to alcohol use and denied ever using alcohol while at work. Tr. at 18. He also confirmed that he did seek treatment through a military treatment program after informing his superiors that he believed that his alcohol consumption was problematic. Tr. at 19, 48-49. The program consisted of group meetings and other exercises that the Individual believes helped him “get [his] drinking under control.” Tr. at 19-20, 49. The Individual was abstinent during treatment and believed he could subsequently engage in responsible alcohol consumption. Tr. at 20, 41-42. However, the Individual later came to believe that he should not engage in controlled alcohol consumption and began abstaining from alcohol around July 2021. Tr. at 20, 53. The Individual began attending AA groups on a weekly basis in August 2021 and now meets with a sponsor to work on the AA’s twelve steps. Tr. at 20, 23, 82.⁴ The Individual testified as to his belief that alcohol was “controlling [his] decisions and [his] life.” Tr. at 20-21. The Individual no longer keeps alcohol in his home and has received his six-month coin since joining AA. Tr. at 23-24, 28, 81. The Individual intends to continue attending AA meetings and has not been tempted to continue drinking. Tr. at 28-29, 32. He also acknowledged that he attempted to minimize the amount of alcohol he was drinking at the time he was evaluated by the DOE Psychologist. In this regard, the Individual asserted that this behavior is not uncommon among alcoholics. Tr. at 34.

After leaving the military, the Individual endeavored to move to an area of the country where he could enjoy a close familial support system. Tr. at 15-17. He frequents “family get togethers[.]” which are not “typically drinking events[.]” Tr. at 17. He also testified that he has enjoyed his family’s support since informing them of his decision to attend AA meetings. Tr. at 23, 29-30. Since abstaining from alcohol, the Individual has been able to concentrate on furthering his education and refrains from engaging in social situations that would entail alcohol consumption, preferring to engage in other activities. Tr. at 26-27, 41, 43-44. The Individual has no intention of consuming alcohol in the future, and at the time of the hearing, the Individual had been attending

⁴ Although the Individual sought to obtain sign-in sheets from his AA group, he was told that his group does not keep records of sign-in sheets. Tr. at 22. The Individual’s Exhibit A indicates that between August 2021 and February 2022, he attended forty-four AA meetings and met with his sponsor eighteen times. Ex. A at 1-3.

regular sessions with a therapist. Tr. at 32, 34-35. He sought the services of a therapist in 2021, and although alcohol is discussed, it “is not really the main priority[.]” Tr. at 35-36, 54. The Individual denied having any trigger situations that might encourage alcohol consumption but did state that he would reach out to his sponsor in the event he did experience such a trigger. Tr. at 42.

The Individual’s former supervisor, who worked with the Individual in the summer of 2021, testified that that he found the Individual to be reliable, denied ever seeing the Individual report to work in an impaired or hungover state, and felt the Individual’s work product was “above average.” Tr. at 61-64. The Individual’s AA sponsor, who has been attending AA meetings since 2014, testified that their group is guided by the book “Twelve Steps and Twelve Traditions[.]” Tr. at 68-69. He indicated that he sees the Individual at AA meetings during the week, that he meets with the Individual on a weekly basis, that the Individual arrives to AA meetings promptly, and that the Individual participates at meetings appropriately. Tr. at 70. According to his sponsor, the Individual “has taken responsibility for his actions, for what he needs to do...correct those behaviors.” Tr. at 74. He also confirmed that the Individual continues to work on the Twelve Steps. Tr. at 75, 82-83.

The Individual’s wife, who has known the Individual since 2011, testified that the Individual now puts forth greater effort toward his recovery than when he was in the military treatment program. Tr. at 94, 99. The Individual’s continued alcohol consumption after returning from the military strained their relationship, and now that the Individual is sober, the Individual engages in “nondrinking activities” with his wife and their respective families. Tr. at 99-100, 111. She confirmed that the couple no longer keeps alcohol in the home, that the Individual speaks frequently with his AA sponsor, that he has been sober for six months, and that the Individual intends to remain sober. Tr. at 100-04. When the Individual decided to abstain from alcohol, he discussed his plan with his wife, which included therapy and AA. Tr. at 106, 109. The Individual’s wife encouraged him to attend therapy not to specifically address his alcohol consumption, but to address his “overall wellness[.]” Tr. at 111-12.

In his testimony, the DOE Psychologist confirmed that in completing his report, he had access to the Individual’s records, the clinical interview of the Individual, and subsequent laboratory results. Tr. at 118. He also stated that the Individual suffered from binge or habitual drinking and recommended that the Individual participate in substance abuse treatment for sixteen weeks, participate in follow-up care for one year, participate in AA, and abstain from alcohol. Tr. at 119-20.⁵ The DOE Psychologist stated his concern over the fact that the Individual failed to seek substance abuse specific care, and his belief that the Individual minimized the level of treatment he had previously received through the military. Tr. at 122-23. He was also concerned by the fact the Individual could not recall his sobriety date with certainty. Tr. at 123. The DOE Psychologist’s opinion as to the Individual’s condition remained the same, and although he acknowledged that the Individual “has done a very good job of attending AA,” he indicated that the Individual is still in

⁵ In making these treatment recommendations the DOE Psychologist considered the discrepancy in the amount the Individual reported he was drinking in comparison to the PEth test results. Tr. at 120-21.

need of specific substance abuse treatment. Tr. at 127. Consequently, the DOE Psychologist does not believe that the Individual has shown adequate rehabilitation or reformation. Tr. at 127.

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).

Although the Individual has recognized his maladaptive alcohol use, previously participated in a treatment program, has engaged his local AA chapter, and enjoys a strong support system through his wife and family, I cannot conclude that the Individual has mitigated the Guideline G concerns stated in the Notification Letter. As an initial matter, the Individual has a previous history of relapse after undergoing a military alcohol treatment program. Further, in his May 2021 report, the DOE Psychologist provided very specific recommendations that the Individual did not endeavor to implement in their entirety. Although the Individual has continued receiving therapy for his overall health, the Individual did not seek specific substance abuse treatment pursuant to the DOE Psychologist's recommendations and did not undergo any appropriate aftercare. Based on the foregoing, the DOE Psychologist could not conclude that the Individual had sufficiently shown that he was reformed or rehabilitated. While there is credible testimonial evidence indicating that the Individual had been abstinent for approximately six months, I cannot find, considering the expert testimony before me, that this alone is sufficient to demonstrate an established pattern of abstinence. As such, the Individual has failed to completely resolve the Guideline G concerns related to his history of alcohol misuse.

VII. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G. After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the Individual has not brought forth sufficient evidence to remove the security

concerns associated with the Guideline G derogatory information recorded in the Notification Letter. Therefore, I cannot conclude that restoring the Individual's 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.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals