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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-22-0014
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Issued: April 12, 2022

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 or 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. Due to derogatory information the Individual reported on his Questionnaire for National Security Positions (QNSP) and other alcohol related events, the Local Security Office (LSO) requested that the Individual undergo a psychological evaluation with a DOE-contracted Psychiatrist (DOE Psychiatrist), who issued a report in March 2021. Ex. 10. After receiving the DOE Psychiatrist’s report, the LSO began the present administrative review proceeding by issuing a September 2021 Notification Letter to the Individual, informing him that his security clearance was suspended and that he was entitled to a hearing before an Administrative Judge to resolve 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

¹ Access authorization is defined as “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 be referred to variously in this Decision as access authorization or security clearance.

the case. At the March 2022 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 four witnesses. The Individual also submitted twelve exhibits (“Ex.”), marked as Exs. A through L. *See* Transcript of Hearing, Case No. PSH-22-0014 (cited as “Tr.”). The DOE Counsel presented the testimony of one witness and submitted thirteen exhibits marked as Exs. 1 through 13.

II. The Notification Letter and the Associated Security Concerns

Guideline G (Alcohol Consumption) provides that an individual’s “[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...regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder” and “[d]iagnosis by a duly qualified medical or mental health professional...of alcohol use disorder.” Adjudicative Guidelines at ¶ 22(a), (d).

In the Notification Letter, the LSO alleged the following Guideline G derogatory information: (1) in a March 2021 report, the DOE Psychiatrist concluded that the Individual met the criteria for Alcohol Use Disorder (AUD), Severe, In Early Remission pursuant to the *Diagnostic and Statistical Manual Fifth Edition*, without adequate evidence of rehabilitation or reformation; (2) the Individual received a written reprimand in December 2020, after he was Absent Without Official Leave on October 7, 8, and 9, 2020, due to alcohol relapse; (3) the Individual was arrested and charged on April 15, 1995, with Aggravated Driving While Intoxicated (DWI), with a blood analysis test indicating an alcohol concentration of .19 percent; (4) in 1993, the Individual was arrested and charged with DWI, Speeding, and Failure to Maintain [Driving] Lane; (5) in 1990, the Individual was arrested and charged with DWI; and (6) the Individual was issued a citation for DWI in 1988, followed by the suspension of his driver’s license. 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 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 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) (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 and Hearing Testimony

Pursuant to the security clearance investigation process, the Individual completed a QNSP in July 2019. Ex. 12. In his QNSP, he disclosed the fact that he had been charged with Driving Under the Influence (DUI) in 1990, 1993, and 1995, which his testimony confirmed. Ex. 12 at 25-28; Tr. at 61-63.² After his 1995 DUI, the Individual attended court-ordered Alcoholics Anonymous (AA) meetings and DUI classes. Ex. 12 at 33. In November 2019, the Individual underwent an Enhanced Subject Interview (ESI) conducted by an Office of Personnel Management Investigator (OPM Investigator). In the interview, the Individual confirmed his alcohol-related arrests to the OPM investigator and attributed his prior arrests to “being young and immature at the time[,]” but “denied having had alcohol issues since the...1995 arrest.” Ex. 13 at 60-61. The Individual disclosed to the OPM Investigator that between 1995 and 2019, he drank beer in moderation, “sometimes experiencing ‘a buzz’ but never to intoxication[.]” Ex. 13 at 61.

The Individual began abstaining from alcohol in June 2019, as he felt his consumption could become problematic. Ex. 13 at 61. Accordingly, he voluntarily sought assistance from his employer’s Occupational Medicine (OM) office and at the time of the ESI, he had met with an Employee Assistance Program (EAP) counselor four times, focusing on his past alcohol consumption. Ex. 13 at 61. At the hearing, the Individual clarified that EAP recommended that he attend an Intensive Outpatient Program (IOP), which he did not complete until later. Tr. at 64-65; Ex. C. He completed the education and counseling portion of the IOP in December 2019. Tr. at 65; Ex. D. The education course convened once a week, where he read literature and watched films. Tr. at 65. At that time, he was receiving individual counseling as well as some group counseling. Tr. at 65. As a result of another relapse, he began a residential treatment program in April 2020. Tr. at 66; Ex. B. He was released from the inpatient program his second week there. Tr. at 66-67; Ex. B. After reporting his alcohol dependence to his employer’s OM office, he was placed on a Fitness for Duty (FFD) program in May 2020, which he completed in July 2020. Ex. 7 at 3. The Individual maintained his sobriety until October 2020. Tr. at 67.

After learning that the Individual was in treatment for his alcohol consumption, the LSO requested that the Individual complete a Letter of Interrogatory (LOI), which the Individual submitted in September 2020. Ex. 8. In the September 2020 LOI, the Individual acknowledged that he was seeking outpatient counseling “to get help with binge drinking.” Ex. 8 at 1. He indicated that he attended the outpatient counseling in December 2019, January 2020, and February 2020. Ex. 8 at 1. He also indicated that he participated in both individual and group counseling with several counselors, including the outpatient counseling with his EAP counselor, on a biweekly to a monthly basis. Ex. 8 at 1. The Individual indicated that he was diagnosed with AUD, Mild, In

² The Individual noted these to be “DUI” charges in his QNSP. Ex. 12. However, the Notification Letter lists these charges as “Driving While Intoxicated (DWI).” Ex. 1

Early or Sustained Remission, and at the time of the LOI, he stated his preference for group sessions over AA, admitting that AA attendance has not been a regular occurrence for him. Ex. 8 at 2-3. He stated that he voluntarily sought treatment because he “was tired of dealing with all the negative aspects of [his binge drinking] effects” and that if he did not seek treatment, his alcohol consumption “would have begun to negatively impact [his] family and employment.” Ex. 8 at 8, 11. At the time of the LOI, the Individual stated that the last time he consumed alcohol was on March 15, 2020. Ex. 8 at 8.

In October 2020, the Individual took unapproved leave due to his relapse; the Individual testified that, because of his alcohol consumption, he failed to report to work for four days. Tr. at 63; Ex. 7 at 3. On December 3, 2020, the Individual was disciplined for his behavior. Ex. 7 at 3-4. In addition to the October 2020 relapse, the Individual testified that he relapsed again in July 2021, testifying that he decided to purchase alcohol while standing in line at a store. Tr. at 70-72. After he consumed the six-pack of hard cider that he purchased, he stated that “realized at that point that. . . I wanted more. And that’s when I reached out to my parents and told them . . . I drank, and . . . I really want to go buy some more.” Tr. at 72-73. Additionally, he reached out to his EAP counselor for support and assistance. Tr. at 73. Although he had a sponsor at the time, the Individual did not contact the sponsor because he was devastated, and “didn’t want to put that on him.” Tr. at 73. The Individual began attending a men’s alcohol self-help support group meeting after the July 2021 relapse, because he “needed...to attend more than just [his] weekly AA meetings[.]” Tr. at 74-75. Although he had been attending AA meetings prior to joining the men’s alcohol self-help support group and had recently engaged a sponsor, he felt the “[t]hings that [he] was doing on [his] own were not holding [him] accountable.” Tr. at 75-76. In terms of identifying his triggers, he stated that the progressive nature of alcoholism exacerbated by life events is what resulted in his ever increasing and, ultimately, problematic alcohol consumption. Tr. at 81-82. He stated that he no longer keeps alcohol in his home; he has refused alcohol in places where others were consuming alcohol; and he does not experience cravings when he is home alone. Tr. at 85.

A psychotherapist (Individual’s psychotherapist) who has been treating the Individual testified that she began seeing the Individual in November 2020. Tr. at 11-12.³ She sees the Individual monthly, and although other matters are addressed, the therapy is primarily related to substance abuse issues. Tr. at 12-14, 20. The Individual was not consuming alcohol at the time his treatment began in November 2020, but he did tell his psychotherapist that he had suffered a relapse. Tr. at 14-15. She confirmed her belief that the Individual is honest with her regarding his sobriety, that he is an active participant in his therapy, and that he understands the consequences of his behavior. Tr. at 17-18.

Another witness, who runs the men’s alcohol self-help support group that serves as a supplement to AA, stated that the group studies the “Big Book” and goes through the Twelve Traditions. Tr. at 28-29.⁴ The Individual joined this group in the spring or summer of 2021, and he consistently attends the weekly meetings. Tr. at 30. The witness confirmed that the Individual is an active

³ Although testifying as a fact witness, and not as an expert, she opined that the Individual was suffering with Alcohol Abuse in remission, as well as two other diagnoses that she confirmed were also factors in his alcohol consumption. Tr. at 11, 22, 24-25. She testified that she does not use the DSM-5. Tr. at 25.

⁴ The Big Book and the Twelve Traditions are both closely associated with AA. Tr. at 29.

participant in the group and believes that the Individual will notify the group leader if he is unable to attend. Tr. at 30-31, 34-35.

The Individual's AA sponsor testified that he first met the Individual when they both attended an IOP in early 2020. Tr. at 39. They met again at an AA meeting that both regularly attended, and it was in the spring of 2021 that the Individual approached the witness to ask whether the witness would sponsor him. Tr. at 40. The Individual's sponsor confirmed that the Individual relapsed in July 2021, having consumed several beers, and he testified that they "had a great relationship," and that the Individual has "been doing fantastic" since that time. Tr. at 42. The Individual informed his sponsor of the relapse a couple of weeks after the incident, which his sponsor considered "a large step in... [the Individual's] progress." Tr. at 43-44. He sees the Individual at AA meetings approximately two or three times per week and interacts with the Individual daily. Tr. at 43. The Individual and his sponsor work on the AA Twelve Steps together, and the Individual is currently on Step Nine. Tr. at 45.

The Individual's EAP counselor testified that the Individual came to EAP for assistance with alcohol consumption. Tr. at 49-50. In June 2019, she provided the Individual with referrals to various programs, including the IOP the Individual attended. Tr. at 51. The EAP counselor stated that she believes the Individual has been open and honest with her, that he initiates contact, and completes follow up. Tr. at 51-52. The Individual was also honest with her about his relapses and recounted one having taken place in 2020 and the other in 2021. Tr. at 52. The witness testified that the Individual sought treatment after his 2020 relapse, and that he began to increasingly reach out to her. Tr. at 52-53. The Individual has informed her that lifelong sobriety is his goal, and she believes that he has taken the opportunity to learn from his relapses. Tr. at 54-55.

Following the March 2021 evaluation, the DOE Psychiatrist determined that the Individual met the criteria for AUD, Severe. Ex. 10 at 9. Although his report concluded that the Individual was in early remission, the DOE Psychiatrist found there was not adequate evidence of reform or rehabilitation. Ex. 10 at 9. The DOE Psychiatrist recommended that, in addition to remaining abstinent for twelve months, the Individual should continue with his outpatient therapy and EAP involvement until October 2021. Ex. 10 at 10. His EAP involvement "can be tapered as determined by the treating professionals[.]" Ex. 10 at 10-11. Further, the Individual should attend his group therapy program until June 2021, or until no longer recommended, and continue attending AA meetings on a weekly basis until October 2021. Ex. 10 at 10. He further advised that the Individual continue the self-help meetings "indefinitely." Ex. 10 at 10. Lastly, he advised that the Individual should continue to submit to regular breath alcohol testing conducted by his employer until October 2021 and that he should voluntarily submit to monthly PEth testing, "at his own expense, until October of 2021." Ex. 10 at 11.

In his testimony, the DOE Psychiatrist stated that the alcohol testing results that were submitted into the record were consistent with the amounts of alcohol the Individual indicated he had consumed at the time of his relapses. Tr. at 93-94. He confirmed the Individual's diagnosis of AUD, Severe, at the time of the DOE Psychiatrist's evaluation. Tr. at 95. However, at the time of the hearing, the DOE Psychiatrist diagnosed the Individual with AUD, Mild. Tr. at 95. The DOE Psychiatrist testified that, in his report, he recommended that the Individual continue with treatment, that he complete the IOP and enroll in aftercare, and that he attend AA or a similar

program. Tr. at 95-96. He also recommended that the Individual continue with EAP, take regular PEth tests at his own expense, and remain sober for twelve months. Tr. at 96. The DOE Psychiatrist noted that, at the time of the hearing, the Individual did complete the IOP, that he engaged in treatment and self-help groups, and that he has been participating in aftercare as well as the EAP. Tr. at 96-97. He also found the Individual's support system and his instinct to reach out for help encouraging. Tr. at 98. However, because the Individual had been sober for only seven months and not the twelve months he recommended in his report, the DOE Psychiatrist determined that the Individual was still in early remission. Tr. at 98-99. Accordingly, the DOE Psychiatrist gave the Individual a fair prognosis. Tr. at 99-100.

V. 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, receives therapy, completed a treatment program, has engaged his local AA chapter and similar groups, and enjoys a strong support system through his family, I cannot conclude that the Individual has mitigated the Guideline G concerns stated in the Notification Letter. The DOE Psychiatrist provided very specific recommendations, which would allow the Individual to show adequate rehabilitation and reformation. Among the recommendations made, the DOE Psychiatrist stated that the Individual should remain abstinent for a period of twelve months. Unfortunately, because the Individual relapsed in July 2021, the DOE Psychiatrist could not conclude that all his recommendations were met. While there is credible testimonial evidence indicating that the Individual had been abstinent for approximately seven months, I cannot find, considering the expert testimony before me, that this period of abstinence is sufficient to mitigate the concerns raised by his prior alcohol misuse. As such, the Individual has failed to demonstrate adequate rehabilitation or reformation, and

accordingly, he has failed to fully resolve the Guideline G concerns related to his history of alcohol misuse.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's access authorization should not be restored. Either party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals