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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: December 17, 2021) Case No.: PSH-22-0035
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Issued: April 5, 2022

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (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 that requires that she hold a security clearance. Due to derogatory information reported to the Local Security Office (LSO), the Individual was referred to a DOE-consultant psychologist (DOE Psychologist) for an evaluation. After receiving the DOE Psychologist’s report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual, informing her that her security clearance was suspended and that she was entitled to a hearing before an Administrative Judge to resolve substantial doubt regarding her 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 her own behalf, presented the testimony of one witness, and submitted four exhibits,

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

marked as Exs. A through D. *See* Transcript of Hearing, Case No. PSH-22-0035 (cited as “Tr.”) The DOE Counsel presented the testimony of one witness and submitted fifteen exhibits marked as Exs. 1 through 15.

II. The Notification Letter and 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). With respect to Guideline G, the LSO alleged that: 1) in August 2021, a DOE Psychologist found that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, Fifth Edition*, criteria for a diagnosis of Alcohol Use Disorder (AUD), Severe, without adequate evidence of rehabilitation or reformation; 2) in July 2021, she consumed four alcoholic drinks in violation of Fitness for Duty (FFD) restrictions for work; 3) in February 2021, she was arrested and charged with Aggravated Driving Under the Influence (DUI); 4) in October 2016, the Individual tested positive for alcohol despite being required to abstain by her employer; and 5) in September 2016, she was arrested and charged with Aggravated DUI. Ex. 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 judgment, 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 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 her eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personal 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

In an April 2021 Letter of Interrogatory, the Individual confirmed that she had two DUIs, one in 2016 and one in 2021. Ex. 9 at 1, 3. In addition to the Individual's two DUIs, she admitted that she consumed alcohol on two occasions while she was ordered to be abstinent by her employer. Ex. 1. On the first occasion, she failed a random alcohol test. Ex. 1; Ex. 7 at 3; Ex. 10 at 6. On the second occasion, the Individual self-reported the alcohol consumption. Ex. 1; Ex. 10 at 6. The Individual testified that on both occasions where she consumed alcohol while on FFD restrictions, she was at a family function and just made what she termed "a bad decision." Tr. at 42, 48. She claimed that she has not consumed alcohol since July 2021. *Id.* at 48.

The Individual's counselor testified that the Individual was diagnosed with AUD, moderate, in April 2021. Tr. at 18, 22. She stated that the Individual completed 24 weeks of an Intensive Outpatient Treatment (IOT), which consisted of two and a half hours of group counseling two times a week, Smart Recovery,² and one-on-one counseling. *Id.* The counselor testified that the Individual was compliant with all the requirements of IOT. *Id.* at 19. She asserted that their counseling has focused on how to self-manage the stressors involved in her life. *Id.* at 21. She continued that the Individual began aftercare immediately after completing IOT but did not restart Smart Recovery until January 2022. *Id.* at 28-29. The counselor concluded that the Individual opted to continue the treatment and is working toward abstinence. *Id.* at 31, 32.

In her report following the August 2021 evaluation, the DOE Psychologist opined that the Individual suffered from AUD, severe. Ex. 10 at 9. She also stated that there was no evidence of rehabilitation or reformation. *Id.* The DOE Psychologist recommended that the Individual complete a 30-day in-patient treatment program, followed by aftercare of not less than two years. *Id.* She also recommended Phosphatidylethanol (PEth) tests be administered every two months. *Id.* The DOE Psychologist based her recommendations on her opinion that the Individual was "an unreliable historian" of her alcohol consumption. *Id.* Further, the Individual had previously completed two intensive outpatient treatment programs and was unable to remain abstinent despite being told by her employer that she must not consume alcohol. *Id.* In addition, the DOE Psychologist included an addendum to her report in which she stated that the Individual delayed her post evaluation Ethyl Glucuronide and PEth testing for two weeks.³ *Id.* at 1. At the hearing, the DOE Psychologist confirmed her diagnosis and recommendations. Tr. at 61. The DOE Psychologist opined that the Individual is taking positive steps in attending her IOT sessions and continuing aftercare, and she concluded that the Individual's prognosis is "guarded." *Id.* at 62.

² The counselor testified that Smart Recovery is similar to Alcoholic Anonymous with a more academic component. Tr. at 25.

³ The delay did not change the DOE Psychologist's diagnosis, however, she asserted that she believed the results would have been significantly different if the Individual had undergone the testing the day of the evaluation, as instructed. Ex. 10 at 2. The Individual was questioned about why she did not go immediately to the laboratory for the testing and answered that she did not know she had to go that day and thought she had to call to make an appointment. Tr. at 51. The DOE Psychologist stated that the Individual's claim was "disingenuous, uncooperative, and reinforce[d] the conclusions in [her] report." Ex. 10 at 2.

V. Analysis

Guideline G

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).

I cannot find that the Individual has mitigated the concerns raised by the LSO. The Individual's alcohol issues are not remote in time. The Individual's last DUI occurred in February 2021. Following that DUI, while on FFD restrictions from her employer, the Individual consumed alcohol in July 2021. In addition, although the tests performed following her evaluation were negative, she delayed those tests by two weeks. While she has possibly recognized her maladaptive alcohol use, she has not taken sufficient actions to overcome her AUD diagnosis. Over the past five years, the Individual has attended two IOTs; however, the DOE Psychologist recommended an inpatient treatment program due to her severe AUD and her extensive alcohol history, including the completion of two IOTs and violation of her employer's restrictions on at least two occasions. Even though the Individual is participating in counseling, she has a previous history of treatment and relapse. Finally, again given her history, the DOE Psychologist recommended two years of abstinence for a finding that the Individual is rehabilitated or reformed and the Individual has, by her own unreliable reporting, been abstinent for only nine months. Therefore, I cannot conclude that the Individual has mitigated the Guideline G concerns stated in the Notification Letter.

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 raised by Guideline G as set forth in the Summary of Security

Concerns. Accordingly, the Individual has not demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance 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