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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: January 31, 2022) Case No.: PSH-22-0046
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Issued: June 28, 2022

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 and 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. Derogatory information regarding the Individual’s alcohol consumption was discovered. The Local Security Office (LSO) 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 testified on his own behalf. The LSO presented the testimony of the DOE psychologist who had evaluated the Individual. *See* Transcript of Hearing (hereinafter cited as “Tr.”). The LSO submitted 15 exhibits, marked as Exhibits 1 through 15 (hereinafter cited as “Ex.”). The Individual submitted five exhibits, marked as Exhibits A through E.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

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.

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. 10 C.F.R. 710.7.

Guideline G states that 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. Conditions that could raise a security concern include:

- (a) Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;
- (b) Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder;
- (c) Habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;
- (d) Diagnosis by a duly qualified medical or mental health professional (*e.g.*, physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;
- (e) The failure to follow treatment advice once diagnosed;
- (f) Alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder; and
- (g) Failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Id. at ¶ 22.

The LSO alleges that the Individual was arrested and charged with Driving Under the Influence (DUI) in September 1981; that the Individual was arrested and charged with Aggravated Driving While Under the Influence of Liquor and/or Drugs and Failure to Keep a Proper Lookout in May 2021; and that a DOE-consultant Psychiatrist (hereinafter "Psychiatrist") diagnosed the Individual with Alcohol Use Disorder, Moderate, without adequate evidence of rehabilitation or reformation. 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

Before the Notification Letter was issued, the Individual was evaluated by the Psychiatrist, who diagnosed him with Alcohol Use Disorder, Moderate, and made several recommendations for the Individual. Ex. 12 at 8–9. The Psychiatrist recommended that the Individual complete an Intensive Outpatient Program (IOP) and follow its aftercare recommendations; continue his therapy efforts already in progress; continue his IOP, aftercare, or current therapy efforts for one year; continue attending SMART meetings weekly; see a physician for possible prescriptions for medications that could aid with abstinence; and undergo monthly blood testing to monitor alcohol consumption. *Id.* at 9. He also recommended that, if the Individual consumed alcohol during his initial year of abstinence, he should complete a 30-day residential alcohol rehabilitation program followed by one year of aftercare treatment. *Id.*

At the hearing, the Individual testified that he had no disagreement with the Psychiatrist's diagnosis or the fact that he received the two DUI charges as described in the agency's Statement of Security Concerns. Tr. At 12. He had not been previously diagnosed with an alcohol use disorder, but, as of the date of the hearing, he believed that he had a problem with alcohol. *Id.* at 14.

The Individual's first DUI occurred in 1981 when he was a college sophomore and resulted in a deferred sentence, which was resolved with attendance at court-mandated classes. Tr. At 14–15.

He testified that he had been at home waiting for his girlfriend to come over, but when she did not arrive as agreed he became anxious and started drinking the wine they had planned to consume that evening. *Id.* Eventually, he decided to drive to his girlfriend's dorm to see if he could find her and was pulled over on the way and arrested for DUI. *Id.* at 15.

The Individual's second DUI occurred over Memorial Day weekend in 2021. Tr. at 16. He had been consuming alcohol at home but later left to meet a friend at a plant nursery. *Id.* at 16–17. On the way, he made a wrong turn and his car went into the roadside ditch. *Id.* at 17–19. An officer arrived and determined that the Individual's Blood Alcohol Level was .28. *Id.* at 16. The case was dismissed when the arresting officer failed to appear in court, but the Individual did not deny that he had driven while intoxicated. *Id.* at 28–29.

The Individual described himself as a weekend drinker and stated that his consumption had increased over the past year or two more than he "knew or intended" until he was drinking liquor in the same way he would drink a beer. *Id.* at 17–18. He testified that he typically drank at home and was not aware of any time beyond his two DUI incidents when he had driven while over the legal limit. *Id.* at 15. At the time of the hearing, the Individual did not keep alcohol in the house and testified that, if he found himself in a situation where others were consuming alcohol, he did not feel a desire to consume alcohol. *Id.* at 27–28.

The Individual decided to abstain from alcohol indefinitely in November 2021, a few weeks after his evaluation by the Psychiatrist. Tr. at 19. He maintained his abstinence until about two weeks before the hearing when he had some wine with an old friend who was visiting his town. *Id.* at 20. The friend did not know that the Individual had become abstinent and the Individual, caught up in nostalgia as they discussed old times, decided to consume three glasses of wine with his friend. *Id.* at 20, 30, 88. He testified that he intends to pursue complete abstinence indefinitely, regardless of the outcome of the administrative review process. *Id.* at 20, 33.

The Individual described the SMART program he attended online weekly, noting that it is an alternative to AA. *Id.* at 21, 25. He spoke at length about the program's basis in cognitive therapeutic techniques, as well as the program's structure, exercises, and tools. *Id.* at 22–24. He stated that he had not told his group about his recent alcohol consumption. *Id.* at 69. The Individual testified that SMART considers the incident to be a lapse, rather than a relapse, because it was a singular event after which he learned from his mistake and continued his commitment to sobriety. *Id.* at 24. He stated that, for that reason, he still considered his sobriety date to be in November 2021. *Id.* He had developed relationships with the other participants in his group and the moderator and stated that he would continue to attend that meeting in addition to in-person meetings, if in-person meetings ever resumed. *Id.* at 35.

The Individual also described a therapy program he had attended as part of his fitness for duty program. Tr. at 25–26, 31–33. It involved eight weeks of group therapy and nine weeks of individual therapy, as well as urine testing for alcohol consumption. *Id.* at 25–26, 31–32. It focused heavily on identifying triggers, alternatives to alcohol when feeling triggered, and moving forward with non-addictive behavior. *Id.* at 32. The Individual testified that he had purchased and read books his therapist had recommended as well. *Id.* Though his therapist had decided that he no longer needed to attend the program, the Individual was still able to contact her if he was having a

problem. *Id.* at 31, 52–53. The Individual had not told his therapist about his recent alcohol consumption. *Id.* at 69.

The Individual testified that his children are his major sobriety support system. Tr. at 27. His five children are adults and four of them are abstinent from alcohol. *Id.* at 53. One of the children had struggled with alcohol issues but had been doing much better in recent months. *Id.* at 54. They communicated often and were there for each other in their sobriety journeys. *Id.* at 27.

The Individual recalled that, on the day shortly before the hearing when his friend visited, he did not contact any members of his support system before his choice to consume alcohol. Tr. at 58. He testified, “I didn’t really go through the steps that I ... have learned.” *Id.* He went on to testify that he needs to inform people around him that he does not drink, adding that “[i]t’s actually real [sic] easy to do that.” *Id.* at 59. He stated that his plan for the future is to request in advance that visitors not bring alcohol to his home. *Id.* at 60.

The Individual had told his partnership group at his firm about his DUI because his clearance could have been affected. Tr. at 60. Initially, he told the other three members of the executive committee he was on and they decided as a group that he needed to tell the other partners. *Id.* at 61. The Individual had not told his SMART group, his therapist, or his partnership group that he had consumed alcohol shortly before the hearing. *Id.* at 68–69. He had told his children. *Id.* at 69.

The Individual admitted that he had only partially completed the Psychiatrist’s recommendations. *Id.* at 33–35. He completed the recommendations to continue the treatment he had already begun before seeing the Psychiatrist and to discuss medications with a doctor. *Id.* at 34–36. He had discussed medications with the doctor at his therapy center but had not discussed them with his primary care physician who would actually need to prescribe them. *Id.* at 36–37. Two days before the hearing, the Individual did his first blood test to monitor for alcohol use over the previous month. *Id.* at 37. The results, received after the hearing concluded, stated that chemicals indicating alcohol use were not detected in the Individual’s blood. Ex. E. The Individual did not begin abstaining from alcohol until several weeks after his evaluation by the Psychiatrist. Tr. at 45.

The Psychiatrist testified that the Individual had made efforts toward clinical rehabilitation from his Alcohol Use Disorder, Moderate, diagnosis. Tr. at 76. However, he did not consider the Individual rehabilitated at the time of the hearing because he had not abstained for one year and because of his recent alcohol use. *Id.* He also expressed some concern that the Individual had not told his SMART group about his recent alcohol use. *Id.* at 77. The Psychiatrist revised one of his recommendations, stating that he recommended the Individual resume the IOP rather than enter inpatient treatment for his recent alcohol use. *Id.* at 77–78. The Psychiatrist testified that, because of the recent alcohol use, his prognosis for the Individual’s continued abstinence had changed from good to guarded. *Id.* at 78.

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.

Conditions that may mitigate security concerns under Guideline G include:

- (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; or
- (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.

The Individual consumed alcohol despite the risk of severe consequences for doing so in the month leading up to the hearing. While the individual utilizes the term “lapse” instead of “relapse,” I find the distinction inconsequential to this analysis; the Individual’s choice to consume alcohol that evening echoed the behavior leading up to the Individual’s DUI² in that it threatened the Individual’s safety and security, albeit financially instead of physically. It is particularly concerning that the Individual did not use the skills he learned in his IOP and SMART group and that he was not able to articulate a time outside of his professional life when he had. As a result, the Individual has not demonstrated that his recovery activities have reduced the chance that he will drink alcohol in a concerning manner. I cannot find his progress satisfactory. Moreover, I cannot find that he has demonstrated a clear pattern of abstinence, as his treatment plan recommends, and, therefore, I

² The 2021 DUI is also recent, occurring less than one year before the hearing.

cannot find that the Individual's alcohol consumption no longer casts doubt upon his judgment, trustworthiness, and reliability. As such, none of the mitigating factors apply in this case.

For the foregoing reasons, I find that the Individual has not 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