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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: March 28, 2022) Case No.: PSH-22-0070
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Issued: October 19, 2022

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (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 granted.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position which requires him to 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 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 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 three witnesses. DOE presented the testimony of the DOE psychologist (Psychologist) who had evaluated the Individual. *See* Transcript of Hearing (hereinafter cited as “Tr.”). DOE submitted 17 exhibits, marked as Exhibits 1 through 17 (hereinafter cited as “Ex.”). The Individual submitted one exhibit, marked as Exhibit A.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

¹ Under the regulations, “[a]ccess 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 diagnosed with Alcohol Abuse in 2010 and was diagnosed with Alcohol Use Disorder, Moderate, in 2021. It further alleges that the Individual was arrested in 2010, and again in 2017, for Driving Under the Influence of Intoxicating Liquor and/or Drugs (DUI), and that he was arrested in 1999 for Driving While Intoxicated,² Failure to Yield to Emergency Equipment, Speeding 31 to 35 Miles Over the Speed Limit, and Having No Car Insurance. Finally, the LSO alleges that the Individual admitted that it takes one pint of vodka for him to become intoxicated; that he consumed one pint of vodka, or four beers two to three times

² In this decision, the term "DUI" is understood to include the charge of Driving While Intoxicated.

per week; and that he became intoxicated once per week. 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

In July 2017, the Individual consumed half a pint of vodka and two or three beers over four to five hours while spending time with friends. Ex. 8 at 5; Ex. 4 at 3. On his way home, he was pulled over for failure to signal before a lane change. Ex. 8 at 5; Ex. 4 at 3. He failed a field sobriety test and was arrested for DUI. Ex. 8 at 5; Ex. 4 at 3. The Individual's blood alcohol concentration (BAC) was 0.16. Ex. 4 at 3. The Individual reported the 2017 DUI, as well as DUIs in 2010 and 1999, on his Questionnaire for National Security Positions. *Id.* The Individual told investigators that it would take about one pint of vodka consumed over five to six hours for him to become intoxicated and that he became intoxicated once per week. Ex. 8 at 9. He reported consuming alcohol two to three times per week. *Id.*

The Individual was referred to the Psychologist for evaluation. Ex. 9. The Psychologist issued a report in which he diagnosed the Individual with Alcohol Use Disorder, Moderate, not in remission. *Id.* at 9. He recommended that the Individual abstain from alcohol permanently and not attempt controlled drinking. *Id.* He recommended that the Individual provide documentation of his

abstinence through blood tests taken at least every two months. *Id.* The Psychologist further recommended that the Individual participate in a 12- to 16-week intensive outpatient treatment program with group and individual therapy components, followed by at least 12 months of aftercare meetings and attendance at a support group such as Alcoholics Anonymous (AA). *Id.*

At the hearing, the Individual presented the testimony of his manager, his friend, and his brother.

The manager had known the Individual for about two years. Tr. at 10. They generally did not socialize outside of work but had attended social work events together. *Id.* at 12–13. The manager had organized a celebration before Thanksgiving and believed that the Individual consumed one beer on that occasion. *Id.* at 13–14. The Individual had told the manager that he had some DUIs but had not discussed his most recent one. *Id.* at 14. The manager had discussed with the Individual the need to get treatment at that time. *Id.* at 14–15. He described the Individual as reliable, energetic, positive, and honest. *Id.* at 20–21.

The Individual's friend had known him for about 10 years. Tr. at 24. He testified that about once or twice a month they would go to bars or restaurants where alcohol was served, most recently about a month before the hearing. *Id.* at 25–27. They had gone to a brewery and had one or two drinks each. *Id.* at 26–27. They used ride share services to get to and from the brewery. *Id.* at 28. They spent less time together than before the Individual had a child. *Id.* at 29. Typically, they saw each other once or twice per month and had a beer together. Most of the places they went had limits on the number of drinks a patron could purchase. The friend was aware that the Individual had gone through part of an administrative review several years prior for reasons associated with alcohol use. He testified that he had never seen the Individual engage in problematic alcohol use and had not heard the Individual discuss abstinence or having a problem with alcohol. *Id.* at 28, 29, 34–35. He testified that, several years earlier, the Individual had told him about a drinking and driving charge. *Id.* at 30.

The Individual's brother testified that he stays in close contact with the Individual, at times talking to him daily. Tr. at 39. They live very close together and see each other often. *Id.* at 40. The brother testified that the family would consume alcohol at gatherings at times, but they helped each other with designated drivers and did not have any issues with people being too intoxicated. *Id.* at 42. He had never been concerned with the Individual's alcohol consumption. *Id.* The brother had seen the Individual at a family gathering about three weeks prior to the hearing. *Id.* at 43. He was not sure if the Individual consumed alcohol on that occasion, but he was able to say definitively that he did not see the Individual drink to excess. *Id.* He testified that the Individual would sometimes call him for a ride after drinking, the most recent instance having occurred within the month prior to the hearing. *Id.* at 47, 49. He did not know why the Individual had not called him on the night of his 2017 DUI. The brother testified that their family was very close, and the Individual had a very strong support system. *Id.* at 52–53. The brother had never known the Individual to be a morning drinker or daily drinker. *Id.* at 56–57. He described the Individual as honest and loyal. *Id.* at 58–59.

The Individual testified that the Psychologist told him at his evaluation that he needed to stop drinking entirely. Tr. at 62. He testified that he was trying but he just could not do it overnight and needed professional assistance. *Id.* at 63. He stated that his girlfriend had stopped drinking alcohol "cold turkey" but he was unable to do so. *Id.* The Individual did not believe he had an alcohol

problem but acknowledged that his alcohol use could be problematic. *Id.* at 65. He clarified that he was not chemically dependent on alcohol and then stated that his drinking might be bordering on an alcohol problem. *Id.* at 65. He had gone through administrative review for alcohol-related issues many years earlier. *Id.* at 64. When his employer lost the contractor bid he decided not to stop drinking or seek treatment because he no longer needed a security clearance and would not have to prove that he had stopped consuming alcohol. *Id.* 64–65. The Individual testified that, as of the hearing, he had not consumed alcohol in about three weeks and that he wanted to get into a treatment program. *Id.* at 67. He testified that he wanted to do a treatment program, not just to gain a security clearance, but also for himself and his family. *Id.* He had reached out to a program and was on a waiting list for enrollment. *Id.* at 69. He had not attended AA or similar a similar support group, stating, “I personally feel I haven’t fallen that low to be knocking on double A’s door... .” *Id.* at 80. However, he was open to the idea and stated that he would look into a support group. *Id.*

The Individual’s fiancé was a role model to him for abstinence and they did not keep alcohol in the house. Tr. at 76–77. She supported him in his abstinence, as did his fiancé’s mother, who lived next door to them. *Id.* at 76. The Individual also described having the support of his family and two close friends. *Id.* He also testified that there is no alcohol in his home. *Id.* The Individual was avoiding situations where he would usually consume alcohol, such as barbeques, parties, and happy hours. *Id.* at 77–78.

The Individual testified that, once he saw the Psychologist’s report in mid-May, he intended “to not drink at all, maybe, you know, at somebody’s wedding, New Year’s, or something like very rare.” Tr. at 72–73. He clarified that the rare alcohol consumption would be after a year of abstinence. *Id.* at 73. He testified that after receiving the report, he consumed alcohol only once, at the family gathering referenced by his brother. *Id.* at 74.

The Individual had never mishandled any of the classified information that he had learned while previously working with classified information at DOE. *Id.* at 70–71. He exhibited rigorous candor in his testimony and took responsibility for his actions.

The Psychologist testified that, having attended the hearing up to that point, he would not change the Individual’s earlier diagnosis. Tr. at 86. He still recommended that the Individual abstain from alcohol permanently and not try controlled drinking. *Id.* at 87. He stated that, in addition to not following his recommendations, the Individual also had not completed the recommendations made by the psychologist in his previous administrative review process. *Id.* He opined that the Individual is a good and moral man and has many characteristics that indicate his honesty and trustworthiness. *Id.* at 88. For example, the Individual reported information to the Psychologist that the Psychologist did not previously have. *Id.* at 90. He reported to the Psychologist that he was drinking heavily and did not deny or try to justify his actions. *Id.* at 91.

The Psychologist opined that the Individual was not yet rehabilitated or reformed and gave the Individual a low prognosis for remaining abstinent. Tr. at 88–90. He testified that, without assistance, the risk of relapse is 80 to 90%. *Id.* at 89. He further testified that the Individual’s continued use of alcohol compromised his honesty, reliability, and trustworthiness because his alcohol use had caused lapses in judgment in the past and because he could not guarantee the Individual’s emotional stability when he was under the influence of alcohol. *Id.* at 92.

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 granting the Individual’s clearance is not an unacceptable risk to national security.

Factors that may mitigate 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; 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.

None of the mitigating factors are applicable in this case. As to the first mitigating factor, the Individual has a long history of arrests for DUI, spanning nearly two decades. Given the number of and length of time between his DUIs, I cannot find that “so much time has passed” since his 2017 arrest to satisfy mitigating factor (a), and I cannot find that the behavior of drinking and driving was infrequent because it happened enough for him to be caught three times. Furthermore, there is no evidence that the Individual’s DUIs happened under unusual circumstances.

Regarding the second mitigating factor, the Individual refused to accept the severity of his alcohol issues. While admitting that his alcohol consumption was problematic, he denied that he had an alcohol problem. This hairsplitting indicates a lack of self-awareness, as does the Individual's testimony that he did not need AA despite his previously testifying that he needed professional help to stop drinking.

The second and fourth mitigating factors both require a clear and established pattern of modified consumption or abstinence. While the Individual has reduced his alcohol intake, his prior history of high alcohol consumption after a period of abstinence introduces doubt about his ability to maintain controlled alcohol use. The Individual had only been abstinent for about three weeks at the time of the hearing. Considering the Individual's history, his pattern of modified consumption is not satisfactorily established; his weeks of abstinence are not sufficient to establish a pattern. The third and fourth mitigating factors require that the Individual be in or have completed a treatment program, which the Individual has not done.

The Individual presents as an honest person, but his problems with alcohol persist such that I cannot find him reliable or trustworthy. For the foregoing reasons, I cannot find that the Guideline G concerns have been mitigated.

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 granting 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 grant access authorization to the Individual.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Kristin L. Martin
Administrative Judge
Office of Hearings and Appeals