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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: June 28, 2022)	Case No.: PSH-22-0111
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Issued: November 18, 2022

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and 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

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. As part of the clearance process, the Individual was required to complete a Questionnaire for National Security Positions (QNSP), which he signed and submitted in July 2021. Exhibit (Ex.) 7. In the QNSP, the Individual disclosed that in approximately June 2020, he was charged with Driving While Intoxicated (DWI). Ex. 7 at 37. Based on the information provided, the Local Security Office (LSO) directed the Individual to undergo a psychiatric evaluation conducted by a DOE-consultant psychiatrist (DOE Psychiatrist) in February 2022, after which the DOE Psychiatrist issued a report in which he diagnosed the Individual with Alcohol Use Disorder (AUD), Mild, without adequate evidence of rehabilitation or reformation. Ex. 5 at 10.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance and that his clearance had been suspended. The Notification Letter informed the

¹ The regulations define access authorization 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). This Decision will refer to such authorization as access authorization or security clearance.

Individual 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 his supervisor, his sister, and a friend. The DOE Counsel presented the testimony of one witness, the DOE Psychiatrist, and submitted eleven exhibits marked as Exhibits 1 through 8.

II. Notification Letter and Associated Concerns

A Summary of Security Concerns attached to the Notification Letter informed the Individual that information in the possession of the DOE raised security concerns under Guideline G of the Adjudicative Guidelines. Ex. 1. Under Guideline G (Alcohol Consumption), “[e]xcessive alcohol consumption often leads to the exercise of questionable judgement 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 “[a]lcohol-related incidents away from work, such as driving while under the influence . . . regardless of 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) and (d). The LSO alleged that, in November 2019,² the Individual was arrested and charged with DWI. Ex. 1 at 1. The LSO also alleged that in February 2022, the DOE Psychiatrist determined that, pursuant to the *Diagnostic Statistical Manual of Mental Disorders, 5th Edition* (DSM-V), the Individual met the diagnostic criteria for AUD, Mild, without adequate evidence of rehabilitation or reformation. Ex. 1 at 1; Ex. 5 at 2, 9–10. The LSO also cited the DOE Psychiatrist’s determination that the Individual engages in the binge consumption of alcohol, raising concerns pertaining to the Individual’s honesty, reliability, and judgement. Ex. 1 at 1.

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 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 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).

² Although the Individual stated on the QNSP that the DWI occurred in approximately June 2020, when he later underwent an Enhanced Subject Interview (ESI) as part of the Office of Personnel Management (OPM) background investigation, he correctly stated that the incident occurred in November 2019. Ex. 8 at 67–68.

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. *Id.* § 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

Following a November 2019 ATV accident, the Individual was charged and convicted of DWI. Ex. 7 at 37-38; Ex. 8 at 67-69. He admitted to the DOE Psychiatrist that he suffered a Traumatic Brain Injury (TBI) in the accident. Ex. 5 at 4. The Individual disclosed in his QNSP and to the DOE Psychiatrist that because of his conviction, his license was restricted, he was required to use an interlock device for six months, and he had to pay a fine. Ex. 7 at 38; Ex. 5 at 2. He also disclosed during the ESI that he was placed on probation and ordered to pay restitution for the cost of the mailbox that he hit in the accident. Ex. 8 at 69. The Individual stated during the ESI and on the QNSP that he attended and successfully completed counseling pursuant to a court order. *Id.* at 69; Ex. 7 at 41. At the time of the ESI, he indicated that he was consuming approximately “one or two beers at home once per month” and that he could not remember how much alcohol he had consumed on the day of the incident. Ex. 8 at 68.

At the hearing, the Individual asserted that he does not believe that he has a problem with alcohol. Tr. at 43. He stated that he rarely consumes alcohol now because his wife is having a very difficult pregnancy and he is taking care of her. *Id.* at 44. He claimed that he last consumed alcohol about one month prior to the hearing when he consumed two beers over the period of four to five hours. *Id.* at 44. He also stated that, prior to that, he last consumed alcohol during his honeymoon in July 2022. *Id.* at 47. The Individual stated that he was last intoxicated at his bachelor party at approximately the end of May 2022. *Id.* at 46. He asserted that he does not intend to consume more than two beers in one sitting in the future. *Id.* at 53.

The Individual’s supervisor, friend, and sister testified on his behalf. Tr. at 13. The supervisor asserted that he has never smelled alcohol on the Individual’s breath, nor has the Individual appeared “hungover” at work. *Id.* at 14. He concluded that “[a]t no time over the last year that I’ve worked with [the Individual] have I ever had to question him coming to work sober.” *Id.* at 19.

The Individual’s friend, who has known him for about 10 years, stated that he last saw the Individual consume alcohol in July. Tr. at 24, 25. He has never had a concern about the Individual’s alcohol consumption but has observed that, since the Individual left the military, his alcohol consumption has been reduced. *Id.* at 25, 27. The friend asserted that, when he visited the Individual’s home a week before the hearing, he did not notice any alcohol and they did not consume alcohol. *Id.* at 29-30. He stated that the Individual is honest, reliable, and straightforward. *Id.* at 30.

The Individual's sister testified that she sees him frequently at family gatherings, at both of their houses, and when they go out to dinner. Tr. at 36. She stated that it has been a "really long time" since she saw him consume alcohol. *Id.* at 36. The last time she saw him consume alcohol was before he left the military in May 2021. *Id.* at 37. The sister claimed that she did not know if he consumed alcohol at his wedding in July 2022, but he did not appear intoxicated when she left. *Id.* at 37. She asserted that they have not discussed his alcohol consumption and that she never had any concern about it. *Id.* at 38. After the sister's testimony, the Individual was questioned why his sister had stated that she had not seen him consume alcohol since he left the military, although they are siblings, close in age, and see each other frequently, including on the weekends. He stated that when they are together, they are normally with her children and the only time he consumes alcohol is with his friends. *Id.* at 58–59.

In his February 2022 report, the DOE Psychiatrist diagnosed the Individual with a mild AUD. Ex. 5 at 10. He opined that there was no adequate evidence of reformation or rehabilitation. In making his finding, the DOE Psychiatrist found that the Individual satisfied two factors listed in the *DSM-5* for the mild AUD diagnosis. *Id.* at 10. The two factors that the Individual satisfied are that alcohol is taken in larger amounts than intended and continued despite knowledge of having a persistent physical or psychological problem that is exacerbated by alcohol. *Id.* He based those findings on the fact that the Individual's reported alcohol use, which the DOE Psychiatrist concluded from the evaluation was either six to eight beers per weekend or eight to ten beers per weekend, constituted a binge drinking pattern and his alcohol use after the TBI put him at risk for alcohol-induced psychological problems. *Id.* At the hearing, the Individual testified that he had reduced his alcohol consumption since his wedding in July, primarily because his wife is expecting, and he needs to care for her. Tr. at 44.

At the hearing, the DOE Psychiatrist stated that the Phosphatidylethanol (PEth) blood test administered to the Individual after the evaluation was positive with a result of 41 ng/mL.³ Ex. 5 at 6. This positive result showed that the Individual was either drinking more than he reported or he had more consistent alcohol use than reported. Tr. at 73-74. The Individual disagreed with the information described in the DOE Psychiatrist's report,⁴ claiming that he did not indicate that he was consuming alcohol most weekends. *Id.* at 60. He also disputed that he told the DOE Psychiatrist that he consumed six to eight beers every weekend, but rather specified that he consumed four to six beers on the weekends. *Id.*

The DOE Psychiatrist testified that the Individual's mental status exam results show that his TBI is still a concern, because "in the mental status examination he made some errors that were consistent with soft -- what are called soft neurological signs that suggest that he still has effects of brain injury." *Id.* at 73. These findings led the DOE Psychiatrist to opine that the Individual's

³ The PEth analysis of blood includes Liquid Chromatography and Tandem Mass Spectrometry with a detection limit of 20 ng/mL. A PEth level in excess of 20 ng/mL is considered evidence of "moderate to heavy ethanol consumption." Ex. 5 at 6.

⁴ The DOE Psychiatrist's report catalogues that the Individual has reported different amounts of alcohol consumption. At the beginning of his report, under the section entitled "Introduction and Purpose," he stated that the Individual "now drinks one or two beers at home per month." Ex. 5 at 2. Later in the report, he asserted that the Individual told him he drank six to eight beers most weekends but did not want to misrepresent that he drank every weekend. *Id.* at 5.

continued alcohol use is a hazard. “Controlled drinking in view of his DUI [sic] and brain injury is not effective in the long term. . . . [K]nowing that he has a [TBI] effect is a substantial concern.” *Id.* at 76.

To show rehabilitation or reformation, the DOE Psychiatrist detailed in the report that the Individual should enter his employer’s Employee Assistance Program (EAP) and be subject to the random alcohol breath tests required by that program. *Ex.* 5 at 10. He also outlined that while attending the EAP, the Individual should also attend three AA meetings a week for one year, including working the steps and obtaining a sponsor. *Id.* Further, the DOE Psychiatrist specified that the Individual should undergo two PEth tests, one three months after he starts the EAP and the second six months later. *Id.* Finally, he declared that if the Individual fails either of the PEth tests, he should be evaluated for an Intensive Outpatient Alcohol treatment program. *Id.* The DOE Psychiatrist asserted that the Individual’s PEth test results showed that he was consuming between four drinks in a week and four drinks in a day, which indicated that he was consuming alcohol regularly. *Id.* at 84.

Regarding reformation, the DOE Psychiatrist concluded that, in his opinion, reformation is recognizing that you have a problem with alcohol consumption and have ceased consuming alcohol. *Tr.* at 75. At the hearing, the Individual avowed that he does not have an issue with alcohol consumption and indicated that he is still consuming alcohol. *Id.* Testifying about rehabilitation, the DOE Psychiatrist stated that despite having attended three alcohol-related programs after his DWI, the Individual did not complete any aftercare, such as AA. *Id.* at 75–76. He opined that attending some type of aftercare is necessary for the Individual to show rehabilitation. *Id.* at 76. Although not specifically stated in his report, the DOE Psychiatrist testified that the Individual should not consume alcohol again, stating that his prognosis would be very good if he abstained from alcohol. *Tr.* at 74, 76.

V. Analysis

As mentioned above, the Adjudicative Guidelines state that “[e]xcessive alcohol consumption often leads to the exercise of questionable judgement or the failure to control impulses and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines at ¶ 21. The concern is not simply about alcohol consumption during work hours or on evenings prior to going to work. The Guidelines specifically mention that “[a]lcohol-related incidents away from work, such as driving while under the influence...regardless of frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder” can raise a concern regarding an Individual’s alcohol use.

The Adjudicative Guidelines do, however, provide conditions that could mitigate security concerns under Guideline G, which 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.

I find that the Individual has not satisfied any of the mitigating conditions associated with Guideline G. The Individual's DWI occurred a mere three years ago in November 2019, but most importantly, he has not established a subsequent pattern of abstinence or modified consumption. He and his friend did testify that his alcohol consumption has decreased, and his sister testified that she has not seen him consume alcohol since he left the military in May 2021. But the Individual admitted that he only drinks with his friends, not his sister, so she is not a reliable witness to his alcohol consumption. Further, the Individual admitted to consuming at least four-to-six beers on the weekends at the time of the DOE psychiatrist's evaluation, and the results of the PETH test indicated that the Individual was drinking regularly. In any event, the DOE Psychiatrist opined that the Individual should be abstinent, which he is not, as evidenced by his alcohol consumption a month prior to the hearing. The Individual has not acknowledged that he has a problem with alcohol, nor has he shown that he has taken the steps needed to demonstrate reformation or rehabilitation since his evaluation by the DOE Psychiatrist. The Individual has not satisfied the DOE Psychiatrist's recommendations regarding his alcohol use or undertaken the recommended treatment. In addition, the Individual did not undergo the PETH testing recommended by the DOE Psychiatrist. The DOE Psychiatrist opined that the Individual is not reformed or rehabilitated from his AUD diagnosis. Therefore, it is my opinion that the Individual has not mitigated the concerns under Guideline G.

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 granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

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