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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: August 15, 2022) Case No.: PSH-22-0132
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Issued: January 3, 2023

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 her to hold a security clearance. Derogatory information regarding the Individual’s alcohol use was discovered and the Individual was evaluated by a DOE contractor psychologist (the Psychologist). The Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding her 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 presented the testimony of two witnesses and testified on her own behalf. The LSO presented the testimony of the Psychologist. *See* Transcript of Hearing (hereinafter cited as “Tr.”). The LSO submitted seven exhibits, marked as Exhibits 1 through 7 (hereinafter cited as “Ex.”). The Individual submitted nine exhibits, marked as Exhibits A through I.

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.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for a security clearance. That information pertains to Guideline I 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 regulations. 10 C.F.R. § 710.7.

Guideline G states that “[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. 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 consumes three times the amount of alcohol considered risky by the National Institute of Alcoholism and Alcohol Abuse and that the Psychologist opined that the Individual habitually consumes alcohol past the point of intoxication. The LSO further alleges that the Psychologist opined that the Individual is not rehabilitated or reformed from her alcohol issues. 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 at ¶ 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) (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 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

The Individual and her husband have been married for nearly 30 years. Tr. at 11. The husband testified that the Individual has been loyal to the United States and kept work materials physically secure when working from home. *Id.* at 13. He testified that, at the time of the hearing, the Individual typically consumed two glasses of alcohol per night on weeknights and two to three glasses per night on weekend nights. *Id.* at 16, 27. He testified that the Individual's alcohol consumption had decreased by at least half since her clearance was suspended a few months prior. *Id.* at 17. The husband had also decreased his alcohol consumption. *Id.* at 18.

The husband believed the Individual enjoyed high quality wine, but not for its intoxicating effects. Tr. at 26. He testified that he and the Individual never drove after any alcohol consumption. *Id.* He testified also that he had never seen the Individual intoxicated or impaired and described her as trustworthy. *Id.* at 12, 14.

The Individual's coworker had known the Individual for about six years. Tr. at 37. They worked closely together during that time. *Id.* at 37, 43. She had never known the Individual to be hungover or under the influence of alcohol at work but had no first-hand knowledge of her alcohol consumption outside of work. *Id.* at 37–38. She had not talked to the Individual about any changes

in the Individual's alcohol consumption. *Id.* at 42–43. She described the Individual as trustworthy and a rule follower. *Id.* at 38.

The Individual testified that she began abstaining from alcohol in 1999 for religious reasons and maintained her abstinence for 17 years. *Tr.* at 51. She testified that, in 2016, her husband and son “talked [her] into ending her self-imposed fast from wine.” *Id.* She added that, after praying about the matter, she felt that she could resume drinking. *Id.* at 78–79. She testified that, typically, she was mentally exhausted when arriving home from work. *Id.* at 54. She would have a walk or do yoga and then, around 5:00 PM, she would have a glass of wine while unwinding with her husband. *Id.* She would have another glass of wine with dinner and sometimes would have another one or two glasses while reading or watching television. *Id.* She testified that she never had so much that she had memory loss or fell down. *Id.* She further testified that, at bedtime, she was “still capable of walking in a straight line, standing on one foot, and holding a conversation.” *Id.* The Individual further testified that, on the rare occasion that she consumed too much alcohol, “there is no way in which [she] would be tricked or cajoled into revealing any sensitive information.” *Id.* She added that there was no amount of alcohol or money that would cause her to betray her country. *Id.*

In 2017, the Individual was evaluated for the DOE's Human Reliability Program (HRP). *Tr.* at 54. The HRP psychologist that interviewed her advised her that drinking too much alcohol could affect her ability to hold a security clearance. *Id.* at 54–55. The HRP psychologist sent her to Occupational Medicine for an alcohol education course that lasted about six weeks. *Id.* at 55. The course involved therapy with a counselor and watching educational videos. *Id.* The Individual abstained from alcohol for the length of the course. *Id.* Then the HRP psychologist recommended that she be approved for participation in the HRP. *Id.* The Individual testified that the HRP psychologist discussed her alcohol use in every yearly evaluation after that, however the Individual did not specify the content or context of those discussions. *Id.*

The Individual's most recent HRP evaluation was in Spring 2022. *Tr.* at 58. In addition to a psychological evaluation, she underwent a medical examination. *Id.* The Individual testified that the medical provider became upset when she told him how much alcohol she consumed. *Id.* She testified that the provider seemed surprised that the tests he performed on her did not indicate that her liver was damaged. *Id.* at 58.

The Individual testified that she did not abstain from alcohol after her security clearance was suspended in 2022 because she “simply didn't want to.” *Tr.* at 60. She believed she needed to reduce her alcohol consumption slightly, which she did in the months before the hearing. *Id.* As of the hearing date, the number of weeknights on which she consumed two glasses of wine—as opposed to three or four glasses—had increased and she recalled one evening on which she had not consumed any wine. *Id.* at 61. She estimated that her weekly alcohol consumption had decreased from 28 to 20 glasses of wine per week. *Id.* She attended a six-week course through her employer's Employee Assistance Program (EAP), which met once per week and was oriented toward employees who had been charged with drinking and driving. *Id.* at 61–62. She did her best to adapt the concepts to her situation. *Id.* After completing the course, the Individual recognized that she had “a tendency to drink too much,” and decided to reduce her alcohol consumption so she could have more control over her drinking. *Id.* at 63. The Individual hoped to get down to only one to two glasses of wine per night and expected that this would become easier once the stress of the

administrative review process was behind her. *Id.* at 63–64. She had not attended any treatment other than the two alcohol education classes previously mentioned. *Id.* at 64.

The Individual received the DOE Psychologist’s report around August 2022. Tr. at 88. In his report, the Psychologist opined that the Individual frequently and habitually consumed alcohol past the point of intoxication, drinking more than three times the amount considered to be risky or heavy consumption. Ex. 5 at 7. the Psychologist recommended that the Individual abstain from alcohol or, if not, to limit alcohol intake to no more than seven glasses of wine per week. *Id.* at 7. He further recommended that the Individual take a PEth blood test, which detects alcohol use over the preceding four weeks, once per month for six months as evidence of abstinence or reduced alcohol consumption. *Id.* The recommendation specified that the PEth result should be no higher than 70 ng/mL. *Id.* The Individual submitted the results of two PEth tests showing 150 and 169 ng/mL respectively. Ex. C; Ex. D. The Individual testified that she only glanced through the Psychologist’s report because it was “like wallowing in raw sewage” and she felt like the stress was too much for her at that time. Tr. at 88. The Individual testified that she could stop at one glass of wine but just did not want to because she enjoyed the taste. *Id.* at 89.

The Individual stated that continuing to consume alcohol after having her clearance suspended was “probably the most illogical thing [she’d] ever done.” Tr. at 90. She stated that she knew that abstaining would help her lose weight, become healthier, and save money. *Id.* However, she added, alcohol is legal, and she felt that she should not have to stop drinking if she had done nothing wrong. *Id.* The Individual was concerned about the risks of alcoholism and testified that she had tried unsuccessfully to stop or significantly curtail her drinking “numerous times” in the preceding six-year period. *Id.* at 91. She described her struggle:

I—when I get up every morning, I—I’m like today’s the day. I’m just going to have one glass today. But then in the evening, especially if it’s been a really tough day, I have that first glass, and then I have a second glass, and then I may have more after that.

Id. at 91–92. She testified that she had been struggling in this way ever since she resumed drinking in 2016. *Id.* at 92. She had asked her husband not to buy wine but would eventually buy more herself. *Id.* At one point she asked her son to get rid of her wine collection, worth hundreds of dollars at that time. *Id.* The Individual testified that she was interested in a weekly group meeting run by the EAP, but abstinence from alcohol was required and she did not “want to give it up.” *Id.* at 94. She did not believe her alcohol consumption posed a security risk. *Id.* She also did not believe that her alcohol consumption was dangerous for her at that time. *Id.* She stated that she was at peace with her decisions regardless of the hearing’s outcome. *Id.* at 87.

The Psychologist testified that the Individual was drinking less than she was at the time of her evaluation but was still drinking excessively and was not rehabilitated or reformed. Tr. at 99–100. He was impressed by the Individual’s honesty, both in his initial evaluation and at the hearing. *Id.* at 100. The Psychologist testified that he did not believe the Individual would drink fewer than two glasses of wine per day in the future, twice the amount recommended by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) and the Centers for Disease Control and Prevention (CDC). *Id.* at 104, 106. He testified that the NIAAA and CDC considered two glasses of wine per day to be heavy drinking for a female. *Id.* at 104. The Psychologist described the Individual as

being a strong woman with good moral character and believed that she needed regular sessions with a counselor who could challenge her and hold her accountable regarding her alcohol consumption. *Id.* at 102, 106. Psychologist believed that, from a psychological perspective, the Individual was trustworthy and reliable. *Id.* at 114–15. He believed that, from a psychological perspective, the Individual’s judgment was somewhat weakened when she was under the influence of alcohol. *Id.* at 115.

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 at ¶ 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 Guideline G concerns 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. None of the mitigating conditions apply in this case.

Regarding condition (a), the Individual continues to drink at a level considered heavy the NIAAA and CDC and appears likely to continue doing so. Because the Individual continues the behavior that caused the LSO to doubt her judgment, trustworthiness, and reliability, I cannot find that that doubt no longer exists.

Regarding condition (b), the Individual does acknowledge her maladaptive pattern of drinking and even harbors concerns about her inability to stop or control her alcohol consumption. However, her established pattern of modified consumption remains at nearly three times the limit recommended by the Psychologist.

Regarding condition (c), the Individual is not participating in counseling or a treatment program. She also has a history of relapse, as well as difficulty abstaining or reducing her alcohol intake.

Regarding condition (d), the Individual has completed an alcohol education program but has not undertaken a treatment program. In fact, she has decided not to participate in an EAP group counseling program because of its abstinence requirements. As noted with respect to condition (b), the Individual's established pattern of modified consumption exceeds the treatment recommendations.

The Individual consciously chose to continue consuming two or more glasses of wine per day with the understanding that she may not be able to maintain her security clearance if she did so. And while the Individual cannot conceive of a situation in which she would compromise national security, it is concerning that the Individual prioritized alcohol over holding a security clearance. Her conviction that she has "done nothing wrong" despite being told that her behavior casts doubt on her eligibility to hold a security clearance calls into questions her ability to follow rules with which she does not agree. Thus, I cannot find with any certainty that, in the future, the Individual will not choose to follow her own preferences over her responsibilities as a security clearance holder.

For the foregoing reasons, I cannot find that the Individual has 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 access authorization 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.

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