

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)	
)	
Filing Date: May 19, 2022)	Case No.: PSH-22-0085
)	
_____)	

Issued: August 29, 2022

Administrative Judge Decision

Janet R.H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (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 be restored.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In November 2021, he was charged with Battery Against a Household Member and Criminal Damage to Property of a Household Member after he got into an altercation with his girlfriend. Exhibit (Ex.) 1 at 1. He admitted to having consumed alcohol prior to the altercation. Ex. 1. The local security office (LSO) sent the Individual to a DOE-consulting Psychiatrist (DOE Psychiatrist). After receiving the report from the DOE Psychiatrist, the LSO issued a 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. Ex. 1. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information described above raised security concerns under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed

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.

me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted eleven exhibits (Ex. 1–11) and the Individual submitted seven exhibits (Ex. A–G). The Individual testified on his own behalf and presented the testimony of his girlfriend. Hearing Transcript (Tr.) at 10, 31. The LSO offered the testimony of the DOE Psychiatrist. *Id.* at 65.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline G (Alcohol Consumption) as the first basis for its determination that the Individual was ineligible for access authorization. Ex. 1 at 1. “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. The LSO cited the DOE Psychiatrist’s report which determined that the Individual met the diagnostic criteria for Alcohol Use Disorder (AUD), Moderate, in early remission, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. Ex. 1 at 1. In addition, the LSO relied on the Individual’s two arrests – a 2019 arrest when he became aggressive after being intoxicated at a concert and the 2021 arrest for Battery Against a Household Member and Criminal Damage to Property of a Household Member. Finally, the LSO relied on the Individual’s admission that he got intoxicated once or twice a month between August 2021 and November 2, 2021. The LSO’s assertions justify its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c), (d).

The LSO also cited Guideline J (Criminal Conduct) as a basis for its determination that the Individual was ineligible for access authorization. Ex. 1. at 2. “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. The LSO cited the charges of Battery Against a Household Member and Criminal Damage to Property of a Household Member made against the Individual. Ex. 1 at 2. The criminal charges against the Individual justify the LSO’s invocation of Guideline J. Adjudicative Guidelines at ¶ 31(b).

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 Dep’t 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 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.

IV. FINDINGS OF FACT

On November 2, 2021, the Individual was charged with Battery Against a Household Member and Damage to Property of a Household Member. Ex. 1; Ex. 7. On that evening, the Individual had been drinking and got into an argument with his girlfriend. Ex. 7 at 3; Tr. at 11. Two days after the incident, in his report to the LSO, he claimed that when he was taking her phone, her sweater ripped. Ex. 7 at 3. In the same report, the Individual stated that he then called his brother to pick him up to avoid further conflict. Ex. 7 at 3; Tr. at 24-25. Later that night, the Individual called the police to conduct a wellness check because his girlfriend was not answering his text messages and he was concerned about the safety of his child, who was with his girlfriend. Ex. 6 at 6; Tr. at 25. Upon arriving at their shared home where the girlfriend was located, the police officer spoke to the Individual’s girlfriend, who informed him that the Individual had been trying to contact her, but she had not responded due to the incident earlier that evening. Ex. 6 at 6. The Individual’s girlfriend stated that the Individual had seemed intoxicated and upset when she got home from work. *Id.* She admitted at the hearing that she had told law enforcement personnel that the Individual “was pouring [beer] on [the child] because [she] was trying to be the good guy in the situation.” Tr. at 26. However, both the Individual and the girlfriend testified that the cold bottle of alcohol that the Individual had in his hand was simply touching the child’s skin as the Individual bathed her. *Id.* at 25-26, 57. After putting the child to bed, the Individual’s girlfriend locked herself in the master bedroom, leaving the Individual outside. *Id.* at 24. The Individual wanted to use the restroom attached to the master bedroom and broke the wood to the bedroom when attempting to open the door. Ex. 6 at 6. According to the Summons filed in response to the incident, when the Individual’s girlfriend unlocked the door, the Individual threw his girlfriend to the ground and then pinned her to the floor using his body. *Id.* She stated that the Individual’s brother picked him up approximately 30 minutes later. *Id.*

Based on statements to the police regarding the altercation, the Individual was criminally charged. *Id.* The Individual’s girlfriend testified that the day after the incident, she filed for a restraining order, which was granted. Ex. 6 at 6; Tr. at 11, 25. The Individual testified that the charges were later dropped, and his girlfriend indicated that she asked the court to dismiss the restraining order. Tr. at 29, 60.

The Individual’s girlfriend testified that the Individual had previously become intoxicated and combative at a concert in 2019. The Individual testified that on the occasion he became intoxicated at a concert in 2019, he woke up on a gurney carried by paramedics, and because he did not want to go to the hospital, he “just freaked out.” Tr. at 49. Although he could not state with certainty, he believes it was likely that he reduced his alcohol consumption in the following weeks. Tr. at 49-50. The Individual was placed on a Fitness for Duty (FFD) program by his employer following the incident, and during that time, he was obligated to remain sober and was randomly tested on a

weekly basis. Tr. at 50. The Individual did not provide copies of these alcohol and drug test results. *Id.* He testified that he successfully completed the FFD program in 2019. Tr. at 50. The girlfriend further stated that, following the 2019 incident, the Individual began consuming less alcohol. Tr. at 13. She stated that his “alcohol consumption was for special occasions, mainly visiting with family.” Tr. at 12. The Individual’s girlfriend estimated that, in early 2021, the Individual would typically consume alcohol “a couple times a week[,]” and that they would each drink approximately two to three beers each time. *Id.* at 13. She went on to state that the Individual’s alcohol consumption increased after several of his family member passed away, but that his consumption did not pose any difficulties for the couple until November 2, 2021. *Id.* at 12. The girlfriend testified that when the Individual’s alcohol consumption increased, he also began consuming “a little bit of liquor[.]” *Id.* at 13. However, she stated that his alcohol consumption had not increased to the amount he was drinking around the time of the 2019 concert incident. *Id.* at 13-14. Accordingly, she stated, she had not asked the Individual to seek assistance for his consumption prior to November 2. *Id.* at 12. She indicated that when she saw the Individual after the November 2 incident, he had expressed feelings of regret and they both decided they wanted to make changes in their lives and reduce their alcohol consumption. *Id.* at 14-15, 25. She confirmed that the Individual has not consumed alcohol since November 2, 2021, but that they do keep alcohol in the home to accommodate guests. *Id.* at 15. The Individual’s girlfriend confirmed that since November 2021, she has attended family functions with the Individual where alcohol had been consumed, but that she did not witness the Individual consume any alcohol. *Id.* at 23.

The Individual claims to have consumed three to four hard seltzers prior to the fight with his girlfriend on November 2, and a quarter of a pint of vodka after the fight. Ex. 9 at 4. The Individual has noted that he drank more heavily from August 1, 2021, to November 2, 2021, because of stress related to the death of five family members. *Id.*; Tr. at 51-52. He believes that alcohol has a negative effect on his personal life because it causes him to become irritable and argumentative, and to exercise poor judgment. Ex. 9 at 4. The Individual enrolled in an intensive outpatient program (IOP) on December 15, 2021, which has caused him to acknowledge that he has a problem with alcohol.² Ex. 9 at 4.; Tr. at 37-38. The Individual testified that, initially, his enrollment in the IOP was a tactic to get his girlfriend to drop the restraining order, but he soon realized it was good for him. Tr. at 34-38. At the time that he started the IOP, the Individual also began attending Alcoholics Anonymous (AA).³ Ex. A; Tr. at 41. The Individual could only complete 13 weeks of the full 16 weeks of the IOP, because of his erratic work schedule. Ex. 2 at 2; Tr. at 18, 33-34. The group counselor suggested other programs that could meet the Individual’s needs, but none of

² The Individual testified that the IOP also consisted of discussions regarding triggers, each individual’s reasons for drinking alcohol, and improving partnerships. Tr. at 35-36. The Individual also participated in hour-long individual counseling sessions. *Id.* at 36. As a result of these sessions and discussions, he learned how to deal with the trauma of his past while remaining abstinent. *Id.* at 36-37. He testified that aside from stress associated with this hearing, his stress levels are “pretty much nonexistent[,]” and that he has learned techniques to cope with his stress. *Id.* at 53-54.

³ The Individual’s girlfriend testified that the Individual had been attending virtual AA meetings soon after the November 2 incident, before attending in-person meetings. Tr. at 16-17. She stated that he would attend virtual meetings approximately two to five times a week. *Id.* at 17. At the time of the hearing, she testified, the Individual had been attending in-person AA meetings for “a few months[.]” at an approximate rate of two to three times a week. *Id.* at 16, 18. The Individual’s testimony reflects that the Individual began keeping a personal log of his in-person AA attendance in June 2022, after the initial prehearing conference the parties held in this case. *Id.* at 44-45; *see also* Ex. A. The Individual also testified that he continues to attend AA in person and online, but he attends the online AA meetings while he is at work. Tr. at 42.

those programs could help the Individual, either because they would not take his insurance, or his insurance would not cover the program because he had been sober for over 100 days. Ex. 2 at 3; Tr. at 18-19, 40. The Individual testified, and his girlfriend confirmed, that he finally found a suitable program, a regular outpatient program (ROP), and was able to start in May 2022. Ex. G; Tr. at 19-20, 39-41, 46. The Individual testified that when he finally found the ROP, he was informed there would be a three- to five-week waiting period. Tr. at 41. Through the ROP, the Individual attends individual counseling sessions once a week and another two-hour group session that same day. Ex. G; Tr. at 45-46. He plans to continue in the ROP for as long as he can. *Id.* at 46-47. After he stopped attending the IOP because of his work schedule, he continued with AA and also attended several self-help meetings at the church he attends. Tr. at 19, 41, 54-55. He discontinued attending the self-help meetings at his church because it failed to directly address his issues and occasionally conflicted with his work schedule. *Id.* at 55. The Individual and his girlfriend also attended a few counseling sessions conducted by the pastor of their church. *Id.* at 28, 56.

The Individual testified that he has been abstinent since November 3, 2021, and that he intends to remain sober, and he presented evidence of monthly negative phosphatidylethanol (PEth) testing beginning in April 2022 and continuing through July 2022. Ex. C; Ex. D; Ex. E; Ex. F; Tr. at 39, 48-49. In addition, the Individual presented negative, random alcohol and drug tests, which included alcohol testing in the form of the Ethyl Glucuronide (EtG) tests, from the IOP. Ex. 2 at 7-11; Tr. at 32-33. The dates of the EtG tests were December 7, 2021, February 4, 2022, February 16, 2022, and February 28, 2022.⁴ The Individual also submitted a personal log of fellow attendees' signatures from in-person AA meetings beginning in June 2022.⁵ Ex. A. He stated that he was not able to get an attendance log from the online AA meetings that he attends. Tr. at 47-48; Ex. B (depicting an exchange of text messages that indicate he asked for an attendance log, but it was unavailable). The Individual's girlfriend testified that the Individual usually spends his time at home in the evenings but leaves on occasion to attend AA meetings. Tr. at 16. Also, she knows when he attends the online AA classes because he uses the computer in their home office, and it is the only time either of them uses the computer. *Id.* at 23.

The Individual testified that he initially found AA helpful because "it got [him] back on that...sober mindset[.]" *Id.* at 42. He stated that he feels that the Twelve Steps are not something to be rushed, and accordingly, he feels that his AA attendance will continue to be a feature for the rest of his life, and he plans on attending meetings three times a week for the foreseeable future. *Id.* at 42-43. He is still on the first step at AA, which is to admit that he is powerless over alcohol, because he was told not to jump steps and he does not feel powerless over alcohol. *Id.* at 58. He stated that he "[does not] know if [he is] sold on" the religious aspects of AA. *Id.* at 59. The Individual also stated that he does not have a sponsor, but he can turn to his brother if he is feeling like he needs to consume alcohol. *Id.* at 59-62. The Individual does not generally think about consuming alcohol and engages in a range of hobbies to keep himself busy. *Id.* at 62-63. Further, the Individual's girlfriend testified that since the Individual began abstaining from alcohol, their

⁴ The Individual testified that the IOP would contact him and indicate that he needed to do the urine test that day prior to a specific time. Tr. at 33.

⁵ The log only began after the Individual, the DOE Counsel, and the Administrative Judge held a preliminary meeting to discuss what needed to be addressed at the hearing. At that time, the DOE Counsel suggested it would of probative value to have a log of AA attendance.

“relationship has improved[.]” and that they accomplish their goals as a family. *Id.* at 21. She also stated that “to [her] knowledge it [does not] seem like [the Individual] wants to drink ever again.” *Id.* at 21.

At the February 2022, evaluation, the DOE Psychiatrist diagnosed the Individual with Alcohol Use Disorder (AUD), Moderate, in early remission. Ex. 9 at 8. According to the DOE Psychiatrist’s report, the Individual met five of the criteria to warrant such a diagnosis including showing a craving for alcohol, using alcohol in larger amounts than intended, continuing to use alcohol despite the negative interpersonal effects of his alcohol use, continuing to use alcohol despite being told his liver was affected, and trying to cut down on his alcohol use. *Id.* The DOE Psychiatrist stated that the Individual would show evidence of rehabilitation if he completed his outpatient program, participated in aftercare or outpatient alcohol use counseling, and attended regular self-help meetings. *Id.* at 9. The Psychiatrist also recommended that the Individual should be monitored by random alcohol testing, undergo monthly PEth testing and abstain from any alcohol use for a full year. *Id.*

At the hearing, the DOE Psychiatrist confirmed the diagnosis he had made in the report. Tr. at 66. He stated that he is not surprised that the Individual has problems with the religious aspects of AA, as some people do. *Id.* at 65. The DOE Psychiatrist continued that the Individual still has the diagnosis of AUD despite being sober since November 2021. Since the Individual has less than twelve months of sobriety, the DOE Psychiatrist determined, he is still in early remission. *Id.* at 66. The DOE Psychiatrist also asserted that the likelihood of an individual’s return to consuming alcohol “flattens out” between six and twelve months, meaning that most individuals who relapse do so within the first six months of sobriety. *Id.* at 66-67. Additionally, the DOE Psychiatrist testified, the Individual has a good support system and has participated in treatment programs and AA, showing the rehabilitation as recommended. *Id.* at 67. Even though the DOE Psychiatrist specified that he should complete the IOP, and the Individual only completed 13 or the 16 weeks due to a work conflict, the DOE Psychiatrist remarked that most IOP programs are 12 weeks. Further, he found it positive that the Individual found another program. He continued that the Individual is “showing rehabilitation efforts that I requested – or recommended.” *Id.* at 67.

Based on the aforementioned facts and the Individual’s stable living situation, the DOE Psychiatrist felt that the Individual’s prognosis was good. *Id.* at 68-69.

V. ANALYSIS

The LSO raised security concerns under Guidelines G and J. The concerns were properly raised by the LSO based on the Individual’s diagnosis of AUD, Moderate, in early remission; his two alcohol-related arrests; and his admission that he was becoming intoxicated once or twice a month for three months prior to the November 2, 2021, arrest.

A. Guideline G

The Adjudicative Guidelines provide that conditions that could 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; 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 find that the mitigating conditions (b), (c), and (d) of Guideline G are applicable in this case. The record unequivocally establishes that the Individual recognized that his alcohol use was maladaptive. Acting in accordance with this realization, the Individual began abstaining from alcohol on November 3, 2021, and voluntarily submitted to PEth testing beginning in April 2022 to provide evidence of his sobriety. The December 7, 2021, and February 4, 2022, February 16, 2022, and February 28, 2022, random tests, which included an EtG test, that his employer administered also buttress the Individual's assertions of ongoing sobriety. I found the Individual to be truthful and honest in his testimony. It was apparent to me that he has been attempting to satisfy the DOE Psychiatrist's recommendations. As soon as he received the DOE Psychiatrist's report, he began getting the PEth tests. His random drug and alcohol tests, performed by the IOP with little warning when they would occur, demonstrate his sobriety. Further, the Individual's girlfriend testified that they had both stopped consuming alcohol and only keep alcohol in their house for guests. The record also indicates that the Individual enrolled in an IOP in December 2021 and completed thirteen weeks of the program before it conflicted with his work schedule. Although he started attending the IOP as a tactic to get his girlfriend to drop the restraining order, he soon began to realize that it was good for him. As he desired continued treatment, the Individual began searching for another program, but found that he was blocked by the fact that his insurance would not cover several programs because his abstinence had been longer than 100 days at that point. The Individual's girlfriend confirmed his testimony. He found a program that would accept him but had a three- to five-week waiting list. The Individual began attending the ROP in May 2022, which includes one-on-one counseling, and he stated that he intends to continue attending the program for as long as he is able. The DOE Psychiatrist asserted that most IOP programs are 12 weeks. The Individual completed 13 sessions of the initial IOP he chose. The credible testimony also established that the Individual began attending AA meetings around the time he began attending the IOP, and that he continues to regularly attend AA meetings. The Individual also enjoys a strong support system in his brother and girlfriend, has learned how to manage stressors, and unequivocally stated that he intends to remain sober. Importantly, the DOE Psychiatrist

acknowledged that the Individual had implemented his recommendations and determined that the Individual was in early remission. Further, the DOE Psychiatrist testified that the Individual “is showing rehabilitation efforts that I requested – or recommended, I should say, in the evaluation.” Tr. at 67. Based on the aforementioned facts, the DOE Psychiatrist determined that the Individual’s prognosis was good. Accordingly, I find that the Individual has met the mitigating conditions set forth under Guideline G at ¶ (b)-(d).

B. Guideline J

Conditions that could mitigate security concerns under Guideline J include:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person’s life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32(a)–(d).

The Individual’s criminal behavior was a direct result of his maladaptive alcohol use. “Once the Individual resolves the security concerns raised by his use of alcohol, the associated [Guideline J] concerns pertaining to his alcohol-related arrests will also be mitigated.” *Personnel Security Decision*, OHA Case No. PSH-13-0062 at 7 (2013).⁶ As the Individual has remained sober since November 3, 2021 and has diligently endeavored to obtain appropriate treatment for his maladaptive alcohol use, I conclude that adequate time has passed since the criminal behavior outlined in the Summary of Security Concerns occurred and that it happened under such circumstances that it is unlikely to recur. Therefore, I find that the Individual has mitigated the Guideline J concerns pursuant to the mitigating factor at ¶ 32(a).

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and J 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 brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and

⁶ Decisions issued by OHA are available on the OHA website located at <http://www.energy.gov/OHA>.

would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should 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