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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 3, 2022)	Case No.: PSH-22-0098
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Issued: October 14, 2022

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. In early December 2021, the Individual properly self-reported that he suffered from a "blackout syncope episode" while receiving work-related training. Exhibit (Ex.) 6 at 2. He disclosed that this episode was likely caused by excessive alcohol consumption. *Id.* The Local Security Office (LSO) requested that the Individual complete a Letter of Interrogatory (LOI), which the Individual signed and submitted on January 21, 2022. Ex. 8. As a result of the information provided, the LSO instructed the Individual to undergo a psychiatric evaluation conducted by a DOE-consultant Psychiatrist (DOE Psychiatrist). Ex. 9. In forming his opinions, the DOE Psychiatrist relied on the information he obtained in the clinical interview with the Individual, as well as his review of the Individual's Personnel Security File (PSF) and the *Diagnostic Statistical Manual of Mental Disorders, 5th Edition* (DSM-V). *Id.* at 2. The DOE Psychiatrist also contacted the Individual's treating providers and the employer's office of Occupational Medicine (OM). *Id.* at 7. On March 6, 2022, the DOE Psychiatrist issued a Psychiatric Assessment (report) containing his opinions, which included a diagnosis of Alcohol

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.

Use Disorder (AUD), Severe, in Early Remission and without adequate evidence of rehabilitation or reformation. *Id.* at 9.

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. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the 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 employer's Employee Assistance Program counselor (EAP counselor). He also submitted nine exhibits, marked as Exhibits A1 through D3. The DOE Counsel submitted eleven exhibits marked as Exhibits 1 through 11 and presented the testimony of the DOE Psychiatrist.

II. Notification Letter and Associated Concerns

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance. That information pertains to 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 at work . . . regardless of whether the individual is 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(b) and (d). With respect to Guideline G, the LSO alleged that: (1) the Individual was evaluated by the DOE Psychiatrist on February 24, 2022, who concluded in a March 6, 2022, report that the Individual met the diagnostic criteria for AUD, Severe, in Early Remission without adequate evidence of rehabilitation or reformation pursuant to the DSM-V; (2) the Individual experienced a blackout syncope episode on November 11, 2021, as a result of excessive alcohol use, having consumed approximately ten, 12-ounce beers; and (3) the Individual's alcohol consumption increased from approximately late June 2021 to November 11, 2021, and ultimately resulted in the Individual consuming ten, 12-ounce beers a night, and further, the Individual would have to consume three, twelve-ounce beers in three hours to achieve a state of intoxication. Ex. 1 at 1. The foregoing justifies the LSO's invocation of Guideline G.

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).

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.

IV. Findings of Fact and Hearing Testimony

As indicated above, the Individual reported a "blackout syncope episode" that he suffered while sober due to excessive alcohol consumption. Ex. 7 at 1; Ex. 6 at 2. In his testimony, the Individual indicated that the episode occurred while he was in a training class and that he fell from his chair. Tr. at 14. The Individual suffered convulsions and a laceration as a result of this episode and was taken to the hospital, where he was diagnosed with AUD and hospitalized for two days. Ex. 9 at 4. He testified that it was at the hospital that he "[could not] dispute that [he] had a problem with alcohol." Tr. at 14. In his LOI, the Individual indicated that the night before the syncope episode on November 11, 2021, he had consumed approximately ten, 12-ounce beers. Ex. 8 at 1, 5; Ex. 9 at 4-5. The Individual indicated in his LOI that, from June 2021 to November 2021, he was consuming approximately ten, 12-ounce beers per night. Ex. 8 at 3; Ex. 9 at 4. Prior to that, the Individual indicated that he was consuming approximately four, 12-ounce cans of beer every night. Ex. 8 at 3. He also stated in his LOI that he needed to consume three, 12-ounce beers within a three-hour timespan to become intoxicated. Ex. 8 at 4; Ex. 9 at 4.

In late November 2021, the Individual was instructed to participate in a Fitness for Duty (FFD) evaluation at the behest of his employer. Ex. 7 at 4-5; Ex. 9 at 4. The Individual stated in his LOI that his employer's OM concluded that the episode he suffered on November 11 was likely the result of his alcohol consumption. Ex. 8 at 1; *see also* Ex. 9 at 4. Accordingly, as the Individual indicated in the LOI, he enrolled in his employer's EAP as well as an intensive outpatient treatment program (IOP), receiving both individual and group therapy. Ex. 8 at 1, 5-6; Ex. 9 at 4. In his LOI, the Individual indicated that he began attending the IOP four times per week on December 6,

2021.² Ex. 8 at 1; Ex. 9 at 4, 6. The Individual testified that, at the time he began attending the IOP, he also started attending the EAP alcohol awareness class. Tr. at 44. The IOP taught him about why he was consuming alcohol, and the alcohol awareness class taught him about the “physiological and psychological impacts of alcohol[.]” Tr. at 44-45. He also stated in his LOI that, in the future, he intended to consume “no more than [three] drinks a week.” Ex. 8 at 6.

The Individual stated in his LOI, in his self-report, and in his evaluation with the DOE Psychiatrist that he has been abstinent from alcohol since November 21, 2021. Ex. 8 at 3, 4; Ex. 6 at 2; Ex. 9 at 5. However, at the hearing, he indicated that he could not remember an exact date, but that he knew his sobriety began in late November 2021. Tr. at 48. A letter submitted by his individual therapist indicates that the Individual has been sober since November 21, 2021. Ex. D1.

The DOE Psychiatrist stated in his report that the Individual was still in the FFD process, attending an alcohol awareness class, seeing an individual therapist, but not attending any self-help meetings. Ex. 9 at 4-5. The Individual told the DOE Psychiatrist, and confirmed in his testimony, that his alcohol consumption had increased when his work responsibilities changed, and his stress levels increased in May 2021. Ex. 9 at 5; Tr. at 13. The Individual told the DOE Psychiatrist that he had previously been “intoxicated most evenings[.]” and although he did report to work in a hungover state on “a couple” of occasions, he never reported in an intoxicated state. Ex. 9 at 5. The Individual denied any cravings for alcohol at the time of the evaluation and told the DOE Psychiatrist that he did not feel as though he was an alcoholic. Ex. 9 at 5. The Individual also told the DOE Psychiatrist that he wanted to “return to social drinking.” Ex. 9 at 5. The Individual stated that he had completed the IOP program and found it helpful. Ex. 9 at 6. The Individual also disclosed to the DOE Psychiatrist that his individual therapy consisted of counseling every other week. Ex. 9 at 6. A Phosphatidylethanol (PEth) blood test was administered in conjunction with the psychological evaluation, the result of which was negative. Ex. 9 at 8. A negative PEth test “provides medical evidence that the [individual] has not been drinking in significant or heavy amounts of alcohol with days or up to a few weeks of the date of the specimen collection.” Ex. 9 at 8.

The DOE Psychiatrist was told by the Individual’s individual therapy provider, whom the Individual has been seeing every other week since October 2021,³ that the Individual had performed well in the IOP and that, although she did not diagnose the Individual with AUD, alcohol was discussed in their sessions. Ex. 9 at 7; Ex. D1. The therapist also submitted a letter of support indicating that she noted the negative impacts alcohol has had on the Individual but that the Individual has experienced “breakthroughs” and consistently attends therapy sessions. Ex. D1. The individual therapist also noted that the Individual has held himself accountable and that the Individual participates in activities that support his continuing abstinence. Ex. D1. The EAP counselor confirmed to the DOE Psychiatrist at the time of the evaluation that the Individual had completed the alcohol awareness class. Ex. 9 at 7. She also stated that the Individual had discontinued attending weekly group sessions. Ex. 9 at 7. The FFD provider informed the DOE

² At the time the Individual completed his LOI, the Individual expected that he would complete treatment in early February 2022. Ex. 8 at 1, 6. The DOE Psychiatrist’s report confirmed that the IOP concluded on February 4, 2022. Ex. 9 at 7.

³ The Individual testified that he began receiving individual therapy to address the stress he was feeling. Tr. at 45. He indicated that his alcohol consumption had already increased by that point. Tr. at 45.

Psychiatrist that the IOP the Individual completed was six weeks in duration, that he did not attend Alcoholics Anonymous (AA) or any other self-help group,⁴ and that, as a result, she extended his FFD participation requirement and felt his prognosis was poor at that time. Ex. 9 at 7. The Individual's IOP provider told the DOE Psychiatrist that the Individual was compliant with the program and confirmed that the Individual did not attend any self-help meetings while attending the IOP. Ex. 9 at 7. The IOP provider indicated that the Individual's prognosis was good and that the Individual decided to remain abstinent from alcohol upon discharge from the IOP. Ex. 9 at 7.

After the evaluation, the DOE Psychiatrist diagnosed the Individual with AUD, Severe, in Early Remission, without adequate evidence of rehabilitation or reformation. Ex. 9 at 9. The DOE Psychiatrist recommended that the Individual continue receiving outpatient treatment with his therapist every other week. Ex. 9 at 9. He also recommended that the Individual attend a self-help group on a weekly basis through December 6, 2022, and submit to random alcohol testing administered by his employer's OM. Ex. 9 at 9. The DOE Psychiatrist further stated that the Individual should take monthly PEth tests at his own expense, attend his employer's "[OM EAP] for those who completed the Alcohol Awareness class[.]" and remain abstinent from alcohol for one full year from the start of his treatment. Ex. 9 at 9.

The Individual began attending an online recovery program in March 2022, and, since then, the Individual has attended approximately fifteen virtual sessions, including introductory sessions that are not recorded. Exs. C1, C2; Tr. at 46. The Individual testified that the online recovery program is "an excellent complement" to the individual therapy he has been receiving since October 2021. Tr. at 19; Ex. D1. The program assists him with developing coping skills and managing stressors and triggers that would "cause [him] to use maladaptive behavior to cope[.]" Tr. at 20. The Individual testified that the online recovery program has taught him techniques to manage his anxiety and he enjoys attending the meetings. Tr. at 50, 52.

The Individual also testified that he plans on remaining in individual therapy "indefinitely[.]" as it allows him to monitor his own progress and stay "on course." Tr. at 47. He feels his individual therapist is his primary support, and he also relies upon the online recovery program and the group conducted by the EAP counselor. Tr. at 48. He feels that his abstinence will last because the syncope episode taught him that his alcohol consumption was adversely impacting his health and his consumption was "no longer sustainable." Tr. at 49. He stated that he does not intend to drink alcohol again,⁵ he engages in individual hobbies and group hobbies with friends, and he recently enrolled in graduate school. Tr. at 49. The Individual also testified that, since abstaining from alcohol, his sleep has improved, he has lost weight, his overall stress levels have reduced, and he has been able to attend social events without consuming alcohol without any issue. Tr. at 53. The

⁴ The Individual clarified in his testimony that he had attended a few AA meetings, but that these meetings "[did not] appeal to [him,]" as they failed to address the various reasons why individuals consume alcohol. Tr. at 46.

⁵ The Individual testified that he had just begun his recovery when he stated he wanted to return to social drinking. Tr. at 53. Since then, he has been able to give the matter greater thought and has decided to remain abstinent. Tr. at 53.

record contains the results of several PEth, Ethyl Glucuronide (EtG), and breath alcohol content (BAC) tests to support his stated abstinence. Ex. A1; Ex. B1; Ex. B2.⁶

The EAP counselor testified that she first met the Individual on November 18, 2021, when he reported to the OM clinic. Tr. at 23. She indicated that she spoke to the Individual several times the same month and would see him in the weekly alcohol awareness class as well as the weekly group meetings that she conducts. Tr. at 24. She indicated that she has seen a “significant change” in the Individual, in that he has gained an understanding of his stressors and how he was using alcohol to cope, and she described the Individual as being an honest participant. Tr. at 25-26, 30. She indicated that the Individual was initially fearful in seeking assistance, but his perspective changed in the spring of 2022.⁷ Tr. at 26. The EAP counselor stated her belief that the Individual has benefitted from his participation in the weekly group she conducts, and she recommended that the Individual continue with individual therapy and the online recovery program he attends. Tr. at 27-28. She stated her belief that the Individual has developed a good support system, and she also confirmed that although the Individual had initially failed to continue receiving assistance from the EAP counselor after he completed his alcohol awareness class in late January 2022, he ultimately returned to attend her group sessions in late March 2022. Tr. at 29, 32, 40. She described his participation in the group as “satisfactory.” Tr. at 41. She feels that the Individual should remain abstinent. Tr. at 37.

The record includes a letter from the FFD provider that states she has been working with the Individual since December 1, 2021, and that, although she initially had concerns about his prognosis, she has since noted the Individual’s increased participation and that his anxiety management “has been tremendous.” Ex. D3. She opined that “his prognosis for continued success is positive.” Ex. D3.

At the hearing, after listening to the testimony provided and reviewing all of the evidence, the DOE Psychiatrist testified that the Individual would still be considered in “early remission” because the Individual had been abstinent less than a full twelve months. Tr. at 63. The DOE Psychiatrist also stated that the Individual “does seem more committed to his treatment[]” and that he has complied with the treatment recommendations made in the report, notwithstanding the fact that he had been abstinent less than twelve months. Tr. at 65-66. The DOE Psychiatrist opined that, at the time of the hearing, the Individual had shown adequate rehabilitation. Tr. at 66.

⁶ The Individual voluntarily submitted to six PEth tests spanning from May 2022 to August 2022, most of which were negative. Exs. A1, A2; Tr. at 17. The first two results, according to the report, indicated “abstinence or light alcohol consumption.” Ex. A1. The DOE Psychiatrist noted that the laboratory that processed the specimens used a different “cutoff” threshold than the one used for the PEth test administered in conjunction with the psychiatric evaluation. Tr. at 61-62. When the Individual discussed the matter with the FFD provider, he was told that alcohol-based mouthwashes may cause such outcomes. Tr. at 16. The Individual testified that he discontinued using his alcohol-based mouthwash. Tr. at 16. The DOE Psychiatrist testified that the aforementioned positive results were so low that they would have come back as “negative” if the specimens had been processed by the laboratory that he is accustomed to using. Tr. at 63. The Individual was also subject to approximately 33 random BAC tests from early December 2021 to late August 2022, all of which were negative. Ex. B1; Tr. at 18. The record also contains evidence that the Individual submitted to approximately 30 EtG tests, another way to detect alcohol, from early December 2021 to August 2022, all of which were negative. Ex. B2; Tr. at 18.

⁷ The Individual confirmed in his testimony that this was about the time he began shedding the notion that getting help would put his access authorization at risk of revocation. Tr. at 46.

V. Analysis

As noted, Guideline G (Alcohol Consumption) provides 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. 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.

The record demonstrates that the Individual recognized his alcohol use was maladaptive after learning that the syncope episode was likely caused by excessive alcohol consumption. The record also contains evidence of the significant actions he has undertaken to overcome the problem, including remaining abstinent in accordance with treatment recommendations. The Individual has been abstinent since November 2021, which is supported by a series of negative PEth, EtG, and random BAC tests. He successfully completed an IOP and participated in an alcohol awareness course through his employer’s EAP. He has been attending an online recovery program, engaging in group therapy conducted by his EAP counselor, and receiving regular therapy with his Individual therapist for approximately one year. Furthermore, the record demonstrates that the Individual has learned to cope with the very work stressors that triggered his maladaptive alcohol consumption, and he acknowledged that the benefits he has experienced incentivize him to remain abstinent. Further still, the FFD provider opined that the Individual’s prognosis is positive—echoing the sentiment of the IOP provider. Lastly, the DOE Psychiatrist concluded that the Individual, by remaining abstinent and complying with treatment recommendations, has demonstrated rehabilitation. Accordingly, I find that the Individual has resolved the Guideline G concerns.

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 brought forth sufficient evidence to resolve the security concerns set forth in the SSC. Accordingly, the Individual has demonstrated that granting him a 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 be restored.

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

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals