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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: July 19, 2023)	Case No.: PSH-23-0112
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Issued: October 10, 2023

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. On October 10, 2022, at 7:43 a.m., the Individual was selected for a random breath alcohol test (BAT) by his employer, and the Individual tested positive for alcohol consumption at a level of 0.037 g/210L. Exhibit (Ex.) 6 at 19; Ex. 8 at 42. The Individual admitted to his employer that, the night before the test, he consumed "3.5 cans of 12 oz. [sic] beers" between 5:00 p.m. and 9:30 p.m. Ex. 5 at 16. Following the positive BAT, the Individual's employer referred him to a Substance Abuse Professional (SAP), to undergo an assessment and evaluation of his alcohol consumption. Ex. 6 at 21. In March 2023, the Local Security Office (LSO) issued a Letter of Interrogatory (LOI) to the Individual, which sought additional information related to the Individual's alcohol consumption. Ex. 7. Because of security concerns identified in the Individual's LOI responses, the LSO referred the Individual for a psychological evaluation. Ex. 3 at 10.

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.

In April 2023, the Individual underwent an evaluation by a DOE consultant psychologist (DOE Psychologist), who issued a report of her findings (the Report). Ex. 8. Based on the evaluation, the DOE Psychologist diagnosed the Individual with Alcohol Use Disorder, Moderate. Ex. 8 at 46. The DOE Psychologist also opined the Individual did not demonstrate adequate evidence of rehabilitation or reformation. *Id.* at 47.

Due to the unresolved security concerns related to the Individual's alcohol consumption, the LSO informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In a Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1.

In June 2023, the Individual requested an administrative 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), I took testimony from five witnesses: the Individual, his brother, his sponsor, his counselor, and the DOE Psychologist. *See* Transcript of Hearing, Case No. PSH-23-0112 (Tr.). The Individual submitted 33 exhibits, marked as Exhibits A through GG. Counsel for the DOE submitted ten exhibits, marked as Exhibits 1 through 10.

II. The Summary of Security Concerns

As previously mentioned, the Notification Letter included the SSC, which sets forth the derogatory information that raised concerns about the Individual's eligibility for access authorization. The SSC informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1. Conditions that could raise a security concern under Guideline G include: "alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition" and a 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." Adjudicative Guidelines at ¶ 22(b) and (d). In citing Guideline G, the LSO relied upon the opinion of DOE Psychologist that the Individual has Alcohol Use Disorder Moderate, without adequate evidence of rehabilitation or reformation." Ex. 1 at 5. The LSO also relied upon the Individual's positive BAT, at a level of .037 at 7:30 am, while at work, and the Individual's admission in the LOI that he consumed four 12-ounce beers and was intoxicated the night before the BAT. *Id.*; Ex. 7 at 29. Based on the conduct noted above, I find 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 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 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

A. Findings of Fact

As a result of his positive BAT on October 10, 2022, the Individual was placed on administrative leave by his employer. Ex. 5. On October 12, 2022, the Individual was evaluated by the SAP. Ex. 6 at 19. After the evaluation, the SAP issued a report of his findings (the SAP Report), which indicated that, the night before the BAT, the Individual consumed “3.5 cans of 12 oz [sic] beers” between 5:00 p.m. and 9:30 p.m. *Id.* at 21. The Individual went to bed at 10:15 p.m. and arrived at work the next day, at 5:20 a.m. to start his day. *Id.* The Individual told the SAP that, on average, he consumes “maybe one or two 12 oz. beers a week” and that “having beer in the house can be tempting for [him] to drink more, so [he doesn’t] usually keep it in the house.” *Id.* at 22. The SAP diagnosed the Individual with Alcohol Intoxication, Without Use Disorder, and recommended the Individual complete a 20-hour online drug and alcohol education course and successfully pass the course examination. *Id.* at 19, 22. The SAP also recommended the Individual “provide verification of the course completion and passing of the examination.” *Id.* at 22.

On October 27, 2022, the Individual underwent a follow-up evaluation by the SAP, during which the SAP determined the Individual “successfully complied” with his recommendations, as the Individual completed the drug and alcohol education course and passed the course examination. Ex. 6 at 22. The SAP Report indicates the SAP recommended to the Individual’s employer that, as it considered the Individual’s fitness for duty, the Individual must “first produce a negative DOE level Return-To-Duty drug test and breathalyzer prior to returning to a safety-sensitive position.” *Id.* at 23. The SAP also recommended to the DOE that the Individual be subjected to a “Testing Plan” of “at least six unannounced and observed DOE level drug tests and breathalyzers per year, and over the next year; and with negative testing results on each separate specimen.” *Id.*

In the March 2023 LOI, the Individual reported that, before the October 2022 BAT, he consumed “about four 12 oz. beers” at home, from about 4:30 p.m. to “almost 11pm.” Ex. 7 at 29. The Individual reported that, the day before the test, he “had been on vacation,” “wasn’t really thinking about going to work,” and did not think he would test positive for alcohol the next day. *Id.* The

Individual also reported that he understands his employer's policy regarding reporting to work under the influence of alcohol and that his employer requires that he does not consume alcohol eight hours before reporting to work. *Id.* at 30. The Individual reported that the last time he consumed alcohol was during the Christmas holiday weekend in 2022, during which he consumed two beers on Friday, one beer and "one glass of wine (about 8 ounces)" on both Saturday and Sunday, and one beer on Monday. *Id.* at 33.

During the April 2023 psychological evaluation, the Individual told the DOE Psychologist that, the night before the BAT, he consumed "four to five 12-ounce beers . . . between 4:30 and 11 PM (a span of 6.5 hours)." Ex. 8 at 44. The DOE Psychologist told the Individual that, "based on his stature and the amount of alcohol he reported drinking over the course of more than six hours, his [Blood Alcohol Content (BAC)] was likely 0.0g/210L at the time he stopped drinking, more than eight hours prior to his alcohol level being measured at 0.037 g/210L." *Id.* at 44. The DOE Psychologist also told the Individual that "the chances of [his BAT results] resulting from his reported consumption pattern was nearly impossible." *Id.* The Individual explained the discrepancy by stating he "consumed four light beers prior to 11:00 the night prior" to the BAT and "did not eat much that day." *Id.* The Individual told the DOE Psychologist that the last time he consumed alcohol was December 2022, during which he consumed "a moderate amount of alcohol several consecutive days while visiting family during Christmastime." *Id.*

After the evaluation, the Individual underwent a PEth laboratory test to detect recent alcohol consumption. Ex. 8 at 44. The results of the Individual's PEth test were positive at a level of 1004 ng/mL, which the DOE Psychologist determined was "highly inconsistent with [the Individual's] report that he has not consumed any alcohol in more than three months," and were "indicative of excessive alcohol use in the month leading up to this evaluation." *Id.* at 45. The DOE Psychologist diagnosed the Individual with Alcohol Use Disorder (AUD), Moderate, without adequate evidence of rehabilitation or reformation. *Id.* at 46–47. The DOE Psychologist recommended that the Individual abstain from alcohol for at least 12 months. *Id.* at 47. The DOE Psychologist also recommended that the Individual participate in Alcoholics Anonymous (AA) at least once per week, or an alternative to AA, such as "SMART, Motivation-Enhanced Therapy, or 12-step Facilitation Therapy. Strictly online programs are not acceptable." *Id.* The DOE Psychologist also recommended that the Individual undergo, "breathalyzer tests conducted at random . . . supported by at least two PEth tests over a 12-month period." *Id.*

B. Hearing Testimony

The Individual's sponsor testified that he met the Individual during an AA group meeting at an inpatient alcohol treatment program two months prior to the hearing. Tr. at 12. He stated the Individual attends the group meetings every Wednesday. *Id.* He testified that he became the Individual's sponsor about a month before the hearing. *Id.* at 13. He stated the Individual attended all his meetings, except one, during which he was sick. *Id.* at 15. He stated the Individual actively participates in the group meetings. *Id.* at 34. He stated the Individual is currently on step four, or step five, of the AA program. *Id.* at 17. He stated that he meets with the Individual weekly and sends him daily text messages using a phone app that tracks a person's sobriety. *Id.* at 27–28. He also stated the Individual recently received his 60-day sobriety chip. *Id.* at 34.

The Individual's therapist testified that he had two sessions with the Individual in June 2023, before the Individual started treatment at an inpatient alcohol treatment program. Tr. at 39. He stated he is scheduled to meet with the Individual again in October, when the Individual completes his Aftercare at the inpatient alcohol treatment program. *Id.* He stated that the Individual minimized his level of alcohol consumption to the DOE Psychologist, as the results of his April 2023 PEth test revealed he had consumed more than he reported. *Id.* at 39–40. He stated the Individual has “a very typical alcoholic story,” in that he never had severe consequences or issues at work; he did not have any problems in his social life; and he kept his drinking secret from his church community. *Id.* at 40. He stated that when the Individual came to see him, the Individual “recognized that he was an alcoholic and needed help.” *Id.* at 43.

He stated that, after he assessed the Individual, the “main thing” that showed up was alcoholism. Tr. at 42. He stated the Individual believes he has been successful in his sobriety. He detailed that, because the Individual's alcohol consumption did not cause “problems in his life” and occurred at home when he was alone, it is possible that the Individual's opinion about alcohol consumption could change again. *Id.* at 43–44. The Individual did not drink with other people, so he does not have to avoid situations where he is around others who are drinking. *Id.* at 44. He stated that a “positive prognostic factor” is that the Individual has a supportive family, which will act as a “barrier to relapse,” and he does not have to hide his drinking, which he was doing in the past. *Id.* at 44–45. He stated that, if the Individual continues what he is currently doing, *i.e.*, attending AA and being involved with the steps, working with a sponsor, engaging in individual therapy, and talking at meetings, he is doing all the things that promote recovery. *Id.* at 47. He stated that, assuming the Individual goes back to work, he would be subject to further testing, which would help him stay sober. *Id.* at 51.

The Individual's brother testified he did not know the Individual consumed, or had a problem with alcohol, until the Individual told him during a family dinner in early July 2023. Tr. at 64. He stated the Individual explained that for the past 13 years, when he could not sleep at night, he was using alcohol to sleep. *Id.* at 69, 74. The brother stated he has been supporting the Individual through the process of abstaining from alcohol. *Id.* at 65. He stated he attended one of the Individual's meetings at the inpatient alcohol treatment program and has been able to communicate with him three to four times a week. *Id.* He stated he calls the Individual on the phone to see if he needs anything as he wants to make sure the Individual knows he cares for him and supports him. *Id.* at 68. He said he has never known the Individual to drink and drive, and the Individual has always been a responsible person and a provider to his family. *Id.* at 73. He also said that he thinks the Individual's plans are to accept the help he is receiving now and maintain his sobriety. *Id.* at 78.

The Individual testified that, since he started treatment at the inpatient alcohol treatment program, in July 2023, he has not consumed any alcohol, and he has been sober for 65 days. Tr. at 82–83. He stated he was in treatment at the inpatient alcohol treatment program for 22 days. *Id.* at 151–152. He stated the DOE Psychologist's diagnosis of AUD was “spot on.” *Id.* at 84. The Individual testified he started residential, inpatient treatment at the inpatient alcohol treatment program on July 10, 2023. *Id.* at 84–85. He stated that, as part of the program, he met with a counselor one to two times a day and took classes on various topics, like relapse recovery and the effects of alcohol. *Id.* at 88–89. He stated he also took a class called “your first step,” during which participants explained their stories to their peers. *Id.* at 88. Every day concluded with an AA meeting. *Id.* He

stated that the Wednesday AA meeting he attends, which is open to the public, is where the Individual met his sponsor. *Id.* at 90. He also stated that he learned about AA's 12-step program the first day he attended an AA meeting, and as of the date of the hearing, he was on his third step. *Id.* at 91. He stated the AA meetings he attended are documented on his attendance sheet. Tr. at 93–94; Ex. U.

The Individual asserted that, now that he is back home from the inpatient alcohol treatment program, but still attending Aftercare, it is going to be a challenge because he lives alone. Tr. at 101. He must “find things to keep [him] occupied for not wanting to dwell on wanting to drink.” *Id.* The Individual testified that he is starting to renovate his house and get rid of furniture, and he has thought about other projects to keep him busy at night. *Id.* at 101–02. He stated that he attends AA meetings at 12 noon, and then, he attends his Aftercare from 5:00 p.m. to 8:00 p.m. *Id.* at 102. He said that although he presently attends AA meetings at 12 noon, when he goes back to work, he will attend the 5:30 p.m. AA meetings. *Id.* at 102–03.

The Individual asserted that he will complete his Aftercare on October 5, 2023, and he will return to work one week later. Tr. at 105. He stated he will continue to attend AA meetings and work with his sponsor after he completes the Aftercare. *Id.* at 106. He also specified that he intends to see his therapist at least once per month. *Id.* at 107. Regarding testing for alcohol consumption, he claimed his primary care physician ordered tests for him every two weeks leading up to the hearing; however, he only provided two test results. *Id.* at 108–09; Ex. T; Ex. CC.² Both of these test results were negative. Ex. T; Ex. CC. The Individual continued that when he returns to work, he will be subject to random drug and alcohol tests. *Id.* at 109.

The DOE Psychologist testified that the Individual's reported alcohol consumption that he provided during the evaluation was not accurate. *Id.* at 136. She also testified that, after listening to the Individual's testimony, she amends her diagnosis to be AUD, Severe, in early remission, “because [the Individual] has been sober for three months.” *Id.* at 136, 142. She also stated that the Individual's acknowledgement of his problem, his willingness to go to inpatient treatment, his participation in AA, and his use of a sponsor, are all positive factors toward his recovery. *Id.* at 142–43, 147–48. She stated the Individual is “doing all of the things that I've recommended for him to do.” *Id.* at 143. She stated the Individual successfully completed the inpatient alcohol treatment program, and he is currently participating in Aftercare. *Id.* at 146–47. She also said that she believed the Individual's testimony that he will continue to see his therapist. *Id.* at 147. She also stated she did not know of the Individual undergoing any previous treatment, so he would not have had a history of relapse. *Id.* at 146.

The DOE Psychologist stated the Individual has shown evidence that he has begun rehabilitation. Tr. at 145. She stated, “[t]here's not anything else I would recommend for him to do except to do it longer, do it more, keep going.” *Id.* She stated that whether the Individual's diagnosis was AUD, Moderate or Severe, she would recommend 12 months of abstinence as a way of “gauging a person's ability to sustain these changes.” *Id.* at 145. She maintained that continuing AA “would be a full demonstration of rehabilitation and reformation. But I think he's well on his way.” *Id.* at

² The Individual claimed he requested PEth tests; however, the results are labeled as “ethanol” tests. Ex. T; Ex. CC. Whether they are PEth tests or not does not affect the outcome of my decision.

145–46. As to a prognosis, the DOE Psychologist stated that “if [the Individual] continues to do [what he’s been doing], his prognosis is really good.” *Id.* at 146.

V. Analysis

A. Guideline G

An individual may be able to mitigate security concerns under Guideline G though the following conditions:

- 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 maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified alcohol 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.

Regarding condition (a), the Individual used alcohol regularly as a sleep aid, while at home alone, over a period of 13 years. Only four months have elapsed since the Individual was diagnosed with AUD, Moderate, in April 2023.³ The Individual submitted evidence that he has abstained from alcohol for two months, but two months is not a sufficient amount of time to demonstrate that his AUD has been resolved and his prior level of alcohol consumption is unlikely to recur. Therefore, I am unable to find that so much time has passed, the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on his current reliability, trustworthiness, or judgment. As such, the Individual has not mitigated the security concerns under ¶ 23(a).

Regarding factor (b), the Individual has acknowledged his pattern of maladaptive alcohol use and has provided evidence he is taking actions to resolve his AUD, Severe, diagnosis.⁴ Furthermore,

³ The DOE Psychologist testified that she would have changed the severity of the AUD diagnosis from moderate to severe had the Individual reported his alcohol consumption correctly. Tr. at 136.

⁴ As stated in the footnote above, the DOE Psychologist testified that if she had a correct report of the Individual’s actual alcohol consumption during the evaluation, she would have diagnosed him with AUD Severe.

the Individual provided evidence he has abstained from alcohol for the past two months. However, the DOE Psychologist opined that the Individual should remain abstinent for twelve months to show evidence of rehabilitation and reformation from his AUD. A two-month period of abstinence from alcohol is not a sufficient period of time to demonstrate a clear and established pattern of modified alcohol consumption or abstinence in accordance with the DOE Psychologist's treatment recommendations. Therefore, I find that the Individual has not mitigated the security concerns under ¶ 23(b).

Regarding factor (c), the Individual is making some progress in his treatment. He provided evidence that he participated in, and completed, one month of a residential inpatient treatment program; he has actively participated in AA for the past three months; he has obtained a sponsor; he is participating in AA's 12-step program and is currently on step three of the program; and he is currently participating in Aftercare. However, the Individual has been abstinent for two months, not the twelve months recommended by the DOE Psychologist. Further, he has only been meeting with his sponsor for one month, after having only met him two months prior to the hearing. As the DOE Psychologist opined, despite the Individual's participation in treatment with no history of previous treatment or relapse, the relatively short time that has passed since he acknowledged his alcohol misuse, began treatment, and began abstaining from alcohol is insufficient to establish that he is making satisfactory progress. Therefore, I find the Individual has not mitigated the security concerns under ¶ 23(c).

Regarding factor (d), as noted above, the Individual provided evidence he has abstained from alcohol for two months. However, a two-month period of abstinence is not sufficient to establish a pattern of modified consumption or abstinence in accordance with treatment recommendations. In addition, he has not yet completed Aftercare. Therefore, I find that the Individual has not mitigated the security concerns under ¶ 23(d).

For the reasons stated above, I cannot find that the Individual has mitigated the security concerns raised under Guideline G of the Adjudicative Guidelines.

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, I find the Individual has not demonstrated that restoring 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