

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

In the Matter of: Personnel Security Hearing)
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Filing Date: December 5, 2023)
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Case No.: PSH-24-0025

Issued: March 29, 2024

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 granted.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position that requires a security clearance. Derogatory information was discovered regarding the Individual’s alcohol consumption. The Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order 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 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—a friend and a colleague—and testified on his own behalf. The LSO presented the testimony of a DOE psychologist who had evaluated the Individual regarding his alcohol consumption. *See* Transcript of Hearing PSH-24-0025 (hereinafter cited as “Tr.”). The LSO submitted ten exhibits, marked as Exhibits 1 through 10 (hereinafter cited as “Ex.”). The Individual submitted ten exhibits, marked as Exhibits A through J.

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 his eligibility for a security clearance. That information pertains to Guideline G 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. 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:

- (1) In August 2023, the Individual was diagnosed by a DOE-consultant psychologist (the Psychologist) with Unspecified Alcohol-Related Disorder without evidence of rehabilitation or reformation; that the Psychologist concluded that the Individual habitually or binge consumed alcohol to the point of impaired judgment; and that the results of the

Individual's Phosphatidylethanol (PEth) blood test was positive at a level of 753 ng/ml, which can indicate significant alcohol consumption in the preceding four weeks;²

- (2) In June 2019, the Individual was arrested and charged with Driving Under the Influence (DUI), Aggressive Driver, Speeding (25-39 MPH over limit), Following Too Closely Aggressive Driver, Lane Usage Violation Aggressive Driver, and Driving While Ability Impaired;³
- (3) In August 2015, the Individual was arrested and charged with Aggravated Driving While Intoxicated (DUI),⁴ Stop/Yield Sign Violations, and Driving on Roadways Laned for Traffic;
- (4) In March 2015, the Individual was arrested and charged with Shoplifting after he attempted to steal a bottle of liquor from a Walmart;
- (5) In January 2013, the Individual was arrested and Charged with Aggravated Driving While Intoxicated (.16% or above) (DUI) and Careless Driving; and
- (6) In October 2011, the Individual was cited for Shoplifting Under \$250.00 after he attempted to steal a bottle of liquor from a Walmart.

Ex. 1 at 1. 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 ¶ 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

² PEth test information can be found at page 7 of Exhibit 7.

³ This event will be referred to as the 2019 DUI.

⁴ For consistency, in this decision, all instances of driving while under the effect of alcohol will be referred to as DUI, regardless of the specific charge.

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.

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

In October 2011, the Individual, nineteen years old at the time, was at a party and consuming alcohol. Tr. at 14. When the party ran out of alcohol, the Individual decided to steal a bottle of alcohol from the Walmart down the street. *Id.* The Individual was intoxicated when he made the decision. *Id.* at 25–26. He was stopped by the store’s loss prevention team and arrested by the local police. *Id.* at 14. The case was ultimately dismissed after the officer was unable to produce evidence. *Id.* at 14, 46.

In October 2013, the Individual, now age twenty-one, was consuming alcohol at a friend’s party and decided to drive to another town to meet a girl. Tr. at 15. He was stopped for running a stop sign and arrested for DUI. *Id.* The charges were later dropped. *Id.*

In March 2015, the Individual, now age twenty-three, was consuming alcohol at a friend’s party. Tr. at 16, 25. When the party ran out of alcohol, the Individual decided to steal alcohol from Walmart because he did not have money to purchase it. *Id.* at 16. The Individual was intoxicated when he made the decision and wanted to “be the cool kid, the guy that . . . saved the party.” *Id.* at 25–26, 38. He did not think about his previous shoplifting arrest when he made the decision. *Id.* at 38. He was arrested by the local police. Ex. 1 at 1. The case was ultimately dismissed after the officer was unable to produce evidence. Tr. at 16, 46.

In August 2015, the Individual was consuming alcohol at his home with some friends. Tr. at 16. He decided to drive across town to pick up a girl to bring her to the party and did not think about his previous DUI arrest when he made the decision. *Id.* at 16, 38. The Individual was stopped on his way back to his home. *Id.* at 16. The case was ultimately dismissed after the officer was unable to produce evidence. *Id.* at 16, 46.

These four incidents did not affect the Individual’s view on alcohol or sobriety, and he did not abstain from alcohol after any of them. Tr. at 17.

In June 2019, the Individual, now age twenty-seven, was in another state for his sister’s college graduation. Tr. at 16. He and his girlfriend had brunch at their hotel before driving to meet his family at a local brewery for a tour. *Id.* On the way to the brewery, he was pulled over for speeding and was arrested for DUI. *Id.* at 16–17. He pleaded guilty to Driving While Ability Impaired and Failure to Maintain Lane. *Id.* at 17. For his sentence, he completed twenty-four hours of community service, alcohol education classes, and one year of supervised probation. *Id.* at 17, 27.

After this incident, the Individual abstained from alcohol for about one and a half years before returning to drinking in early 2021. Tr. at 17. He initially would have one or two beers when at a weekly trivia night with friends, but over the course of six months to one year, he began drinking more. *Id.* at 18, 28. He believed he was controlling his drinking because he would avoid driving after consuming alcohol. *Id.* In August 2023, the Individual reported to the Psychologist that he was drinking three to five weekdays out of the week, consuming two to three mixed drinks ... after work, as well as consuming three or more mixed drinks on weekends. Ex. 7 at 6.

After the Individual applied for a security clearance, discovery of his criminal history prompted investigators to refer him for psychological evaluation. Ex. 7 at 2. In August 2023, the Psychologist evaluated the Individual and referred him for a PEth test, which the Individual completed immediately after the evaluation. *Id.* at 7. The psychiatrist who interpreted the test results opined that the Individual's PEth level was "extremely high." *Id.* During the evaluation, the Individual disclosed that on two occasions he had stolen alcohol and was not caught. *Id.* at 8. The Psychologist noted that, after completing the alcohol education courses for his 2019 DUI sentence, the Individual did not follow recommendations for aftercare (ongoing recovery group sessions). *Id.* He also noted that the Individual returned to alcohol very soon after completing his probation and based on the results of his PEth test, minimized the amount of alcohol he reported consuming to the Psychologist. *Id.* at 8. The Psychologist diagnosed the Individual with Unspecified Alcohol-Related Disorder based on his "reported history of excessive alcohol use, failed attempt to remain abstinent, and continued episodes of excessive alcohol use and binge-drinking despite his history of five alcohol-related incidents." *Id.* at 9. He opined that the Individual was not rehabilitated or reformed and recommended that, for the Individual to show reformation, the Individual should abstain from alcohol for at least one year, attend Alcoholics Anonymous (AA) (or similar program) twice weekly, and obtain an AA sponsor. *Id.* He recommended that, for the Individual to show rehabilitation, he should attend a twenty-eight-day residential treatment program or eight-to-twelve-week intensive outpatient treatment program. *Id.* For either option, he also recommended that the Individual engage in aftercare with an individual counselor, group therapy, or twice weekly AA meetings until his total time for all treatments combined equaled at least one year. *Id.* He also recommended that the Individual undergo monthly PEth testing for one year to demonstrate his abstinence. *Id.*

In late September or early October 2023, the Individual received the Psychologist's report, which included the recommendations for demonstrating rehabilitation or reformation. *Id.* at 29–30. He stopped drinking in late November 2023 and began attending AA twice per week. *Id.* at 31, 33. The Individual estimated that he was abstinent and attending AA from just before Thanksgiving until the beginning of December. *Id.* at 33. He relapsed when he was attending Christmas parties and stopped attending AA during that time. *Id.* at 31–33. He consumed alcohol four or five days per week for several weeks during the holiday season, then decreased his intake to about one day per week in January. *Id.* at 32. The Individual began abstaining from alcohol again toward the end of January; he could not provide a specific date for his last consumption of alcohol but estimated that it was about three weeks before the hearing. *Id.* at 32, 41. He began attending AA twice weekly again one week before the hearing. *Id.* at 33. He did not tell his AA group about his relapse. *Id.* at 45.

At the hearing, the Individual testified that he had not been consuming alcohol recently and was “planning to refrain from drinking . . . for as long as I can.” Tr. at 20. He also testified that he was willing to take monthly PEth tests. *Id.* He testified that the Psychologist’s report showed him that he was not in control of his alcohol use. *Id.* at 30. The Individual testified that he had not found an AA sponsor yet. *Id.* at 33. When asked which of the 12 Steps of AA he was on, the Individual testified that he was on the First Step before mischaracterizing the First Step as “admitting to a higher power that—you know, giving yourself to a higher power and admitting that alcohol has a problem over you.”⁵ *Id.* at 33–34, 39. The Individual testified that he had looked into inpatient and intensive outpatient treatment programs but they did not work with his schedule. *Id.* at 34. As of the hearing date, he had not undergone any PEth tests other than the one for his psychological evaluation in August 2023. *Id.*

The Individual initially testified that he believed Guideline G mitigating conditions (b) and (c) (see next section for full text) applied to him. Tr. at 43. When asked why condition (c), which includes having no history of treatment and relapse, applied, the Individual conceded that he had relapsed after his alcohol education program, stated that he had misread the condition, and stated that condition (c) did not apply to him. *Id.* at 43–44. The Individual testified that in terms of the “evidence of actions taken to overcome [his] alcohol problem” required by condition (b), he had been attending AA and was “trying to get back into attending AA,” and he planned to remain abstinent. *Id.* at 44. The Individual testified that he believed it would take several months to demonstrate the “pattern of modified consumption or abstinence” required by condition (b) and admitted that he had abstained for fewer than 60 days, non-consecutively, in the preceding several months. *Id.* at 47–48.

The Individual’s friend had known him since middle school and had stayed in contact with him since then. Tr. at 54. He testified that the Individual had reduced his alcohol intake the previous summer and had recently stopped drinking. *Id.* at 55–56. He was not aware that the Individual had consumed alcohol in December and said he was slightly surprised to hear that he had. *Id.* at 63–64.

The Individual’s colleague had known the Individual for about five years and had asked the Individual to apply for his current position. Tr. at 66. He was aware of the Individual’s history of alcohol related crime. *Id.* at 72. He testified that the Individual had told him he was abstaining from alcohol and that he did not know whether the Individual had been drinking recently. *Id.* at 72–74.

The Psychologist testified that the Individual had not complied with his treatment recommendations. Tr. at 79–80, 89. He testified that he would not change the Individual’s diagnosis based on the hearing testimony. *Id.* at 82. He testified that the Individual did not meet the criteria for early remission. *Id.* at 86. He testified that the Individual had a poor to fair prognosis instead of a poor prognosis because he believed the Individual acknowledged that he had a problem with alcohol. *Id.* 86–89. The Psychologist further testified that the Individual was not reformed or rehabilitated. *Id.* at 83.

⁵ This explanation is an amalgam of the First and Second and Third Steps. See *The Twelve Steps*, ALCOHOLICS ANONYMOUS (2024), <https://www.aa.org/the-twelve-steps>.

V. ANALYSIS

A person who seeks access to classified information enters 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 ¶ 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 granting the Individual’s clearance is not an unacceptable risk to national security.

Conditions that can mitigate 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; 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 conditions apply in this case.

Regarding condition (a), the Individual’s alcohol consumption has remained problematic within the last twelve months, and his recent relapse indicates that the behavior is not unlikely to recur.

Regarding condition (b), the Individual has acknowledged that he has an alcohol problem, but he has only recently begun to treat his alcohol use disorder. Furthermore, he admitted that he has not been abstinent from alcohol long enough to demonstrate a pattern of abstinence. Just a few months

prior to the hearing, he relapsed after abstaining for a few weeks. As of the hearing, he had only been abstaining for about the same amount of time. I cannot find this amount of time sufficient to demonstrate a pattern of abstinence because, recently, he has not maintained abstinence beyond this amount of time.

Regarding condition (c), the Individual admitted to having relapsed after completing the treatment program associated with his 2019 DUI. He also has not entered counseling or a substance abuse treatment program. He has inconsistently attended a few AA meetings, but he has not obtained a sponsor and is not familiar enough with the 12 Steps to demonstrate that he has put significant work into that program.

Regarding condition (d), the Individual has not completed a treatment program and the required aftercare in accordance with the Psychologist's treatment recommendations. Additionally, as stated above, he has not demonstrated a pattern of abstinence.

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 granting 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 grant 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