

*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: February 2, 2024

Case No.: PSH-24-0059

Issued: May 23, 2024

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 should not be granted access authorization.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires possession of a security clearance. When completing a Questionnaire for National Security Positions (QNSP) in December 2022, the Individual reported an alcohol-related criminal charge. The information prompted the Local Security Office (LSO) to request that the Individual be evaluated by a DOE-consultant Psychologist (DOE Psychologist). After the evaluation, the LSO informed the Individual by letter (Notification Letter) that it possessed reliable information that created substantial doubt regarding her eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline G of the Adjudicative Guidelines.

The Individual exercised her right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review

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.

hearing. At the hearing, the Individual presented the testimony of three witnesses and also testified on her own behalf. The LSO presented the testimony of the DOE Psychologist. The Individual submitted sixteen exhibits, marked Individual's Exhibits (Ind.'s Exs.) 1 through 16.² The LSO submitted eight exhibits, marked Exhibits (Exs.) 1 through 8.³

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Ex. 1. Guideline G provides 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]lcohol-related incidents away from work, such as driving while under the influence . . . 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"; "[h]abitual . . . consumption of alcohol to the point of impaired judgment . . ."; and "[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, Psychologist . . .) of alcohol use disorder . . ." *Id.* at ¶ 22(a), (c), and (d). The SSC cited the following information. The DOE Psychologist concluded in her November 2023 report that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, criteria for Alcohol Use Disorder (AUD), Moderate, without evidence of rehabilitation or reformation. Ex. 1 at 5. The Individual was administered a November 2023 Phosphatidylethanol (PEth) test as a part of the DOE Psychologist's evaluation, and the results were positive at a level of 1106 ng/mL, which indicated that she "consume[d] [alcohol] very heavily and frequently." *Id.* The Individual was arrested four times for alcohol-related driving offenses between 2009 to 2015. *Id.* And the Individual was terminated from a job in 2013 "after her manager smelled alcohol on her." *Id.* The cited information 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 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 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

² Ind.'s Exs. 1 through 13 are combined in a 44-page PDF workbook. This Decision will cite to these exhibits by reference to the exhibit and page number within the workbook. Ind.'s Exs. 14 through 16 were each submitted as separate documents. This Decision will cite to these exhibits by reference to the exhibit and page number within each document.

³ The LSO's exhibits were combined and submitted in a single, 230-page PDF workbook. References to the LSO exhibits are to the exhibit number and the Bates number located in the top right corner of each exhibit page.

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 or her 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.* at § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

The Individual reported in her December 2022 QNSP that she had been arrested and charged with Driving Under the Influence (DUI) in June 2016. Ex. 7 at 84–85. However, the record reflects that this incident occurred in December 2015, and the Individual was actually charged with Aggravated Driving While Intoxicated (ADWI) .16 or above, second offense. Ex. 8 at 166, 183, 186. According to the DOE Psychologist who evaluated the Individual in November 2023 and provided a subsequent report (Report) to the LSO, the Individual reported that she had fallen asleep in her car after consuming alcohol at a birthday party, and although one of her friends offered to drive her car, she still attempted to drive home. Ex. 5 at 27. After the Individual was stopped by the police, her blood alcohol content was measured at .22 and .23 g/210L.⁴ *Id.* The Individual pled guilty to the ADWI charge and was sentenced to four days in jail and three years of probation. *Id.* The Individual was also ordered to complete a twenty-eight-day inpatient treatment program, however, she reported that she instead attended weekly group and individual classes at an outpatient treatment program (Outpatient Treatment) “for two or three months.” *Id.*

During the evaluation, the Individual also reported her history of alcohol use. In October 2009, she was arrested and charged with a Driving While Intoxicated (DWI).⁵ Ex. 5 at 26; Ex. 8 at 182. She stated that after this DWI, she “stopped drinking for a time” but later resumed consuming alcohol “occasionally.” Ex. 5 at 26. In February 2011, the Individual was arrested and charged with ADWI. Ex. 5 at 26; Ex. 8 at 184. The Individual pled guilty to the ADWI charge and was required to complete, among other things, “court ordered alcohol education in a group setting.” Ex. 8 at 160. After the February 2011 ADWI, the Individual attended Outpatient Treatment, which “consisted

⁴ When interviewed in 2023 by an investigator regarding the ADWI, the Individual indicated that before her arrest, she had “consumed [three] mixed drinks and [one] beer over a [four] hour time period.” Ex. 8 at 158.

⁵ The Individual reported that these charges were dismissed due to a technicality. Ex. 8 at 167.

of four hours of groups/classes over three Saturdays, and two individual meetings twice per week for three weeks.”⁶ Ex. 5 at 26.

The Individual reported that in 2013, her older brother passed away, and this became a “very difficult time for her.” *Id.* She stated that this caused her to “hit rock bottom,” and “she began to drink in a regular, frequent, and excessive manner.” *Id.* The Individual reported that she was terminated from a job in April 2013 because her manager noticed that she smelled like alcohol while at work. Ex. 5 at 26; Ex. 8 at 164. After her termination, she stated that her grandmother “had an intervention with her,” and in 2014, she indicated that she reduced her consumption of alcohol to “once or twice a month” of “just beer.” Ex. 5 at 26.

The Individual reported that after her 2015 ADWI, she did not consume alcohol again until 2020. *Id.* at 27. The Individual described her alcohol consumption after 2020 as “occasional,” which included “one drink every one to three months, usually one beer.” *Id.* The Individual also told the DOE Psychologist that she last drank one twelve-ounce beer about one month before the evaluation.⁷ *Id.*

In conjunction with the evaluation, the Individual underwent a PEth test, which can detect “any significant alcohol use over the past three to four weeks.” *Id.* at 28. The Individual’s PEth test result was positive at a level of 1106 ng/mL. *Id.* This laboratory report was reviewed by a psychiatrist, who concluded that the Individual “consumes alcohol very heavily and frequently,” which is “likely to be regular nearly daily drinking with or without binges.” *Id.* at 28, 50. The psychiatrist further reasoned that based on the results on the PEth test, the Individual could not have reported her alcohol intake accurately. *Id.* at 29. The DOE Psychologist concurred with this opinion. *Id.*

The DOE Psychologist diagnosed the Individual as meeting the criteria of AUD, Moderate, and opined that the Individual consumes alcohol “in a manner which has impaired her judgment and called into question her trustworthiness.” *Id.* In support of her conclusion, the DOE Psychologist stated that the Individual had substantially underreported her alcohol consumption as evinced by the PEth result; her level of consumption impaired her judgment and called into question her trustworthiness, given her underreporting; and she had a history of several alcohol-related criminal charges and one alcohol-related employment termination. *Id.* The DOE Psychologist concluded that the Individual met the following diagnosis criteria for AUD: (1) a “persistent desire or unsuccessful efforts to cut down or control alcohol use”; (2) “a great deal of time spent in activities necessary to obtain alcohol, use alcohol, or recover from its effects”; (3) cravings or a strong desire or urge to use alcohol; (4) “recurrent alcohol use in situations in which it is physically hazardous—DUIs”; and (5) tolerance to alcohol. *Id.*

⁶ The Individual indicated that this was the same Outpatient Treatment she later attended after her December 2015 ADWI. Ex. 5 at 27.

⁷ The DOE Psychologist acknowledged that during the Individual’s Enhanced Subject Interview in January 2023, she reported that she drank “two mixed drinks at home, twice a month,” which was “notably more than she reported” during the November 2023 evaluation. Ex. 5 at 27.

The DOE Psychologist recommended that to demonstrate rehabilitation of AUD, the Individual should attend an Intensive Outpatient Program (IOP) for a “a minimum of nine hours of therapeutic and educational meetings a week . . . and one weekly individual counseling session, over the course of [twelve] to [sixteen] weeks.” *Id.* at 30. Following completion of the IOP, the DOE Psychologist recommended that the Individual should continue in weekly aftercare meetings for one year. *Id.* If the Individual decided to not participate in an IOP, the DOE Psychologist recommended that she actively participate in Alcoholics Anonymous (AA), including “documented attendance of four meetings a week, meeting with a sponsor, and showing evidence of working the 12-Step program” *Id.* Regarding reformation, the DOE Psychologist recommended that the Individual refrain from alcohol consumption for twelve months and document her abstinence with monthly PEth tests. *Id.*

At the hearing, an Employee Assistance Program (EAP) counselor testified that the Individual completed a six-week Alcohol Education and Awareness group class from February 2024 to April 2024.⁸ Hearing Transcript, OHA Case No. PSH-24-0059 (Tr.) at 16, 24. The counselor testified the class was primarily focused on education, and it did not require the participants to abstain from alcohol. *Id.* at 16, 20. The counselor indicated that the Individual was a strong participant and very “attentive” during the group sessions. *Id.* at 18. The counselor further stated that during an individual session with the Individual, which occurred in early March 2024, the Individual indicated that her goal was to eventually stop drinking alcohol. *Id.* at 20–21, 24.

The Individual’s supervisor and the Individual’s father also testified at the hearing. The supervisor testified that the Individual is a strong performer at work and a strong participant in all classes and training exercises. *Id.* at 31–33. The Individual’s father testified that he sees the Individual “on occasion,” such as holidays and birthdays, and he last saw the Individual consume alcohol a “couple of years ago.” *Id.* at 38, 40. The Individual’s supervisor and father both considered the Individual to be reliable and trustworthy. *Id.* at 33–34, 40.

The Individual’s partner testified that she sees the Individual every day after work and on weekends, but they do not live together. *Id.* at 60. The partner stated that she last saw the Individual drink two or three beers a few weeks prior to the hearing. *Id.* at 61–62. The partner testified that the Individual “rarely” drinks alcohol and does not keep alcohol in the house. *Id.* at 62. The partner also stated that the Individual told her that she wants to “quit [drinking alcohol] officially” and “stick to her AA meetings and classes.” *Id.* at 63.

The Individual testified to the following. She confirmed the above record of her October 2009, February 2011, and December 2015 alcohol-related offenses. *Id.* at 49–53. The Individual stated that the LSO’s allegation that she was arrested and charged in 2015 for a second time was not accurate. *Id.* at 53–56; *see* also Ex. 12 (a state court docket printout listing only one criminal charge in 2015 along with the 2009 and 2011 criminal charges). Regarding her November 2023 PEth test result, the Individual testified that “[a]t that time[,] [she] was drinking every other week,” and she drank alcohol the weekend before the test. *Id.* at 69. The Individual also asserted that she had not been drinking more frequently than she reported to the DOE Psychologist and explained that she

⁸ The record includes the Individual’s Certificate of Completion for the EAP Alcohol Awareness and Education class, dated April 4, 2024. Ind.’s Ex. 15.

did not “always drink the same things every time.” *Id.* at 70. The Individual acknowledged that drinking before the PEth test was a “big mistake” and stated that she had not been taking her medication for anxiety and high blood pressure as frequently as she should have at the time, and “that’s how the drinking came about.” *Id.* at 69, 72–73. The Individual testified that she is currently “back on the medication again.” *Id.* at 73.

The Individual stated that after receiving the Report in early December 2023, she stopped drinking, but resumed briefly for her wedding at the end of that month. *Id.* at 71. The Individual testified that she only consumed alcohol on one other occasion after her wedding, which occurred when her grandfather was hospitalized a couple of weeks prior to the hearing. *Id.* at 71–72. The Individual stated that at the time her grandfather was in the hospital she “got scared” and consumed “a couple beers.” *Id.* at 71.

The Individual also testified that she started attending online AA classes twice a week in early March 2024. *Id.* at 73. She testified she introduces herself at the meetings by stating that she is “here to learn about alcohol and recover from alcohol.” *Id.* at 74. The Individual stated she does not believe she has a problem with alcohol or any cravings for alcohol. *Id.* The Individual stated that AA has taught her about her triggers, which includes experiencing the loss of a family member. *Id.* at 80–81. The Individual explained that she has learned to talk to her family and doctor more often to help cope with her triggers. *Id.* at 81. The Individual also stated that she prefers to attend AA meetings online because in-person meetings would be too “time consuming,” and she would rather have more time to herself in the evenings after working a ten-hour shift. *Id.* at 82–83.

Regarding the Alcohol Education and Awareness class that she completed with the EAP counselor, the Individual stated that she learned “excessive drinking doesn’t always mean that it’s binge drinking,” instead it means “drinking more than what is supposed to be . . . legal.” *Id.* at 76. The Individual testified that she did not know that “more than three drinks was intoxicated” as there have been “times where [she] had five or seven [drinks].” *Id.* The Individual stated that she plans on attending an additional course with the counselor that includes an abstinence requirement. *Id.* at 77–78. The Individual testified that although she initially did not think she needed to quit alcohol, she now wants to stop drinking permanently because she is the sole household provider and needs to maintain her current employment. *Id.* at 84–85.

The DOE Psychologist testified that the Individual’s previous PEth test result was “dangerously high” and one of the highest results she had ever seen. *Id.* at 91. She stated that, after considering the testimony of the Individual and the Individual’s witnesses, she believes the Individual is “sincere in her desire to address the alcohol problem.” *Id.* at 92. However, the DOE Psychologist explained that it was concerning that the Individual still had not recognized that she has a problem with alcohol and excessive consumption. *Id.* The DOE Psychologist testified that it appears the Individual is “struggling with committing the time” to receive the treatment she needs for rehabilitation or reformation, which demonstrated that the Individual was having difficulty “understanding that the amount of alcohol she had been consuming was very high-risk.” *Id.* at 93, 96. The DOE Psychologist also noted that the “fact that [the Individual] has had episodes of drinking since” receiving the Report was also concerning. *Id.* at 93.

The DOE Psychologist concluded that the Individual had not demonstrated either reformation or rehabilitation. *Id.* The DOE Psychologist also explained that the Individual's AUD diagnosis was not in remission because the Individual continued to consume alcohol. *Id.* The DOE Psychologist stated that if the Individual committed herself to treatment, her prognosis would be "good," but if not, it would be "poor to fair, at best." *Id.* at 93–94. The DOE Psychologist noted that the Individual's prognosis is an indicator of the likelihood that the Individual will relapse and return to drinking. *Id.* at 97.

V. ANALYSIS

A. Guideline G Considerations

Conditions that can mitigate security concerns based on alcohol consumption include the following:

- (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.

I find that none of the above conditions apply to resolve the Guideline G concerns. Because I rely upon much of the same evidence in considering each of these mitigating factors, the following analysis addresses them together. As an initial matter, I have considered and accepted the Individual's representation that she has been charged with three DUI or ADWI offenses, not four, in reaching my below findings.

The record does not demonstrate that the Individual acknowledges her maladaptive alcohol use because, as evidenced by her testimony, she specifically denies that she has a problem or issue with alcohol. Her present characterization is consistent with how she has framed her alcohol use in the past. The Individual testified that she does not present herself as somebody who has a problem with alcohol during her online AA meetings, but instead as someone interested in learning more about alcohol abuse and recovery.

I am also skeptical of her willingness or ability to provide accurate information regarding her alcohol consumption. At the hearing, the Individual asserted that the statements she made to the DOE Psychologist regarding her alcohol consumption in November 2023 (*i.e.* consumption of a single twelve-ounce beer one month before the evaluation) were truthful despite her “dangerously high” PEth test result and her conflicting testimony that she was consuming alcohol every other week during the same period leading up to the evaluation.

Furthermore, although the Individual has taken steps to address the concerns regarding her alcohol use, such as completing a six-week alcohol education class and attending online AA classes, the Individual has not established a pattern of abstinence in accordance with treatment recommendations for the following reasons. The Individual acknowledged that she consumed alcohol even after receiving the DOE Psychologist’s Report, including as recently as a “couple of weeks” before the hearing. The Individual has also stated only that she “want[s] to” be abstinent, not that she currently is, and the record demonstrates a historical inability to follow through with her expressed intent to remain abstinent. Therefore, the Individual has not established a pattern of abstinence.

Further still, the Individual has not completed a treatment program because she has not attended or completed an IOP or weekly aftercare classes as recommended by the DOE Psychologist. Although the Individual did complete a six-week alcohol education course, this course did not require abstinence and it was not an IOP. As of the hearing, the Individual had only attended online AA meetings twice-a-week for approximately one month and had not found a sponsor. Instead of opining that her efforts were in line with treatment recommendations, the DOE Psychologist expressed concern that the Individual was struggling to obtain the treatment she needs for rehabilitation or reformation. Thus, I conclude that the Individual is not making satisfactory progress in a treatment program.

Lastly, as indicated above, the Individual’s AUD is not in remission, and therefore I cannot conclude that so much time has passed, the behavior is infrequent, or the behavior occurred under such unusual circumstances that it is unlikely to recur or does not cast doubt on the Individual’s current reliability, trustworthiness, or judgment. Accordingly, I conclude that the Individual has not put forth sufficient evidence to resolve the Guideline G security concerns.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline G of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of 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 SSC. Accordingly, I have determined that she should not be granted access authorization.

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