

In the Matter of: Personnel Security Hearing)
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 Filing Date: December 20, 2023) Case No.: PSH-24-0035
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Administrative Judge Decision

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.

The Individual is employed with a DOE contractor in a position that requires him to hold an access authorization. As part of the clearance process, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in November 2019. Exhibit (Ex.) 11. In the QNSP, the Individual disclosed that he had been charged with Driving While Intoxicated (DWI) in May 1995 and May 2007, DWI and Resisting Arrest in October 2007, and that pursuant to a court order, he was required to attend “[r]ehab for [six] months” from November 2007 through May 2008.² Ex. 11 at 35–41; Ex. 7 at 6.

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.

² The record appears to use the term Driving Under the Influence (DUI) interchangeably with DWI. In this Decision, I shall use DWI.

In June 2023, the Individual was asked to submit to a breath alcohol test at work, as it was suspected that he was under the influence of alcohol. Ex. 6. The Individual tested positive for alcohol. *Id.* at 4–5.

The Individual signed and submitted an LOI in September 2023. Ex. 7. He was also asked to undergo a psychological evaluation, which was conducted by a DOE-consultant psychologist (DOE Psychologist) in October 2023. Ex. 9. The DOE Psychologist compiled a report (the Report) of her findings the same month and concluded that the Individual suffers from Alcohol Use Disorder (AUD), Moderate, in Early Remission. *Id.* at 6.

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 a substantial doubt regarding his continued eligibility for access authorization. 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. 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 six other witnesses. *See* Transcript of Hearing, Case No. PSH-24-0035 (hereinafter cited as “Tr.”). The Individual also submitted five exhibits, marked Exhibits A through E. The DOE Counsel submitted twelve exhibits marked as Exhibits 1 through 12 and presented the testimony of the DOE Psychologist.

II. Notification Letter

Under Guideline G, “[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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are “[a]lcohol-related incidents away from work, such as driving while under the influence . . . regardless of frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder[,]” “[a]lcohol-related incidents at work, such as reporting for work duty in an intoxicated or impaired condition[,]” and “[d]iagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder[.]” *Id.* at ¶ 22(a), (b), (d). Under Guideline G, the LSO alleged that:

- a) The DOE Psychologist opined in her October 2023 Report that the Individual suffers from AUD, Moderate, in Early Remission, and that he has not shown adequate evidence of rehabilitation or reformation. Ex. 1 at 1.

- b) In late June 2023, the Individual took a breath alcohol test at work, the results of which were 0.146 at approximately 10:38 am. *Id.* The Individual “admitted that he consumed four [twenty-four-ounce cans of] beer and eight shots of whisky” the previous evening. *Id.*
- c) The Individual was arrested and charged with DWI in May 1995, April 2001, May 2007, and February 2012. *Id.*
- d) The Individual was charged with DWI and “Resisting, Evading[,] or Obstructing an Officer” in October 2007. *Id.*

The LSO’s invocation of Guideline G is 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 so as 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

In his June 2020 LOI, when the Individual was asked to provide information pertaining to past alcohol-related incidents, he indicated that he could not remember how much alcohol he drank on those occasions. Ex. 8 at 1–2, 4–5. The Individual stated that “all [charges have] been resolved through the courts and motor vehicle division.” Ex. 7 at 3; Ex. 8 at 1–3. The May 2007 DWI charge was dismissed in 2008. Ex. 8 at 2.

One day in June 2023, the Individual reported to work at approximately 6:20 am, and at approximately 10:38 am, the Individual submitted to a breath test following “reasonable suspicion” that he was under the influence. Ex. 6 at 5–6; Ex. 9 at 2. The breath alcohol test was positive for alcohol at 0.146 G/210L. Ex. 6 at 6. His employer’s Occupational Medicine (Occ Med) determined

soon after that the Individual was not fit for duty, and his access to the workplace was restricted. Ex. 6 at 1–3, 7.

In his September 2023 LOI, the Individual indicated that on the night before he reported to work under the influence, he “let [his] problems get the best of [him] and [he] drank alcohol.” Ex. 7 at 1. Specifically, he consumed “around” four twenty-four-ounce cans of beer and eight “shots of whiskey” over the span of five-and-a-half hours. *Id.* at 1, 4. Although he stated that he was intoxicated that night, he asserted that he did not feel “intoxicated [or] under the influence of alcohol” the next morning when he drove to work. Ex. 7 at 1–2, 5; Ex. 9 at 3; Tr. at 85.

The Individual began abstaining from alcohol in early July 2023 because he felt “angry[] and frustrated” following the positive breath test, and he decided that he needed to do what he could “to move forward to keep [his] job.” Tr. at 83, 84; Ex. 7 at 4. So, he “quit cold turkey” after realizing that he “had issues . . . with alcohol[.]” Tr. at 85–86. Prior to abstaining, the Individual indicated in the September 2023 LOI, his general pattern of consumption consisted of “casually drink[ing] on special occasions[,] weddings, graduations, [and] birthdays.” Ex. 7 at 5. However, in the June 2020 LOI, he indicated that on average, he consumed about two beers over the span of two hours, once a week. Ex. 8 at 5–6. He stated that this pattern of consumption began in June 2020. *Id.* at 6.

During the October 2023 psychological evaluation, the Individual told the DOE Psychologist about life events he experienced in late June 2023, which he indicated caused him to drink the night before the positive breath alcohol test. Ex. 9 at 2. Although he had indicated in his September 2023 LOI that he had consumed eight shots of whiskey, he told the DOE Psychologist that he had a shot with every beer, totaling four shots of whiskey. *Id.* The DOE Psychologist learned that pursuant to a court order, the Individual had previously entered a “six-month inpatient rehabilitation program” in 2007. *Id.* at 3–4. The Individual completed the program in 2008. *Id.* at 3. The Individual remained sober for two years following his departure from the inpatient program. Tr. at 87. Based on the information provided, the DOE Psychologist concluded that before 2012 and after the aforementioned period of sobriety, the Individual would drink to intoxication “two or three times per week[.]” Ex. 9 at 3. He told the DOE Psychologist that after his 2012 DWI, he reduced his alcohol consumption for approximately three years, and beginning in 2015, he “consumed alcohol *only* on special occasion[s.]” *Id.* at 3–4. The Individual submitted to a Phosphatidylethanol (PEth) test in conjunction with the evaluation, which was negative.³ *Id.* at 4.

As stated above, the DOE Psychologist diagnosed the Individual with AUD, Moderate, in Early Remission. Ex. 9 at 6. She stated that in order for the Individual to show adequate evidence of rehabilitation or reformation, he needs to complete an Intensive Outpatient Treatment Program (IOP), with participation in aftercare, “for a total of not less than [twelve] months of treatment.” *Id.* In the alternative, the Individual may participate in no “fewer than four [Alcoholics Anonymous (AA)] meetings per week.” *Id.* at 6–7. The Individual should also work on the Twelve Steps and engage a sponsor. *Id.* at 7. Lastly, the Individual should submit to monthly PEth tests. *Id.*

³ The test results indicated that the Individual “has not been drinking on a regular, heavy basis within a few weeks of the test, and has not had binge drinking episodes or moderate drinking within about one week of the test.” Ex. 9 at 4.

In July 2023, the Individual began taking a six-week Alcohol Awareness and Education Class that was offered by his employer's Employee Assistance Program (EAP). Ex. A at 1, 3; Ex. 7 at 7; Tr. at 87, 90. The Individual completed the program in August 2023, and attended the corresponding Maintaining Changes in Alcohol Use (Maintaining Changes) course immediately after. Ex. A at 2, 4; Ex. 7 at 7; Tr. at 87, 90. The Maintaining Changes course lasted twelve weeks, and the Individual received his certificate of completion in November 2023. Ex. A at 2, 4; Tr. at 90. The EAP Counselor who facilitates the classes confirmed the same in her testimony. Tr. at 14–17, 19. She also testified that the Individual continues to attend the Maintaining Changes course, even though he has received his certificate of completion. *Id.* at 17, 90–92. She testified that his level of participation is “present,” “focused,” “honest,” and “interactive.” *Id.* Although she felt that he was initially angry, his “anger decreased every week” and the Individual began “reaching out to other male participants” for support. *Id.* at 18. She confirmed that to the best of her knowledge, the Individual has been abstinent since July 2023, and stated that she had eight one-on-one sessions with the Individual. *Id.* at 20, 92. Through the one-on-one sessions, she has learned that the Individual “has taken the time to look inside[,]” uncovering his triggers and childhood trauma. *Id.* at 21–22. He also told her that he “really had to work on his recovery” during the holidays. *Id.* at 22–23. She also knows that the Individual went on a trip with some friends, and announced during that trip that he would not be drinking. *Id.* at 23. She testified that the Individual has an “excellent chance” of maintaining his sobriety “as long as he continues . . . to stay connected to AA and his sponsor[.]” *Id.* at 24–25.

The Individual began attending AA in August 2023. Ex. B at 2–4; Tr. at 95. He generally attends AA group meetings two to three times per week. Tr. at 42, 95. The Individual's AA sponsor testified that the Individual asked for his sponsorship in November 2023. *Id.* at 40–41. Together, they work through the Twelve Steps and read the Big Book, and the Individual's sponsor is available “24/7” should the Individual need to speak to him about cravings and the like. *Id.* at 41–42, 44–45. Currently, they are working on Step Six of the Twelve Steps. *Id.* at 44, 100. The sponsor testified that to the best of his knowledge, the Individual has not relapsed since his sobriety date in July 2023. *Id.* at 44, 46–47. The Individual intends to continue attending AA meetings. *Id.* at 44, 98. The Individual's sponsor also noted that the Individual “shares from the heart” and is “making progress.” *Id.* at 46.

The Individual began attending an IOP in January 2024, which consisted of three group sessions per week for twelve weeks total. Tr. at 93–94. The IOP also offered a one-on-one therapy component that was in addition to the aforementioned schedule. Ex. B at 5; Tr. at 94. The Individual attended fourteen sessions of one-on-one therapy as of April 2024 and completed the IOP the same month. Ex. B at 1, 5; Tr. at 21. The substance abuse therapist the Individual began seeing at the IOP testified that he still sees the Individual for weekly one-on-one therapy and that the Individual has stated that his “goal was to achieve long-term sobriety.” Tr. at 65–67, 99. Accordingly, their sessions focus on how to “continue doing long-term sobriety.” *Id.* at 67. The Individual's therapist stated that the Individual “has a really good foundation on sobriety[,]” and that the risk of relapse is “very minimal[.]” *Id.* at 68, 70. The Individual testified that the one-on-one therapy sessions have been helpful, and he intends to continue seeing his therapist. *Id.* at 94, 99. The IOP Director testified that he had seen the Individual come in for sessions and he described the Individual as being “very eager to address his issues.” *Id.* at 29, 31–32. The IOP Director also indicated that he sees the Individual at AA meetings on a weekly basis, and he feels that the

Individual is seeking “sustained recovery,” and is “improving his coping skills.” *Id.* at 32–34. He was “impressed” by the Individual’s “motivation.” *Id.* at 32. He confirmed that participants are subject to alcohol testing while enrolled in the IOP, and that the Individual was consistently negative for alcohol. *Id.* at 34–35, 69. The Individual also voluntarily submitted to eight PEth tests from October 2023 through April 2024, the results of which indicate that no alcohol was detected. Ex. C; Ex. E.

The Individual’s current manager admitted that he was the one who sent the Individual for a breath test in June 2023, as he could smell alcohol about the Individual. *Id.* at 55–56. He testified that he has seen “noticeable change” in the Individual, and now, the Individual is at “his highest high[.]” *Id.* at 58. He has not seen an employee put forth as much effort as the Individual has in the rehabilitation process. *Id.* at 58–59. The Individual’s girlfriend testified that she did not feel that the Individual had a problem with alcohol consumption in the past, and that the Individual told her that “he needed to take time away from [her] to work on bettering himself.” *Id.* at 74, 77. She confirmed that to the best of her knowledge, the Individual has been abstinent from alcohol since July 2023, and he intends to continue attending AA meetings. *Id.* at 79. The Individual testified that he enjoys his life now and intends to remain sober for that reason. *Id.* at 107, 109. He stated that he has “learned” how to engage in his favored activities without the use of alcohol, and he no longer keeps the company of people who “need to drink[.]” *Id.* at 107. He wants to make his “day count for today, one day at a time.” *Id.* at 86. He said that he is “a grown man[.]” and he knows what “the consequences” are if he decides to continue drinking alcohol. *Id.* at 106. His “job is very important” to him and has no intention of placing his position “in jeopardy” by consuming alcohol. *Id.*

In April 2024, Occ Med determined that the Individual had successfully completed the Fitness for Duty Evaluation process, which required regular alcohol urine tests from July 2023 through January 2024, all of which were negative. Ex. D; Tr. at 88–89.

The DOE Psychologist testified that she is satisfied that the Individual has followed the recommendations that she made. *Id.* at 115. She stated that the testimony provided by the Individual’s witnesses corroborates the “seriousness” with which the Individual has “approached his treatment[.]” *Id.* at 116. She opined that the Individual has shown adequate evidence of rehabilitation and reformation, and that “he has a low risk of relapse at this point.” *Id.* at 118.

V. Analysis

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline G include:

- (a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or judgment;
- (b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated

a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

- (c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and
- (d) The individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23.

Undeterred by his previous history of treatment and relapse and motivated by the June 2023 incident to change his long-term relationship with alcohol, the Individual swiftly took appropriate action to mitigate the concerns associated with his maladaptive alcohol consumption. First and foremost, he began abstaining from alcohol in early July 2023 and enrolled in the Alcohol Awareness and Education Class. Once he completed the class, he enrolled in and officially completed the Maintaining Changes course. He began his earnest involvement with AA in August 2023, and engaged an AA sponsor with whom he works through the Twelve Steps and studies the Big Book. He also enrolled in and completed an IOP, which contained a separate one-on-one therapy component. He still attends AA and Maintaining Changes meetings, and sees his substance abuse therapist. The Individual submitted eight PETH tests, the results of which corroborate his claims of ongoing sobriety. Finally, the DOE Psychologist testified that he has shown adequate evidence of rehabilitation or reformation and that he has a low probability of suffering a relapse. Accordingly, the Individual has mitigated the stated concerns pursuant to mitigating factor (b) and (d).

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 concerns set forth in the SSC. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and security 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.

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals