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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: February 29, 2024	)	Case No.: PSH-24-0076
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Issued: June 26, 2024

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**Administrative Judge Decision**

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Matthew Rotman, 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."<sup>1</sup> As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should be restored.

**I. BACKGROUND**

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In August 1999, the Individual was arrested and charged with Minor in Consumption of Alcohol. Exhibit (Ex.) 10 at 59.<sup>2</sup> On August 23, 2023, the Individual was given a random Breath Alcohol Test (BAT) at work and tested positive at .039 g/210L and .033 g/210L. Ex. 9 at 45. Later that day he submitted a written statement, in which he admitted to consuming eight beers the evening prior to coming to work. Ex. 8 at 38. He claimed this behavior was "out of character" for him and blamed it on marital difficulties he was experiencing. *Id.*

On September 27, 2023, the Individual responded to a Letter of Interrogatory (LOI) from the Local Security Office (LSO). Ex. 10. Therein, he again explained the circumstances of his positive BAT. *Id.* at 58. He further stated that from about April 2022 through August 2023, his pattern of alcohol consumption increased to approximately six-to-eight beers on weekends. *Id.* at 59. The last time

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<sup>1</sup> 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.

<sup>2</sup> The exhibits submitted by DOE were Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to exhibits submitted by DOE.

he was intoxicated, he claimed, was on August 5, 2023, when he drank 12 beers in four hours. *Id.* at 60. The last time he consumed any alcohol, he stated, was on September 9, 2023. *Id.* at 59. On September 11, 2023, the Individual entered an intensive outpatient program (IOP) to address his problematic alcohol consumption. *Id.* at 58; Ex. A (certificate of IOP completion dated November 2, 2023).

The Individual was referred for a psychological evaluation with a DOE-contracted psychologist (Psychologist), who conducted a 1.25-hour clinical interview of the Individual on November 13, 2023, and prepared a Psychological Assessment (Report) documenting his findings and conclusions.<sup>3</sup> Ex. 11. As an initial matter, the Psychologist opined that based on the Individual's BAT level recorded on August 23, 2023, he most likely underreported the amount of alcohol he consumed the night before, or else consumed the eight beers closer in time to the BAT than reported. *Id.* at 67. According to the Report, the Individual told the Psychologist his alcohol consumption increased in April 2022 in response to his brother's death, but his use of alcohol was almost always limited to weekends. *Id.* at 67–68. He acknowledged that he would sometimes consume up to twelve beers across the weekend, but still viewed himself as a “normal drinker.” *Id.* at 68. The Individual further claimed that his last use of alcohol occurred somewhere in the first nine days of September, when he consumed six beers in three-and-a-half hours. *Id.* The Individual spoke positively to the Psychologist about his experience in the IOP, and when asked about his plans regarding future alcohol consumption, he responded without hesitation, “I’m done.” *Id.* at 69–70.

As part of his evaluation, the Psychologist consulted with the Individual's counselor (Counselor), who oversaw the Individual's participation in the IOP. *Id.* at 72. The Counselor reported that at the conclusion of his initial assessment with Individual, the Individual decided the IOP was something he needed to do and signed up that very day. *Id.* The Counselor described the Individual as being “shy” and “isolated” in the IOP group at first, but over time becoming a leader. *Id.* After completion of the IOP, the Counselor reported, the Individual began attending aftercare sessions. *Id.*

The Psychologist concluded that the Individual had an alcohol use disorder (AUD) of moderate severity, not yet in early remission, pursuant to the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision*. *Id.* at 73. Nonetheless, he opined, the Individual had already demonstrated reformation “at a very high level” by quickly pursuing the IOP, completing it successfully, and continuing in the aftercare program. *Id.* The Individual had not yet demonstrated rehabilitation, the Psychologist opined, as this would require an additional period of sustained abstinence. *Id.* To show reformation and rehabilitation, the Psychologist recommended that the Individual continue in aftercare for at least six months, demonstrate six months of

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<sup>3</sup> In addition to the information obtained from the clinical interview, the Psychologist based his Report on his review of the Individual's Personnel Security File and the results of psychological testing—specifically the Minnesota Multiphasic Personality Inventory-3, which the Psychologist administered to the Individual at the time of his interview. Ex. 11 at 66. Immediately following the interview, the Psychologist had the Individual undergo a Phosphatidylethanol (PEth) test, which “can provide evidence of high alcohol consumption over approximately the three, possibly four preceding weeks, depending on the likes of the individual's ability to metabolize alcohol.” *Id.* at 72. The Individual's PEth result was negative, which indicated “either very low or minimal alcohol consumption in the recent weeks leading up to the date of this evaluation.” *Id.*

abstinence through a series of negative PEth tests, pursue one-on-one counseling, and if the aftercare meetings were only once per week, attend Alcoholics Anonymous (AA) meetings on a weekly basis. *Id.* at 73–74.

On January 30, 2024, the LSO issued the Individual a letter in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. Ex. 1 at 6. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. *Id.* at 5.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted 14 exhibits (Ex. 1–14). The Individual submitted eight exhibits (Ex. A–H). At the hearing, the Individual testified on his own behalf and offered the testimony of his girlfriend (Girlfriend) and his Counselor. Hearing Transcript, OHA Case No. PSH-24-0076 (Tr.) at 10–80. The LSO offered the testimony of the Psychologist. *Id.* at 80–90.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

The LSO cited Guideline G as the basis for its determination that the Individual was ineligible for access authorization. Ex. 1 at 6. “Excessive 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. According to the LSO, the factors that gave rise to the Guideline G concerns were the Individual’s diagnosis with AUD, not yet in early remission and without adequate evidence of rehabilitation or reformation; the Individual’s positive BAT on August 23, 2023, and admission that he had consumed eight beers the night before; and the Individual’s 1999 arrest and charge with Minor in Consumption of Alcohol. Ex. 1 at 5. These allegations justify the LSO’s invocation of Guideline G. *See* Adjudicative Guidelines at ¶ 22(a)–(b), (d).

## **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 Dep’t 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. HEARING TESTIMONY

The Individual’s Girlfriend testified that she first met the Individual in January 2024 and began her relationship with him at that time. Tr. at 10–11. She stated that she often sees him two-to-three times during the work week and significantly on the weekends. *Id.* at 11, 15. Within their first week of dating, she testified, the Individual told her that drinking “wasn’t something that he does or wanted to do.” *Id.* at 13. The Girlfriend stated that the Individual told her that he last consumed alcohol in “July or August of last year.” *Id.* at 21. During the time when he was consuming alcohol, she testified, his consumption was triggered by the death of his brother and “life” in general. *Id.* She indicated that she believes the Individual “knows that he had [an alcohol problem] in the past,” but since she has known him, he has “done everything . . . [to] change that.” *Id.* at 22.

The Girlfriend further testified that, after the Individual’s aftercare meetings on Mondays and Wednesdays, he will often call her to share his thoughts on each meeting. *Id.* at 12. She described him as “very upbeat . . . and retrospective on what he learned” after each meeting. *Id.* at 13. She testified that she does not consume alcohol, she has not seen him consume alcohol, and neither herself nor the Individual keep alcohol in their houses. *Id.* at 15–16. The Girlfriend additionally stated that she was previously married to an alcoholic, so if the Individual started drinking again, she would not continue the relationship. *Id.* at 14, 17.

The Individual testified regarding the circumstances of his positive BAT. He asserted that, on the night of August 22, 2023, he “d[idn]’t count” how much he had to drink and may have had more than the six or eight beers he previously reported. *Id.* at 26. In addition to the loss of his brother two years ago, the Individual also indicated that his excessive drinking was influenced by his divorce, which was finalized in early August 2023. *Id.* at 28–29. He indicated that he did not dispute the Psychologist’s opinion that he had an AUD. *Id.* at 25.

The Individual testified about his experience in the IOP, stating that, although he did not believe he had an alcohol problem at the time he entered, once he started the program, he “kn[ew] for a fact” that he had a problem. *Id.* at 27–28. The Individual indicated that the IOP consisted of four three-hour classes each week, with a different counselor each night. *Id.* at 32. He stated that the classes helped him to cope with the loss of his brother, “where in the past[,] [he] didn’t really know how to deal with it, so [he] drank.” *Id.* at 30. He further stated that the classes discussed “not only [how to] stop drinking, but [also how to] identify relapses.” *Id.* at 32. The Individual noted that he developed a friendship with another IOP attendee, who he still considers to be part of his support network. *Id.* at 32–33.

The Individual explained that after he completed the IOP on November 2, 2023, he began the aftercare program immediately. *Id.* at 34; *see also* Ex. A (certificate of IOP completion dated November 2, 2023). The aftercare program, he testified, consists of hour-long sessions each Monday and Wednesday night. Tr. at 34. The Individual stated that on Mondays, his Counselor

leads the meeting, which is often more “educational” than the Wednesday meetings, which offer more of an “AA perspective.” *Id.* at 35. He spoke positively about the Monday meetings, but also stated that he appreciates the “different perspectives” in both meetings. *Id.* at 35–36. He further indicated that he intends to continue with aftercare as long as the Psychologist recommended it. *Id.* at 36. The Individual testified that he currently attends individual counseling sessions with his Counselor approximately once a month. *Id.* at 30, 52. He feels more “comfortable opening up all the way” during these sessions, he testified, because of their “one-on-one” nature. *Id.* at 31. He indicated that he intends to continue with the individual counseling sessions every three-to-four weeks. *Id.*

The Individual asserted that he has not consumed alcohol since September 5, 2023, and no longer keeps alcohol in his house. *Id.* at 40. He further confirmed that, in addition to his negative mid-November 2023 PEth test noted in the Report, he underwent additional PEth tests every month between December 2023 and April 2024, all of which had negative results.<sup>4</sup> *Id.* at 36–37; *see also* Ex. 11 at 72 (negative November 2023 PEth test); Ex. B (negative December 2023 PEth test); Ex. C (negative January 2024 PEth test); Ex. D (negative February 2024 PEth test); Ex. E (negative March 2024 PEth test); Ex. F (negative April 2024 PEth test). The Individual testified that he has “no intentions on . . . ever drinking again,” and stated that he realizes his “time is valuable.” Tr. at 40. He further asserted that the positive BAT was a “blessing in disguise” because he wasn’t aware that he had a problem with alcohol at that time, but now, the “IOP has most definitely changed [his] life.” *Id.* at 41.

On cross-examination, the Individual was asked whether he has ever attempted to stop drinking alcohol before. *Id.* The Individual responded that he had “slowed down before,” but never attempted to stop drinking completely. *Id.* at 41–42. He indicated that he consumed less alcohol when his children were younger because he didn’t “have the time for it,” but indicated his alcohol use picked up when he had “more time on his hands.” *Id.* at 42. He was also asked how he currently handles stressful situations and responded that he is now able to “figure out a solution” and “deal with it with a clear head.” *Id.* at 44. The Individual expounded further on his decision to begin the IOP even before meeting with the Psychologist and noted that his employer recommended the program, and he “realized that . . . [he] definitely needed [the] IOP.” *Id.* at 46–47. He clarified that, to the best of his recollection, his first meeting with the Counselor was on September 7, 2023, and during this meeting, he first realized that he had an alcohol problem. *Id.* at 54. When he thereafter stopped consuming alcohol, the Individual testified, he had cravings for alcohol “at first,” but as of the hearing date he no longer had such cravings. *Id.* at 54, 56.

When pressed on his ability to remain sober during traumatic life events, the Individual stated that he has a “great group of people at [his] aftercare.” *Id.* at 48. For example, he noted that even on the morning of the hearing, several aftercare members “reached out to let [him] know that they were thinking about [him].” *Id.* at 48–49. The Individual further stated that it is his intention to attend the Counselor’s aftercare program “as long as [the] doors are open,” but he is willing to attend AA if the Psychologist recommends it. *Id.* at 49. When asked about his August 1999 charge of Minor in Consumption of Alcohol, the Individual stated that he had been arrested after drinking

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<sup>4</sup> The Individual also submitted the results of four random breathalyzer tests he received at work between August 2023 and May 2024, all of which were negative. Ex. G at 22–25.

at a party. *Id.* at 51. He indicated that the charges were resolved after he completed community service and paid a fine. *Id.*

The Counselor testified that he first met the Individual for an initial evaluation on September 7, 2023, and that the Individual first inquired about attending the IOP at that time. *Id.* at 60–61. After this initial meeting, the Counselor confirmed, the Individual started the IOP the very next week. *Id.* at 62. He stated that the Individual was “restrictive and standoffish” when he first started the IOP, but “as he progressed[,] . . . he began being not only interactive, but jovial.” *Id.* at 75. He indicated that the Individual “started as a wallpaper,” but “ended as . . . an organizer in the group, [and] an instigator of topics.” *Id.* at 66.

The Counselor perceived that the Individual “had not processed any of the loss of his brother” at the time he began the IOP, but stated the Individual “can [now] talk about it and . . . access those positive memories which were apparently out of reach early on.” *Id.* at 64–65. The Counselor noted that the Individual’s mother is currently facing very serious health issues, and although this is a difficult situation, it has been “very useful to focus on” that type of stress in the counseling sessions. *Id.* at 64. He further stated that the Individual has “the early granules of skill set to cope with” such stressful situations now, and he must “continue working on [these coping skills].” *Id.* at 65–66. Regarding the Individual’s participation in the Monday aftercare meetings, the Counselor testified that “there are days where he’s more interactive than others,” but noted that the Individual “tends to have some involvement, some vocalization” in every session. *Id.* at 67–68. The Counselor stated that his individual sessions with the Individual typically focus on a “mixture of current events versus new strategies for dealing with [stress],” which can include discussion of “emotional regulation, responses to stress, [and] self-care.” *Id.* at 68.

The Counselor further stated that he believes the Individual’s AUD to be in early remission as he has complied with all treatment recommendations, which included completing six months of aftercare and undergoing monthly PEth testing during that time. *Id.* at 70–71. He stated that if the Individual continues to “connect with what he values from this experience . . . and work on it,” he believes that the Individual is “going to do well.” *Id.* at 73. The Counselor stated that he would continue to recommend regular individual therapy sessions, but noted he would leave the decision as to whether to attend aftercare up to the Individual “based off of his own needs and his own instincts.” *Id.* at 76.

The Psychologist testified that, based on the Individual’s negative PEth test results, he has likely maintained abstinence for seven months, which he believes is “pretty powerful.” *Id.* at 84–85. Although he typically “push[es] for a year of abstinence,” the Psychologist testified, he was comfortable with recommending six months in his Report because the Individual had already completed the IOP by the time of the evaluation. *Id.* at 85. He opined that the Individual has complied with all of his treatment recommendations and noted that the Individual’s attendance of two aftercare meetings per week “equals” the group support recommendation in the Report, which indicated that the Individual could consider attending AA if he only attended one aftercare meeting per week. *Id.* at 85, 87–88. In light of the Individual’s satisfaction of the treatment recommendations, the Psychologist testified that the Individual met the definition of both rehabilitation and reformation. *Id.* at 89. He further stated that he is “convinced that” the Individual

can continue with his abstinence, but emphasized the need for the Individual to continue with group support meetings. *Id.* at 86, 89.

## V. ANALYSIS

Conditions that may 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 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.

The Individual has demonstrated mitigation under the conditions set forth in paragraphs (b), (c) and (d). Because I rely upon much of the same evidence in considering each of these mitigating factors, the following analysis addresses them together. The Individual completed an eight-week IOP in November 2023, has continued to participate in two aftercare meetings each week since that time, and has demonstrated his abstinence for at least six months through a series of negative PEth test results. As the Psychologist confirmed, the Individual has met all treatment recommendations and meets the definition of both rehabilitation and reformation. In addition, the Individual currently attends individual therapy sessions with the Counselor approximately once per month and indicated his intent to continue these sessions, as well as the aftercare, for the foreseeable future.

Furthermore, it is evident that the Individual has acknowledged his maladaptive alcohol use, and I find his testimony to be sincere regarding the realization of his alcohol problem during the IOP. I also find compelling the Individual's testimony – corroborated by the Counselor – that he is better able to cope with stressful situations, and it is clear that he now has a strong support network in place, which includes his Girlfriend, Counselor, a former IOP attendee, and several other members of the aftercare program. Additionally, while the Individual indicated that he has attempted to “slow down” his drinking in the past, there is no evidence that he actually attempted to stop drinking altogether prior to his current attempt. Therefore, the Individual does not have a

history of treatment and relapse. Accordingly, I conclude that he has mitigated the stated concerns pursuant to mitigating factors (b), (c), and (d).<sup>5</sup>

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline G of the Adjudicative Guidelines. After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined 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.

Matthew Rotman  
Administrative Judge  
Office of Hearings and Appeals

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<sup>5</sup> To the extent the Individual's 1999 Minor in Consumption of Alcohol charge raises a security concern apart from those raised by his more recent pattern of consumption and diagnosis of AUD, that concern is clearly mitigated by the passage of 25 years since the behavior occurred. *See* Adjudicative Guidelines at ¶ 23(a).