

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

In the Matter of: Personnel Security Hearing)
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Filing Date: April 4, 2024)
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Case No.: PSH-24-0093

Issued: October 7, 2024

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 be granted.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position that requires her to hold a security clearance. Derogatory information was discovered regarding the Individual’s alcohol consumption. The Individual was referred to a DOE Contractor Psychologist (the Psychologist) for a substance abuse evaluation. The Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding her 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 testified on her own behalf and presented the testimony of her Employee Assistance Program (EAP) counselor, her cousin, and two coworkers who she also considered friends (Coworkers 1 and 2). The LSO presented the testimony of the Psychologist. *See* Transcript of Hearing, OHA Case No. PSH-24-0093 (hereinafter cited as “Tr.”). The LSO submitted ten exhibits, marked as Exhibits 1 through 10 (hereinafter cited as “Ex.”). The Individual submitted twelve exhibits, marked as Exhibits A through L.

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 her 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 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. 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:

- On October 30, 2023, the Psychologist evaluated the Individual for substance abuse and, in his November 10, 2023, report, diagnosed the Individual with Alcohol Use Disorder (AUD), mild severity, without adequate evidence of rehabilitation or reformation.
- During her substance abuse evaluation, the Individual admitted to drinking four cocktails in a four hour period three days prior and to drinking alcohol about fifteen times in the previous thirty days, which she described as “not drinking often.”
- The Individual stated that she last drank to intoxication in October 2022, when she consumed about six mixed drinks over a three-and-a-half-hour period, and that since early 2020 she had blacked out from alcohol two or three times.
- The Individual consumed alcohol almost every day in 2021 and from February to April 2022, including times when she consumed eight standard drinks of liquor over a one-to-two-hour period.
- The Individual admitted that from January 2021 to June 2022, she consumed alcohol to cope with poor mental health and difficulties in her life.
- The Individual admitted that her alcohol consumption negatively affected her personal life and was a contributing factor in the end of her romantic relationship in March 2022.

Ex. 1 at 1–2. In addition to the Individual’s AUD diagnosis, which falls under concerning condition (d), the Individual’s periods of heavy drinking, use of alcohol to cope, and use of alcohol to the point that it had a negative impact on her personal life are all incidents of concern that fall under concerning condition (a). 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 full opportunity to present evidence supporting her 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.

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

From March to December 2022, the Individual attended therapy to cope with a breakup and some mental health challenges. Ex. 6 at 1. She discussed her alcohol use with her therapist because she knew she was using alcohol for the “wrong reasons,” but she did not, at that time, believe she had an alcohol problem Tr. at 47. She was not given a substance abuse diagnosis, though treatment notes indicated that the Individual consumed alcohol frequently and that she had experienced social consequences from her alcohol use. Ex. 5 at 2. The Individual had reported to her therapist that her friends and family had commented on her alcohol use and that a romantic relationship ended in March 2022 due in part to her partner’s discomfort with her alcohol consumption. *Id.* The Individual later testified that the partner had not mentioned her alcohol use until the night of their breakup. Tr. at 46. The Individual stopped seeing her therapist when she moved to her current state. *Id.* at 48. After her move, the Individual consumed less alcohol, in large part because she did not have a social group who drank. *Id.* at 49.

The Individual reported her therapy attendance on a Questionnaire for National Security Positions in 2023 and, after investigators spoke to the therapist, the Individual was referred to the Psychologist for a substance abuse evaluation, which occurred on October 30, 2023. Ex. 3 at 1. The Individual reported during the evaluation that prior to 2020, she rarely drank, but her alcohol consumption increased during the COVID-19 pandemic until she was consuming multiple drinks per day. Ex. 7 at 4. She reported that since completing her therapy program, she had been consuming alcohol rarely and only socially. *Id.* at 5. She reported in previously filed documents that her last drink occurred on September 12, 2023, when she drank one twelve oz. vodka lemonade. *Id.* at 4; Ex. 6 at 3 (Letter of Interrogatory Response, September 13, 2023). During the evaluation, she reported consuming four cocktails in four hours on October 27, 2023, and stated that she last consumed alcohol at a birthday party on October 29, 2023. *Id.* at 5. The Psychologist referred the Individual for Phosphatidylethanol (PEth) testing, which tests for alcohol byproduct in the blood and can detect frequent or moderate alcohol use in the month preceding the test. *Id.* at 7. The test returned a positive result, and a medical doctor interpreted the result to be consistent with the Individual’s reported recent alcohol use. *Id.* at 7–8.

The Psychologist issued a report based on the evaluation in which he diagnosed the Individual with AUD, mild severity, in early remission. Ex. 7 at 9. He wrote that she was not rehabilitated or reformed. *Id.* To show rehabilitation, the Psychologist recommended that the Individual engage for six months in a program that taught alcohol education and awareness and included group therapy and an aftercare support group. *Id.* at 10. To show reformation, the Psychologist recommended that the Individual remain abstinent for six months and document her abstinence with monthly PEth tests. *Id.* The Individual received the report in the last week of January or first week of February 2024. Tr. at 51.

The Individual consumed alcohol on one occasion in December 2023 at a family Christmas party in a different state. Tr. at 57. The Individual last consumed alcohol on January 26, 2024, the day after her father's death, when she consumed one beer brought to her by a friend. *Id.* at 19–20, 56. She had not asked the friend to bring her alcohol and did not know he had planned to bring it. *Id.* at 56. She enrolled in a six-week alcohol education and awareness course and then a twelve-week course on change management, both through the EAP. *Id.* at 10–11. The Individual reached out to a counselor for alcohol recovery in mid-February 2024 but was waitlisted until June 13, 2024. *Id.* at 64. By the hearing date, the Individual had completed seven weekly treatment sessions, missing some weeks due to the counselor being unavailable. Tr. at 64, 78. The counseling incorporated three treatment methods: Community Reinforcement Approach, Behavioral Activation, and Mindfulness-Based Relapse Prevention. Ex. K at 1 (Letter from treatment provider). They also discussed the Individual's mood and whether she had felt alcohol cravings or consumed that week. *Id.* The Individual submitted the results of seven monthly PEth test taken from March 2024 through August 2024, all of which were negative for alcohol byproduct.² Ex. A; Ex. B; Ex. C; Ex. D; Ex. E; Ex. F; Ex. G.

The EAP counselor testified that she met the Individual on March 7, 2024, when the Individual began attending the counselor's six-week alcohol awareness and education program. Tr. at 10. The program consisted of group sessions and homework and focused on the stages of change. *Id.* at 10–11. The Individual completed the course in late April 2024. Ex. I. She testified that the Individual began attending the EAP counselor's twelve-week substance abuse recovery course on June 13, 2024, and last attended on August 29, 2024. Tr. at 11. That group met weekly to provide support for employees in all stages of recovery, including those who continued attending after finishing the initial twelve-week course. *Id.* at 11–12. The EAP counselor described the Individual as focused and mindful in both groups and stated that her level of participation was appropriate. *Id.* at 12–13. She opined that the groups helped the Individual see the bigger picture of alcohol in her life, as well as triggers for drinking and the consequences of alcohol use. *Id.* at 13. The EAP counselor testified that the Individual's father died in January 2024 and that the Individual had trauma from childhood. *Id.* at 16. She testified that these factors contributed to the Individual's alcohol use. *Id.* She testified that the Individual's participation in the twelve-week group required abstinence, but testing was not provided for confirmation. *Id.* at 12. She testified that the Individual told her she last drank alcohol on January 27, 2024.³ *Id.* at 17.

Coworker 1 met the Individual when she started working at the Individual's site about eighteen months prior to the hearing. Tr. at 22. They talked daily, carpooled to work together,⁴ and spent time together socially about once per month. *Id.* at 22–23. She had never observed the Individual drinking alcohol, including in situations in which others were drinking alcohol. *Id.* at 23. Coworker 1 was aware of the Individual's prior alcohol use and testified that the Individual had initially struggled with her sobriety. *Id.* at 24. She testified that, recently, the Individual appeared more comfortable with her sobriety and that the Individual intended to abstain from alcohol indefinitely.

² Due to the length of the month, the Individual took two PEth tests in July 2024.

³ The Individual, having been sworn under oath but outside her testimony time, clarified that her last drink was on January 26, 2024. Tr. at 19–20.

⁴ The drive to work was long, resulting in the Individual and Coworker 1 spending about twenty hours per week together just in commute time. Tr. at 22.

Id. at 24–25. She further testified that the Individual had been open about her recovery and was currently focused on emotions and developing healthy coping mechanisms. *Id.* at 25.

The Individual's cousin testified that he saw the Individual at least twice a month for barbeques. Tr. at 30. He testified that he had never seen her drink and that he had never had concerns about her alcohol use. *Id.* at 32. The cousin had not attended the 2023 Christmas party where the Individual drank alcohol. *Id.* at 57–58. He had never heard anyone comment on the Individual's drinking. *Id.* at 35. He had not seen alcohol at the Individual's house when he was there recently. *Id.* at 36. He testified that the Individual enjoyed riding her motorcycle, caring for her dog, and spending time with friends. *Id.* at 33.

Coworker 2 testified that she had known the Individual for about two years and that she typically interacted with the Individual through instant messages and emails at work. Tr. at 39. They spent time together outside of work once every two or three months, during which they typically walked the Individual's dog together or had a coffee. *Id.* at 41–42. She had never seen the Individual consume alcohol and they had never discussed serious issues in their lives. *Id.* at 42. She testified that she found the Individual reliable, responsible, and honest. *Id.* at 40. She further testified that the Individual followed security protocols and, to Coworker 2's knowledge, had not had any security infractions. *Id.*

The Individual testified that she discussed the administrative review process with her mother when she received the Notification Letter. Tr. at 58. She testified that since she began abstaining from alcohol, she attended her brother's wedding in another country and did not consume alcohol even though there was an open bar and others around her were drinking. *Id.* at 58–59. She also testified that she did not consume alcohol with her cousin and a friend on her birthday even though both guests were drinking. *Id.* at 59. The Individual testified that she went through a breakup toward the end of 2023. *Id.* at 69. While they were dating, her partner was diagnosed with a terminal illness, and they mutually decided to end their relationship. *Id.* at 69–70. The Individual testified that she did not consume alcohol to cope with that situation *Id.* at 70.

The Individual testified that in the six-week EAP course, she learned how to identify her emotions that led her to drink alcohol. Tr. at 60. She further testified that it “helped open my eyes more to . . . alcohol consequences.” *Id.* She decided to attend the twelve-week EAP class because she was curious after hearing about it in the six-week course. *Id.* at 61. She testified that in the twelve-week course, she learned that she was not the only person in her situation and felt less stigmatized by her issues with alcohol. *Id.* at 62. The Individual recognized that she had been using alcohol maladaptively. *Id.* at 66. She intended to continue abstaining from alcohol and was using the “one day at a time” approach to sobriety. *Id.* at 89. When discussing whether she would remain abstinent indefinitely, she referred to the possibility of future alcohol consumption as relapse, rather than an intentional return to drinking alcohol. *Id.*

In her individual therapy sessions, the Individual tracked her moods and cravings. Tr. at 64. She testified that, when she first abstained from alcohol, she experienced significant amounts of stress which were accompanied by cravings. *Id.* at 65. However, she testified, her cravings subsided as she mitigated her stress. *Id.* The Individual identified mood as her primary trigger for consuming alcohol. *Id.* at 79. She testified that loneliness and holding in emotions triggered moods that made

her want to consume alcohol. *Id.* Through her various treatment programs, she had learned coping mechanisms to replace alcohol use when she was experiencing stressful emotions, such as riding her motorcycle, taking her dog to the park, and going on nightly walks. *Id.* at 79–80. She also would reach out to others for companionship. *Id.* at 79. She also practiced grounding herself by identifying her emotions and their causes and allowing herself to let out emotions through crying. *Id.* at 81. The Individual testified that the people in her life supported her desire to remain abstinent from alcohol. *Id.* at 60. The Individual had contacted a trauma therapist in March 2024 to work on her deeper issues and was on a waitlist for treatment. *Id.* at 72–73.

The Psychologist testified that early remission means not having used alcohol to a problematic extent in the previous three to six months. Tr. 94. He testified that in the months before her evaluation, even though the Individual consumed alcohol, her alcohol consumption did not meet any of the diagnostic criteria for AUD. *Id.* at 101. He further testified that by the hearing date, the Individual’s alcohol use had not met any of the diagnostic criteria for AUD for over twelve months and, therefore, the Individual’s AUD was in sustained remission. *Id.* at 102. He testified that, based on the Individual’s completion of his recommendations and her demonstrated growth in her treatment programs, the Individual was reformed and rehabilitated. *Id.* at 96–98. He opined that her prognosis was positive. *Id.* at 98.

The Psychologist testified that while alcohol would always pose a risk for the Individual, he believed that with her current skills and education, she could properly assess that risk. *Id.* at 100. He opined that the Individual could potentially engage in controlled drinking in the future so long as she was mindful of the risks. *Id.* The Psychologist testified that permanent abstinence was not one of his recommendations. *Id.* at 97. Moreover, he noted, “DOE doesn’t require that you never drink again, it just requires that you manage it. And the evidence is that she’s managing it.” *Id.*

V. ANALYSIS

A person who seeks access to classified information enters into 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 may mitigate Guideline G concerns 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. Conditions (b) and (c) apply.

Regarding condition (b), the Individual testified that she misused alcohol for years, citing her use as a coping mechanism as the primary maladaptive use. She credibly testified that she has been attending individual therapy and group classes, both focusing on alcohol abuse recovery. She supported this testimony with documentary evidence of her attendance. The Individual also testified credibly that she is learning how to recognize and process her emotions before they reach a level that might trigger a desire to drink. Her testimony is supported by Coworker 1's testimony that the Individual has been emotionally open and is focusing on her emotions and developing healthy coping strategies. The Individual cited multiple coping mechanisms that she uses instead of alcohol when feeling intense emotions, including motorcycle rides, walking her dog, and spending time with friends. Multiple witnesses corroborated this testimony. Based on the evidence presented, I find that the Individual has taken significant actions to overcome her alcohol misuse.

The Individual submitted PEth tests showing over six months of continuous sobriety starting very shortly after receiving the Psychologist's recommendations. The Psychologist testified that, if he had recommended permanent abstinence, the Individual would be in early remission with a good prognosis and would have fulfilled his recommendations in full. However, he did not recommend permanent abstinence. He instead opined that the Individual's alcohol use close to and after the date of her evaluation was not indicative of an AUD and noted that the Individual completed six months of abstinence, documented by PEth tests, as he had recommended. He therefore categorized the Individual's AUD, mild severity, as being in full remission. The Individual testified to her desire to remain abstinent and stated that she no longer felt alcohol cravings. Based on this evidence, I find that the Individual has demonstrated a clear pattern of both modified consumption and abstinence in accordance with treatment recommendations.

Regarding condition (c), the Individual has no history of treatment and relapse. She testified that she was engaging in ongoing therapy based in clinically recognized methods. She submitted

documentary evidence from her treatment provider to support this testimony. Furthermore, she was able to testify in detail about her therapeutic process, triggers she had identified, and ways to disrupt or cope with overwhelming emotions. Coworker 1's testimony supports the Individual's testimony regarding the focus of her therapy. The Psychologist testified that the Individual had demonstrated growth in her treatment program and opined that she was reformed and rehabilitated. The Individual also completed all of the Psychologist's recommendations. Based on this evidence, I find that the Individual is making satisfactory progress in her treatment program.

For the foregoing reasons, I find that the Individual has mitigated the concerns raised under Guideline G.

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 succeeded in fully resolving those concerns. Therefore, I 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 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