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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: May 14, 2024	)	Case No.: PSH-24-0124
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Issued: October 9, 2024

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**Administrative Judge Decision**

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Noorassa A. Rahimzadeh, 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."<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 not be restored.

**I. Background**

The Individual is employed by a DOE contractor in a position that requires him to hold an access authorization. In November 2023, after consuming alcohol, the Individual was arrested and charged with Interference with Communications, Battery Against a Household Member, and False Imprisonment following. Ex. 6 at 2. Three days later, a person reported the incident on behalf of the Individual to DOE. Ex. 8. This person reported that the Individual's wife had called law enforcement because the Individual was not responsive after consuming alcohol. *Id.* at 38. Although the Individual stated he did not need assistance from law enforcement when he regained consciousness, he was arrested when law enforcement arrived at the house. *Id.* The Individual's access to the worksite was restricted the same day the report was made. *Id.* at 46.

The Local Security Office (LSO) asked the Individual to complete a Letter of Interrogatory (LOI), which the Individual submitted in January 2024. Ex. 9. Following the submission of the LOI, the LSO requested that the Individual undergo a psychological evaluation with a DOE-consultant psychologist (DOE Psychologist), which was conducted in January 2024. Ex. 10. The DOE Psychologist issued a report (the Report) of her findings in February 2024. *Id.* at 62. During the

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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.

evaluation, the Individual indicated that he had not consumed any alcohol since late November of 2023. *Id.* at 69. In conjunction with the psychological evaluation, the Individual underwent a Phosphatidylethanol (PEth) test, “which reflects the average amount of alcohol consumed over the previous [twenty-eight to thirty] days.” *Id.* The Individual’s PEth test results were positive at a level of 111 ng/mL, which the psychiatrist who reviewed the laboratory results indicated means that the Individual “consumes alcohol regularly.” *Id.* As part of the evaluation, the DOE Psychologist reviewed the Individual’s personnel file, conducted a clinical interview of the Individual, reviewed the Individual’s PEth test results, and consulted the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition, Text Revision* (DSM-5-TR). *Id.* at 64. In the Report, the DOE Psychologist concluded that the Individual met sufficient diagnostic criteria for a diagnosis of Alcohol Use Disorder (AUD), Mild, and that he had not shown adequate evidence of rehabilitation or reformation. *Id.* at 70.

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. *See* Transcript of Hearing, OHA Case No. PSH-24-0124 (hereinafter cited as “Tr.”). The Individual also submitted six exhibits, marked Exhibits A through F. 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 . . . fighting, child or spouse abuse . . . regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder[.]” and “[d]iagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder[.]” *Id.* at ¶ 22(a), (d). The LSO alleged that:

1. The DOE Psychologist diagnosed the Individual with AUD, Mild, and determined that he had not shown adequate evidence of rehabilitation or reformation. Ex. 1 at 5.
2. Although the Individual denied consuming alcohol in the thirty days prior to the evaluation, the results of the PEth test taken in conjunction with the psychological evaluation indicated

that the Individual engaged in “significant consumption [of alcohol] during the prior thirty days.” *Id.*

3. In November of 2023, the Individual was arrested and charged with Battery (Household Member), Interference with Communications, and False Imprisonment after consuming “two to three beers and one to two shots of vodka.” *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 their 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 the LOI and during the hearing, the Individual provided his account of the November 2023 incident. On that day, the Individual began drinking beer with his spouse around 3:00 pm. Ex. 9 at 48; Tr. at 12, 21. Over the next five hours, the Individual consumed at least one shot of vodka and a total of four beers. Ex. 9 at 48; Tr. at 12–13, 17–18. Later in the evening, following their dinner, the Individual tripped on the front porch step while attempting to take out the trash through the front door.<sup>2</sup> Ex. 9 at 48; Tr. at 13, 20. The Individual’s spouse came to his aid and moved him to a chair by the kitchen table. Ex. 9 at 48; Tr. at 13. As the Individual was lightheaded, he fell from the chair, striking his head on the floor. Ex. 9 at 48. As the injury caused the Individual to become unresponsive, his spouse called emergency services. *Id.*; Tr. at 13–14. When the Individual regained consciousness, he heard his spouse on the phone with emergency services. Tr. at 14. As

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<sup>2</sup> The Individual testified that at this point in the evening, he felt “buzzed” from the alcohol, and, further, he acknowledged that the beer he was consuming had a high alcohol content. Tr. at 17–18, 20–21.

he felt “fine,” he asked his wife to hang up the phone.<sup>3</sup> Ex. 9 at 48. In response, the Individual’s spouse asked him “to go stand in the other room.” *Id.* When he moved to the front door of their home, he overheard the operator ask about any firearms in the home, to which he replied, “nothing is happening with guns.” *Id.* He testified that he said, “this is not a suicide by cop situation.” Tr. at 14. At this point, the operator asked the Individual’s spouse to stand outside to wait for law enforcement personnel. Ex. 9 at 48. The Individual exited the home to wait for law enforcement personnel, and when they arrived, the Individual was arrested, and his spouse provided a statement.<sup>4</sup> Ex. 9 at 48; Tr. at 15–16. The Individual testified that he now understands that his alcohol consumption negatively affected the events of the night. Tr. at 22–23.

The Report indicates that the Individual provided the DOE Psychologist with the same version of events that he provided in the LOI and went on to state that he had only consumed a granola bar the morning of the incident. Ex. 10 at 64–65. Law enforcement personnel took the Individual to a hospital immediately following his arrest. *Id.* at 66. Medical records indicate that law enforcement wanted “medical clearance for incarceration[,]” and that the Individual was not “discharge[d] until he had something to eat” due to low glucose levels. Ex. 6 at 26; Ex. 10 at 66. Medical records also note that the Individual reported consuming “a fifth [of alcohol] and some beers . . . before getting into an argument with his spouse.” Ex. 6 at 28; Ex. 10 at 66.

As indicated in the Report, the Individual was given a set of requirements by his employer’s Occupational Medicine (Occ Med), which included attending Alcoholics Anonymous (AA) meetings, completing a six-week alcohol education course, and establishing a therapeutic relationship with an appropriate therapist. Ex. 10 at 66. At the time of the psychological evaluation, the Individual had met with a therapist licensed to practice in his home state for a consultation. *Id.* He was also “looking around to find” an AA group and had plans to attend his employer’s Employee Assistance Program’s (EAP) six-week alcohol education program. *Id.* The Individual was also subject to PEth testing at the behest of Occ Med. *Id.* The first PEth test took place in late November 2023, the results of which were 900 ng/mL. *Id.* The Occ Med physician told the DOE Psychologist that the Individual had been counseled regarding his alcohol consumption during a routine appointment with Occ Med a few weeks prior to the incident in November of 2023, as “they [had] concerns about anyone who drinks more than a few times per week.”<sup>5</sup> *Id.* at 66–67. The Occ Med physician told the DOE Psychologist that the Individual reported consuming “anywhere from three to five light beers per occasion.”<sup>6</sup> *Id.* at 67.

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<sup>3</sup> At the hearing, the Individual testified that when he regained consciousness, he was “kind of confused[,]” and accordingly, was asking his wife questions, prompting her to ask for “some space.” Tr. at 14.

<sup>4</sup> The terms of the Individual’s release included no contact with his spouse, that he would not possess any firearms, and that he would not violate any federal or state laws. Ex. 8 at 41. The terms of release do not include any alcohol-related restrictions. *Id.* The underlying criminal matters, two misdemeanors and a felony, were dismissed, without prejudice, in December 2023. *Id.* at 39.

<sup>5</sup> The Individual testified that the Occ Med physician told him to “just drink at the house” and to consider asking his wife to drive if he consumes alcohol outside of the home. Tr. at 24–25.

<sup>6</sup> The Individual testified that he was consuming about four beers per weekend, but that the beers contained a high alcohol content. Tr. at 68.

The Report indicates that the Individual reported increased consumption during the COVID-19 pandemic. *Id.* at 67. He indicated that he “primarily drank alcohol on weekends (two to three beers per sitting; Friday [through] Sunday) or an occasional drink after work (one to two beers) or on a weekend afternoon (one beer).” *Id.* The Individual told the DOE Psychologist that “he decided to stop drinking altogether” after the 2023 Thanksgiving holiday, with his last use occurring over the holiday.<sup>7</sup> *Id.* at 69. The Individual reported that over the holiday, he consumed two to three twelve-ounce beers every night over the span of three nights. *Id.* Instead of consuming alcohol, he now exercises and spends time with his spouse. *Id.* However, the results of the PEth test that he took in conjunction with the psychological evaluation, 111 ng/mL, “were not consistent with his reported use[,]” as the results indicated “significant consumption” within approximately four weeks of the evaluation. *Id.* at 69.

The DOE Psychologist diagnosed the Individual with AUD, Mild, without adequate evidence of rehabilitation or reformation. *Id.* at 70. The DOE Psychologist recommended “a minimum of one year of documented abstinence[,]” and participation in an intensive outpatient treatment program (IOP). *Id.* As an alternative to participating in an IOP, the Individual may “work with an individual counselor who specialized in addiction treatment.” *Id.* Finally, the DOE Psychologist recommended that the Individual submit to monthly PEth tests in order to document his abstinence from alcohol. *Id.*

The Individual voluntarily submitted to three random PEth tests administered by his employer in March, May, and June 2024, all of which were negative. Ex. C; Ex. D; Ex. E. He testified that although he voluntarily submitted to three PEth tests, he did not take any additional PEth tests because it was his understanding that the employer’s random tests would be sufficient to prove he had not consumed any alcohol.. Tr. at 57–58. Accordingly, he did not seek out any further PEth testing on his own volition. *Id.* at 58–59.

The Individual also attended and completed a six-week alcohol awareness and education course offered by his employer’s EAP. Ex. B. He completed the course in March 2024. *Id.* He testified that although he began attending the twelve-week follow-up program to the alcohol awareness and education course, due to scheduling constraints, he was not able to complete the twelve-week program prior to the hearing. Tr. at 39.

The Individual began seeing a therapist in March 2024. Ex. F. The Individual’s current therapist submitted a letter on the Individual’s behalf, noting that the Individual has been “attending bi-weekly outpatient counseling and therapy . . . since” that time. *Id.* The Individual receives therapy to address his “communication style and skills, improvement of emotional expression, and his historical use of alcohol and its consequences.” *Id.* The therapist also stated that the Individual has attended every appointment and has a “positive and optimistic attitude.” *Id.* When asked whether

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<sup>7</sup> The Individual testified that there could have been one other occasion on which he drank alcohol during the Christmas holiday season. Tr. at 26. Specifically, he consumed a beverage which caused him to feel “odd afterwards,” but he denied tasting any alcohol in the beverage. *Id.* at 26–27.

he sought to enroll in an IOP, the Individual testified that although he read the Report, he did not seek an IOP, as his current therapist “specializes in . . . alcohol abuse disorders.”<sup>8</sup> Tr. at 55.

He also attended seventeen virtual AA meetings from early February 2024 to mid-August 2024. Ex. A. The Individual testified that he did not, at first, introduce himself as an alcoholic at the AA meetings, and that he “still kind of go[es] back and forth on” that. Tr. at 32. Although he has not secured a sponsor, he feels comfortable enough to contact his therapist outside office hours to discuss matters pertaining to his sobriety. *Id.* at 33–34. He also discusses some of the traditional AA Twelve Steps with his therapist during their sessions. *Id.* at 34, 60.

The Individual testified that he does not know whether he will consume alcohol in the future but has no desire to repeat the alcohol-related events of the past. *Id.* at 34–35, 53–54, 61. He stated that his last drink was “probably towards the end of December, around the holidays.” *Id.* at 57. He knows that his past relationship with alcohol was “toxic,” and he felt that the first Occ Med PEth test result was “eye opening.” *Id.* at 36–37. He does not keep any alcohol in the house, and even though his spouse still drinks alcohol, she does not drink around him. *Id.* at 59. When in social situations where alcohol is usually consumed by attendees, the Individual consumes a soft drink instead. *Id.* at 59–60. He also feels that he can rely on several individuals who serve as his support system; individuals like his parents and current colleagues. *Id.* at 60, 65. Due to his abstinence from alcohol, he has experienced a “clarity of mind.” *Id.* at 66.

The DOE Psychologist testified that she diagnosed the Individual with AUD, because he drank more alcohol than he intended “over a longer period [of time] than was intended.” *Id.* at 72. Further, she felt that the Individual suffered from “the recurrent use of alcohol[, which] result[ed] in a failure to fulfill major obligations at work[.]” *Id.* at 73. She testified that the Individual has “put in a lot of effort” to address his AUD, but that there is insufficient laboratory evidence to show that the Individual has continuously abstained from consuming alcohol since late December of 2023. *Id.* at 74–76. The DOE Psychologist also noted that she has “very little information from” the Individual’s therapist. *Id.* at 77. She concluded that based on the lack of PEth testing, “or other testing to show evidence of abstinence[.]” the Individual has not shown adequate evidence of rehabilitation or reformation. *Id.* at 78. However, she did determine that the Individual was “in early remission” and that he has a fair prognosis. *Id.* at 78–79.

## 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;

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<sup>8</sup> The letter indicates that the Individual’s therapist is a licensed clinical social worker. Ex. F. The Individual testified that he began therapy in February 2024 and attended three sessions with another therapist. Tr. at 28. As her practice closed after their third meeting, the Individual sought out the therapist he is currently seeing. *Id.*

- (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.

While the Individual has made notable strides in addressing his prior problematic alcohol consumption, I cannot conclude that he has fully and completely mitigated the stated concerns. Since meeting with the DOE Psychologist, the Individual understands why his prior consumption was concerning. With that understanding, the Individual testified, he stopped consuming alcohol, joined an online AA chapter, completed a six-week alcohol education course, and has engaged the services of a therapist. Unfortunately, while the Individual testified that he has remained abstinent since late December 2023, this falls short of the full twelve months of abstinence recommended by the DOE Psychologist. Further, the record only contains three negative PEth tests, capturing a fraction of the period of the Individual's claimed abstinence, to evidence his assertions of continued abstinence from alcohol. Lastly, although the DOE Psychologist recognized the Individual's progress, she could not conclude that he has shown adequate evidence of rehabilitation or reformation. As the Individual has not been abstinent for twelve months, I cannot conclude that he has remained abstinent in compliance with treatment recommendations, and accordingly, he has failed to mitigate the stated concerns pursuant to mitigating factor (b). Because the Individual was consuming alcohol on a weekly basis in a manner that caused concern prior to the incident in November of 2023, as expressed by the Occ Med physician, I cannot conclude that the behavior was infrequent or happened under unusual circumstances. I also cannot conclude that "so much time has passed," as the concerning alcohol consumption took place less than twelve months ago. Therefore, the Individual has not met the requirements of mitigating factor (a).

While I have no doubt that the Individual is gleaning some benefit from the therapy he receives, I do not have any substantial or meaningful information from the Individual's therapist regarding the Individual's progress, the nature of the alcohol-related portion of the Individual's therapy, or his therapist's experience and expertise providing such therapy. Accordingly, I cannot conclude that the Individual has established participation in a sufficiently rigorous alcohol treatment program to mitigate the stated concerns pursuant to mitigating factor (c).

I have no evidence before me that the Individual completed a treatment program, like an IOP, and attended any required aftercare. Accordingly, mitigating factor (d) is not applicable.

## **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 not brought forth sufficient evidence to resolve the concerns set forth in the SSC. Accordingly, the Individual has not 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 not 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