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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 20, 2024) Case No.: PSH-24-0129
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Issued: October 9, 2024

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, as 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.

I. Background and Findings of Fact

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In November 2023, the Individual tested positive for alcohol during a random breath alcohol test (BAT) at his worksite. Exhibit (Ex.) 7.² As a result, the Individual was issued a letter of interrogatory, in which he stated that the evening prior to the BAT, between 8:00 p.m. and 9:00 p.m., he consumed “a mixed drink containing vodka, water, and ice.” Ex. 13 at 56. He noted that he was unsure as to the amount of alcohol in the drink as it was not measured. *Id.*

In February 2024, the Individual underwent a psychological evaluation with a DOE consultant-psychologist (DOE Psychologist). Ex. 16. As part of the evaluation, the DOE Psychologist

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 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.

reviewed the Individual's personnel security file, where she learned of two previous alcohol related incidents in which the Individual had been involved: a February 2019 arrest for unlawful restraint, prior to which he had consumed approximately five to seven beers; and a September 2009 arrest and charge for Driving While Intoxicated. *Id.* at 86–87. During a clinical interview (CI) with the DOE Psychologist, the Individual disclosed that, prior to his positive BAT, his pattern of alcohol consumption was “at most” five beers per sitting, approximately twice per month. *Id.* at 89. The Individual claimed that he last consumed alcohol in early December 2023. *Id.*

In the report (Report) prepared following the CI, the DOE Psychologist noted that the Individual had enrolled in an Intensive Outpatient Treatment Program (IOP), and she had consulted with the Clinical Director of the program regarding the Individual's progress.³ *Id.* at 89. The Clinical Director indicated that the IOP met four nights per week for a period of eight weeks, and he stated that the Individual was “attending and participating.” *Id.* He stated that “initially, [the Individual] was somewhat guarded and evasive, and [the Clinical Director] noted that [the Individual] drank alcohol after the positive [BAT].” *Id.* The Clinical Director further added that the Individual was “‘doing fine . . . it is uncomfortable for him [but] he does participate[, and] there is some depth’ to what [the Individual] offers in the group sessions.” *Id.* The Clinical Director anticipated that, following the Individual's completion of the IOP, he would recommend that the Individual continue attending IOP aftercare meetings once per week for a period of at least ninety days. *Id.*

The Individual told the DOE Psychologist that “when he started the [IOP], he felt some resentment and did not believe he needed to be there. But over time, he has come to find it ‘really good . . . the [IOP] really opens your eyes!’” *Id.* As part of the psychological evaluation, the Individual underwent a Phosphatidyl Ethanol (PEth) test,⁴ which was negative. *Id.* at 90. The DOE Psychologist noted that the negative PEth test was consistent with the Individual's reported abstinence since December 2023. *Id.*

Following the evaluation, the DOE Psychologist concluded that the Individual's “alcohol history [was] one of binge consuming alcohol on a frequent basis (weekends)” to the point of impaired judgment, and she opined that he had not established adequate evidence of rehabilitation or reformation. *Id.* In order to establish adequate evidence of rehabilitation or reformation, she indicated that the Individual should complete the IOP and attend the aftercare program for a period of ninety days, attending at least one group meeting per week. *Id.* She additionally noted that the Individual should undergo monthly PEth tests for a period of five months in order to support his abstinence and provide objective medical evidence of his abstinence. *Id.*

The Local Security Office (LSO) informed the Individual in a Notification Letter that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. Ex. 1 at 7–8. In the Summary of Security Concerns (SSC) attached to the Notification

³ The Report does not include the date on which the Individual enrolled in the IOP; however, the Individual's IOP attendance records show that he began the program in early February 2024. Ex. B; *see* Ex. 16 at 89.

⁴ According to the Report, the PEth test “detects any significant alcohol use over the past three to four weeks.” Ex. 16 at 90.

Letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. *Id.* at 6.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted eighteen numbered exhibits (Ex. 1–18) into the record and presented the testimony of the DOE Psychologist. The Individual submitted three exhibits (Ex. A–C) into the record, and he presented his own testimony as well as that of his friend. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

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 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.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included the SSC, which sets forth the derogatory information that raised concerns about the Individual’s eligibility for access authorization. The SSC specifically cites Guideline G. Ex. 1. Guideline G relates to security risks arising from excessive alcohol consumption. “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.

In citing Guideline G, the LSO relied upon the DOE Psychologist’s February 2024 opinion that the Individual binge consumed alcohol to the point of impaired judgment and had not established

adequate evidence of rehabilitation or reformation.⁵ Ex. 1 at 6. The LSO further cited the Individual's November 2023 positive BAT, the February 2019 arrest for Unlawful Restraint, and the September 2009 arrest for "Driving Under the Influence of Alcohol."⁶ *Id.*

IV. Hearing Testimony

At the hearing, the Individual's friend (Friend) testified on the Individual's behalf. He stated that he has known and worked with the Individual for approximately ten years. Tr. at 11. The Friend testified that although he has seen the Individual consume alcohol in the past, he had not seen him consume alcohol in over a year prior to the hearing and was never concerned about the Individual's alcohol consumption. *Id.* at 12, 14–15. The Friend testified that since the Individual has been abstinent from alcohol, he "has very much gotten into working out[,] and he has "gotten very in shape. He's taking very good care of himself over this last year." *Id.* at 15–16.

The Individual also testified during the hearing. The Individual stated that he last consumed alcohol around the time of the positive BAT in late 2023. *Id.* at 29. He testified that when he first received the DOE Psychologist's Report in June 2024, it was "eye-opening," and he now understands that he "consumed more [alcohol] than [he] should have." *Id.* at 20–21. The Individual elaborated, stating that when he first started the IOP, he would have said that he did not have a problem with alcohol. *Id.* at 21. The Individual noted that the Clinical Director's initial impression that he was "somewhat guarded and evasive" was accurate as he was "disgruntled" when he first entered the program and felt that it was a punishment. *Id.* at 30. The Individual testified that he "stayed reserved" for a time before he "opened up" because he was "scared [he] was going to get in even more trouble." *Id.* He stated that he soon realized, "well, I do . . . have some issues that I would like to discuss[,] and acknowledged that he "had an issue with alcohol." *Id.* at 21, 30. He testified that he realized that the IOP was a second chance, "an opportunity to prove that you have the abilities to come back from this[.]" *Id.* at 31.

The Individual submitted his IOP Certificate of Completion into the record, which indicated that he completed the program in early April 2024.⁷ Ex. C. The Individual explained that during the IOP, he participated in individual therapy as well as group sessions. *Id.* He stated that his sessions showed him that "I had to change my people, certain people that were not a good influence for me. I had to change my places that I went to, and I had to change things that I did which were habits." Tr. at 23. As such, he limited himself to "a small circle" of friends, and he focuses his time on the gym and church, where he serves as a volunteer. *Id.* at 23–24. He further stated that the IOP enlightened him as to the negative effects that long-term alcohol use can have on the body, and due to his responsibility for his young children, he began focusing on what he was putting into his body. *Id.* at 22.

⁵ The SSC alleged that the DOE Psychologist found that the Individual had an alcohol use disorder. Ex. at 6. There is no finding of an alcohol use disorder in the Report, and the DOE Psychologist testified at the hearing that she made no such finding. Tr. at 36; *see* Ex. 16. Due to the erroneous nature of this claim, I will not analyze it in this Decision.

⁶ A Federal Bureau of Investigation Identification Record shows that the charge was Driving While Intoxicated. Ex. 18 at 139.

⁷ The Individual also submitted his IOP attendance records which show consistent, regular attendance. Ex. B.

The Individual stated that he has been attending IOP aftercare session on a weekly, consistent basis for approximately five months, and he intends to continue attending. *Id.* at 24. He stated that, through aftercare, he has become “vested in the people[,]” and his “goal is to continue to go to encourage them and to give them something to look forward to, and to not let them see this as some sort of punishment. It’s more of a second chance at life.” *Id.* at 24–25.

The Individual testified that per the DOE Psychologist’s recommendation, he underwent six PEth tests in 2024: one in April, two in May, one in June, one in July, and one in August, all of which were negative for the presence of alcohol. *Id.* at 25–26; Ex. A. Regarding any future alcohol consumption, the Individual stated that he intends to remain abstinent as he “love[s] how [he] feel[s,]” he has learned that he does not need alcohol, and “there is really no point to having it in [his] life.” Tr. at 27.

After hearing the testimony of the Individual and the Friend, the DOE Psychologist testified. The DOE Psychologist stated that the Individual had “more than adequately complied with the . . . steps [he] need[ed] to take to provide adequate evidence of rehabilitation or reformation” from her finding that he had a history of binge consumption of alcohol. *Id.* at 34–35. She added that the Individual had “significantly exceeded” the aftercare attendance recommendation she set forth in the Report. *Id.* at 35. As such, she concluded that the Individual had established adequate evidence of rehabilitation and reformation from his binge consumption of alcohol and had a “very good to excellent” prognosis. *Id.* at 35, 37.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses during the hearing. In resolving the question of the Individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual has mitigated the security concerns cited by the LSO under Guideline G of the Adjudicative Guidelines. Therefore, I find that the Individual’s access authorization should be restored. The specific findings that I make in support of this decision are discussed below.

Conditions that may mitigate a Guideline G security concern 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.

At the time of the hearing, the Individual had: (1) recognized that he previously had a problem with alcohol, (2) completed the IOP, and (3) been attending weekly aftercare meetings for approximately five months with the intention of continued attendance. Additionally, he underwent six PEth tests over the course of five months, all of which were negative for the presence of alcohol. As such, it is clear that the Individual has successfully completed his treatment program, demonstrated a clear and established pattern of abstinence from alcohol in accordance with treatment recommendations, and continues to participate in counseling through aftercare.⁸ Accordingly, I find that the Individual has established the applicability of mitigating factors (b), (c), and (d). *Id.* at ¶ 23(b)–(d).

For the forgoing reasons, I find that the Individual has mitigated the Guideline G security concerns raised in the SSC.

VI. Conclusion

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has brought forth sufficient evidence to resolve the security concerns associated with Guideline G. 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 in 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals

⁸ I note that there is nothing in the record indicating that the Individual has any previous history of treatment and relapse and nothing to indicate that his progress in aftercare has been anything but satisfactory.