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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: June 27, 2024)	Case No.: PSH-24-0147
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_____)	

Issued: November 22, 2024

Administrative Judge Decision

James P. Thompson III, 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 or Eligibility to Hold a Sensitive Position."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

The Individual is employed by a DOE contractor in a position that requires possession of a security clearance. In January 2024, the DOE Local Security Office (LSO) learned that the Individual had been randomly selected by his employer for a random Breath Alcohol Test (BAT) and placed on administrative leave due to the positive test results. Subsequently, the LSO asked the Individual to complete a Letter of Interrogatory (LOI) regarding his alcohol use. After reviewing the Individual's responses in the LOI, the LSO requested that the Individual be evaluated by a DOE-consultant psychologist (DOE Psychologist) regarding alcohol use. Thereafter, the LSO informed the Individual by letter (Notification Letter) that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guidelines G of the Adjudicative Guidelines.

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.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter. I subsequently conducted an administrative review hearing. Transcript of Hearing, OHA Case No. PSH-24-0147 (Tr.). At the hearing, the Individual testified on his own behalf and presented the testimony of his wife. The LSO presented the testimony of the DOE Psychologist. The Individual submitted three exhibits, marked Exhibits A through C. The LSO submitted twelve exhibits, marked Exhibits 1 through 12.²

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 1 at 5.

Guideline G provides that "[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. Conditions that could raise a security concern include "alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition . . . or jeopardizing the welfare and safety of others," "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder[.]" and "[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist . . .) of alcohol use disorder" *Id.* at ¶ 22(b)—(d). The SSC cited the following information. The DOE Psychologist concluded in a March 2024 report (Report) that the Individual met sufficient criteria under the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision*, for a diagnosis of Alcohol Use Disorder (AUD), Mild, without adequate evidence of rehabilitation or reformation. Ex. 1 at 5. The DOE Psychologist also concluded that the Individual is "a habitual and binge drinker" *Id.* And the Individual failed his employer's random BAT after consuming ten light beers the evening prior to the test. *Id.* The cited information justifies the LSO's invocation of Guideline G.

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 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).

² References to the LSO exhibits are to the exhibit number and the Bates number located in the top right corner of each exhibit page.

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 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

In the LOI, the Individual admitted that the night before the random BAT test he consumed ten beers over five hours before going to bed. Ex. 9 at 44. He reported that he went to work early the following morning “with no feelings of alcohol in [his] system.” *Id.* In providing his history of alcohol use, he stated that he regularly consumed six light beers on Friday, Saturday, or both and “occasionally” consumed two beers with dinner during the week. *Id.* at 45. He also stated that he would need to consume twelve alcoholic beverages within a four-hour period to feel intoxicated, and he only drank to intoxication twice a year. *Id.* at 46.

In the March 2024 Report, the DOE Psychologist opined that the Individual’s failure to feel “alcohol in his system” at the time he tested positive on the BAT, along with the self-reported level of consumption required for the Individual to feel intoxicated, indicated that the Individual had developed tolerance to alcohol. Ex. 10 at 55. In reaching this conclusion, the DOE Psychologist referenced the fact that the Individual tested positive on the BAT at the Breath Alcohol Concentration (BAC) of 0.043 g/210L, which, based on the timing of the test, indicated the Individual’s BAC was probably “near or above 0.05 g/210L” when he was notified of his selection for testing, which is a level where judgment can be impaired. *Id.* at 54–55. The DOE Psychologist also noted that, during his clinical interview with the Individual, the Individual offered a different report of his alcohol consumption from what was stated in the LOI, reporting that he consumes “eight to nine beers” on Friday or Saturday, but “rarely” on both nights. *Id.* The DOE Psychologist also noted that, during the evaluation, the Individual estimated that he consumed twelve to fifteen beers a month, which is not consistent with his reported weekly consumption. *Id.* at 55.

The Report also includes information the DOE Psychologist gathered from a Licensed Professional Counselor (Counselor) who conducted a substance abuse evaluation of the Individual.³ *Id.* at 54, 56. The Counselor reported that the Individual had been vague in reporting his typical consumption, but the Individual did estimate that it would take approximately eighteen beers within five hours for him to feel “wasted.” *Id.* at 56. Based on the development of tolerance and the Individual’s reported consumption, the Counselor concluded that the Individual engaged in the binge consumption of alcohol and met the criteria for AUD, Mild. *Id.*

³ The Individual’s employer referred the Individual to the Counselor for the evaluation. Ex. 10 at 56.

Lastly, the DOE Psychologist noted that the Individual reported during the evaluation that he had not consumed alcohol within the preceding thirty days. *Id.* As part of the evaluation, the Individual underwent a Phosphatidylethanol (PEth) test, which can provide laboratory evidence of recent alcohol consumption. *Id.* at 57. The result was positive. *Id.* at 58. The Report includes the opinion of a consultant psychiatrist who reviewed the results and concluded that “it is medically likely” that the Individual’s self-reported abstinence over the preceding thirty days was “incorrect.” *Id.* Based on the information gathered during the evaluation, the DOE Psychologist opined that the Individual met sufficient criteria for a diagnosis of AUD, Mild, without adequate evidence of rehabilitation or reformation. *Id.* at 59–60. The DOE Psychologist also concluded that the Individual “can be considered a habitual drinker in that he drinks to intoxication at least four times a month[,]” and he “can be considered a binge drinker in that he has episodic intoxication with periods of high consumption followed by periods in which his intake is low.” *Id.* The DOE Psychologist made several treatment recommendations for the Individual to demonstrate rehabilitation or reformation of his AUD: (1) participate in a twelve-week intensive outpatient treatment program (IOP) with individual and group therapy components, (2) continue with weekly IOP aftercare for six months, and (3) remain abstinent for six months, evinced by monthly negative PEth test results. *Id.* (noting that “these requirements are not absolute” and that, for example, a “four-to-six-week program that meets four evenings” could meet the recommended IOP treatment).

Prior to the hearing, the Individual submitted exhibit evidence to demonstrate his compliance with the DOE Psychologist’s treatment recommendations. The Individual submitted the results of several PEth tests administered from May to October 2024, spanning the six months leading up to the hearing. Ex. A at 1–7. All results were negative. *Id.* He also submitted the records of treatment attendance, which included an IOP and subsequent IOP aftercare that spanned from April 2024 through the end of September 2024. Ex. B at 1–3. The records also include an IOP certificate of completion dated June 2024. *Id.* at 1. Additionally, the attendance records indicate that the IOP lasted eight weeks, and he attended four classes per week. *Id.* at 1–3. Finally, he submitted a letter from the Counselor referenced in the Report, dated October 21, 2024. Ex. C. That letter documents that the Counselor conducted a follow-up evaluation of the Individual on that same date, during which he gathered information from the Individual and the Individual’s IOP “treatment team.” *Id.* Based on that information, the Counselor set forth his “clinical determination.” *Id.* The letter states that the Individual “responded well to treatment”; he gained a “new awareness regarding his maladaptive use of alcohol”; he is in “complete compliance” with the treatment plan; and “if he adheres to his discharge plan and continues developing the skillset acquired during treatment, his prognosis is considered good.” *Id.* The Counselor also reported that the treatment plan recommended by the Individual’s IOP treatment team included continuing IOP weekly aftercare meetings for six months. *Id.*

At the hearing, the Individual’s wife testified that, in the past, she had been concerned with the Individual’s level of alcohol consumption. Tr. at 13. She testified that the Individual had been attending his treatment classes regularly, he has a lot more energy, and his personality has improved. *Id.* at 14. She testified that the Individual said he feels much better and “doesn’t want to drink [alcohol] anymore.” *Id.* at 17–18. She testified that he now realizes that his alcohol consumption had been problematic. *Id.* at 20.

The Individual testified that he was placed on administrative leave as a result of his positive BAT. *Id.* at 24. After returning from leave, he was evaluated by his employer's physician and that physician recommended that the Individual attend an IOP. *Id.* The Individual confirmed that while he initially did not think he had a problem with alcohol, he realized during the IOP that he had been abusing alcohol. *Id.* at 24, 33–34. He also acknowledged that he meets the criteria for AUD. *Id.* at 26. He described his past “triggers” for alcohol consumption as working in his garage and “boredom,” and he realized that he would “come up with” reasons to consume alcohol. *Id.* at 37. He testified that it was initially difficult to maintain abstinence because his consumption of alcohol “had become a lifestyle pattern” *Id.* at 34. He testified that during the IOP he “learned a lot of tools to better focus and deal with alcohol abuse.” *Id.* at 25. He further testified that he intends to remain abstinent indefinitely, and he believes that he will continue to be successful in his sobriety because he has “the tools and support system around them.” *Id.* at 30. As an example, he described successfully implementing a “stop and think” approach to evaluate situations where, in the past, he would have consumed alcohol, and he provided an example of declining an invitation to an event that would have challenged his sobriety. *Id.* at 35.

The Individual testified that he reviewed the Report and complied with the recommendations therein. *Id.* at 27. In addition to completing an IOP, which included a group component, he has been participating in weekly IOP aftercare meetings for four months, and he intends to continue aftercare for as long as recommended by his treatment provider. *Id.* at 28–29. He testified that his IOP aftercare attendance has been at the rate of “two nights a week” over the four months that preceded the hearing date. *Id.* at 26, 29.

The DOE Psychologist testified that the Individual had followed the recommendations outlined in the Report and that the Individual had, through presenting evidence of his progress in treatment since the evaluation, demonstrated adequate rehabilitation and reformation from his AUD. *Id.* at 41. The DOE Psychologist also testified that the Individual's AUD met the upgraded criteria of “mild, in early remission” and that, based on the Individual's abstinence and progress in accordance with treatment recommendations, the DOE Psychologist concurred with the Individual's Counselor's opinion that the Individual had “a good prognosis.” *Id.* at 40, 42.

V. ANALYSIS

A. Guideline G Considerations

Conditions that can mitigate security concerns based on alcohol consumption include the following:

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

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

Adjudicative Guidelines at ¶ 23.

I find that ¶ 23(b) applies to resolve the Guideline G concerns. The record establishes that the Individual acknowledged his maladaptive alcohol use. He testified that by participating in the IOP he realized that he had been abusing alcohol and needed to change his lifestyle pattern. The Individual also provided evidence of the substantial actions taken to overcome his problem in accordance with treatment recommendations. He followed the DOE Psychologist's recommendations by enrolling in and completing the recommended IOP, immediately enrolling in IOP aftercare, and continuing to attend IOP aftercare in compliance with the recommendation of his treatment provider. Furthermore, the Individual submitted clinical evidence through PEth test results that he has been abstaining from alcohol for the last six months, and the frequency of testing has been commensurate with the recommendation of the DOE Psychologist. As a result of his actions, he received a positive prognosis from both the Counselor who initially diagnosed him with AUD and the DOE Psychologist. In light of the above evidence, I find persuasive the Individual's testimony that he intends to remain abstinent. I also find persuasive the opinion of the DOE Psychologist, as supported by the Counselor's opinion, that the Individual has a good prognosis and has rehabilitated and reformed from his AUD. I therefore conclude that the Individual demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations. I further conclude that the Individual no longer binges or habitually consumes alcohol to the point of impaired judgment. Accordingly, I find that the Individual has resolved the Guideline G concerns.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline G of the Adjudicative Guidelines. 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 find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the SSC. 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.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals