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

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| In the Matter of: Personnel Security Hearing |) | |
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| Filing Date: October 3, 2024 |) | Case No.: PSH-25-0002 |
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Issued: February 13, 2025

Administrative Judge Decision

Erin C. Weinstock, 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."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 granted.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires him to hold an access authorization. Exhibit (Ex.) 1 at 7.² In March 2023, the Individual completed a Questionnaire for National Security Positions (QNSP) in which he disclosed that in the past his use of alcohol "had a negative impact on [his] work performance, [his] professional or personal relationships, [his] finances, or resulted in intervention by law enforcement." Ex. 9 at 167. During an enhanced subject interview (ESI) in June 2023, the Individual confirmed this information to an investigator. Ex. 10 at 286. The Individual disclosed that he had been attending alcohol abuse treatment since 2020. *Id.* He also confirmed to the investigator that on several occasions he was arrested after consuming alcohol. *Id.* at 282–85. As a result of the Individual's disclosures and arrests, the Local Security Office (LSO) issued the Individual a Letter of Interrogatory (LOI), which the Individual completed in March 2024. Ex. 6. After receipt of his responses, the LSO requested that the Individual undergo a psychological evaluation in May 2024, by a DOE-consultant Psychologist (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 References to the Local Security Office's (LSO) exhibits are to the exhibit number and the Bates number located in the top right corner of each exhibit page.

which resulted in a finding that the Individual met sufficient *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)* criteria for a diagnosis of Alcohol Use Disorder (AUD), severe, in early remission without adequate evidence of rehabilitation or reformation. Ex. 7 at 86.

The LSO subsequently issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1 at 7. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline G of the Adjudicative Guidelines. *Id.*

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 conducted an administrative hearing. The LSO submitted ten exhibits (Ex. 1–10). The Individual submitted seven exhibits (Ex. A–G). The Individual testified on his own behalf and offered the testimony of four additional witnesses. Hearing Transcript, OHA Case No. PSH-25-0002 (Tr.). The LSO called the DOE Psychologist to testify. *Id.*

II. THE SECURITY CONCERNS

Guideline G, under which the LSO raised the security concerns, 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 June 2024 diagnosis that the Individual suffered from AUD, moderate. Ex. 1 at 7. It also cited the Individual’s four alcohol-related arrests. *Id.* The information cited by the LSO justifies its invocation of Guideline G. *See* Adjudicative Guidelines at ¶ 22(a), (d) (indicating that alcohol-related incidents away from work and a diagnosis of AUD by a duly qualified mental health professional may raise security concerns under 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 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).

An 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). An 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.* at § 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

In October 2016, the Individual was charged with criminal trespass. Ex. 6 at 50. The Individual explained that prior to this incident he had consumed a twelve pack of beer while home alone with his dog. *Id.* at 50–51. His dog escaped from his yard, and the Individual went into his neighbor's yard to retrieve the dog. *Id.* at 51. The Individual mistook his neighbor's home for his own, and broke the neighbor's sliding door trying to enter the home. *Id.* The neighbor called the police, who charged the Individual with criminal trespass and took him to a hospital to treat his intoxication. *Id.* The Individual received a deferred sentence, and the charges were resolved after the Individual paid to repair the sliding door and went twelve months without any incidents. *Id.* at 52.

In December 2016, the Individual was charged with Driving Under the Influence (DUI). Ex. 10 at 284. The Individual fell asleep while pulled over in his car after consuming an unknown amount of alcohol.³ *Id.*; Ex. 7 at 48. Law enforcement found the Individual, and the Individual attempted to flee. Ex. 10 at 284. The Individual was injured when law enforcement pursued him and was taken to the hospital. *Id.* The Individual accepted a plea agreement that reduced the charge and required him to complete community service, pay court fines, go to therapy, and complete a supervised probation. Ex. 7 at 50. The Individual met the terms of the plea agreement. *Id.*

The Individual voluntarily enrolled in an outpatient alcohol treatment program in January 2017. *Id.* at 81–82. He completed the program in July 2018. *Id.* at 82. After his DUI, the court determined that completion of this program would be acceptable proof that the Individual's driver's license could be reinstated. *Id.*

In November 2017, the Individual was arrested and charged with Damage to Property and Crimes Against Person. Ex. 6 at 46. Prior to his arrest, the Individual had consumed two alcoholic beverages and got into a conflict with his then mother-in-law, who was unhappy that the Individual was consuming alcohol. *Id.* The Individual stated that he called law enforcement because his mother-in-law was threatening him, and he was arrested when law enforcement arrived at the home. *Id.* The charges were later dismissed. *Id.* at 47.

In March 2021, the Individual was charged with Aggravated Battery, Conspiracy, Interference with Communication, and Criminal Damage to Property. *Id.* at 41. On that day, the Individual had consumed two canned alcoholic beverages and an unknown amount of vodka. *Id.* at 42. When the Individual's girlfriend came home from work, she and the Individual got into an argument. *Id.* The Individual stated that he recalled punching a wall. *Id.* Eventually, a neighbor called the police, and the Individual was arrested. *Id.* The girlfriend decided she did not want to participate in further legal proceedings, and the charges were dismissed. *Id.* at 44. The Individual admitted that he

³ In his ESI, the Individual reported that he had consumed beer prior to this incident. Ex. 10 at 284. In the LOI, the Individual stated that he had consumed a pint of vodka before this incident. Ex. 7 at 48.

reacted poorly to the argument and explained that he and the girlfriend have since improved their relationship by participating in therapy. Tr. at 70–72.

The Individual voluntarily engaged in treatment with a veteran’s organization beginning in May 2021. Ex. 7 at 82. He attended outpatient alcohol counseling twice a month until April 2022. *Id.* In December 2023, the Individual enrolled in, and completed, an alcohol awareness program through his employer’s employee assistance program (EAP). *Id.*; Ex. B. According to his employer’s Occupational Medicine Psychologist the Individual’s participation in this program appeared to be sincere, but she did note that on at least one occasion he mentioned that he was participating in the program in order to increase his chances of regaining custody of his children. Ex. 7 at 83–84.

As a result of his disclosures in his QNSP and LOI, the Individual underwent a psychological evaluation on May 20, 2024. Ex. 7. The Individual told the DOE Psychologist that he had not consumed any alcohol since January 2023. Ex. 7 at 83. This response was consistent with his response in the LOI. *Id.*; Ex. 6 at 55. However, the DOE Psychologist noted that in his ESI, the Individual reported he had last consumed alcohol in “summer 2022.” *Id.*; Ex. 10 at 286.

As part of his evaluation, the Individual underwent a Phosphatidylethanol (PEth) test⁴ in May 2024. *Id.* at 85. The PEth test came back negative for alcohol use, meaning that the Individual had not consumed a measurable amount of alcohol in the twenty-eight days prior to the testing, which was consistent with his self-report. *Id.*

After the Individual completed the evaluation, the DOE Psychologist concluded that the Individual met the criteria for AUD, Severe, in early remission. *Id.* at 86. In order for the Individual to show rehabilitation and reformation, the DOE Psychologist stated that the Individual should: (1) enroll in and complete an intensive outpatient program (IOP); (2) engage in weekly aftercare for twelve months; and (3) submit monthly negative PEth test results. *Id.* at 87.

The Individual testified that he has not consumed any alcohol since January 2023.⁵ Tr. at 88. In support of his claimed abstinence from alcohol, the Individual provided seven negative PEth tests dated July 26, 2024, August 23, 2024, September 20, 2024, October 24, 2024, November 27, 2024, December 26, 2024, and January 17, 2025. Ex. E; Ex. G. He also submitted three negative ethyl glucuronide tests that he completed in January and February 2024 as a condition of his employment. Ex. F. At first, the Individual found not consuming alcohol to be “a little difficult,” but he no longer feels that he has to worry about it. Tr. at 91.

⁴ “[A] PEth level reflects the average amount of alcohol consumed over the previous 28–30 days as red blood cells degrade and enzymatic action removes PEth. A MedTox PEth result exceeding 20 ng/mL is evidence of ‘moderate to heavy ethanol consumption.’” Ex. 7 at 85.

⁵ The Occupational Medicine Psychologist’s report to the DOE Psychologist stated that the Individual reported that he had binge consumed alcohol at times in 2023. Tr. at 88. The Individual denied that he ever told the Occupational Medicine Psychologist that he was binge drinking in 2023. *Id.* at 89. The Individual’s contention is supported by the testimony of his coworker and his brothers, who all stated that to their knowledge the Individual has not consumed alcohol since January 2023. *Id.* at 13, 29, 42.

The Individual began an IOP as soon as he could after receiving the DOE Psychologist's report. *Id.* at 92. Prior to beginning the IOP, the Individual started taking courses through his employer's EAP related to alcohol education and supporting abstinence from alcohol. *Id.* at 92–93; *see also* Ex. B (documenting the Individual's completion of the alcohol education class); Ex. C (documenting the Individual's completion of the abstinence support class). Taking the alcohol education class helped the Individual to determine that there would be no point in the future where he could consume alcohol responsibly. Tr. at 94. He intends to attend both therapy and aftercare with his IOP provider after he completes the IOP because he knows it is good for him and that he benefits from it. *Id.* at 91. The Individual has been so successful in his IOP that his counselor suggested that he might be a good candidate to become a peer support specialist in the program. *Id.* at 105.

The Individual testified that while he is responsible for all of the criminal incidents that he was involved in, he feels that he could have avoided those problems if he had used alcohol more responsibly. *Id.* at 79. He is very proud of how he has handled problems in his life recently because it helps him to see how far he has come and know that he has made progress. *Id.* at 95. He explained that when alcohol consumption had caused problems in his life previously, he looked for external motivation to stop drinking, but this time, while his motivations began as external, he eventually realized that he wanted to stop consuming alcohol because he wanted his life to be better for himself. *Id.* at 82, 98. Further, he has fully accepted that alcohol has no place in his life and does not plan to consume alcohol ever again. *Id.* at 99, 106. He feels more energetic and “emotionally and spiritually” better than he ever has. *Id.* at 102. There are many people he feels he could talk to if he was struggling, including his coworker, his brothers, his girlfriend, and his ex-wife. *Id.* at 104–05.

The Individual's older brother testified that he sees the Individual in person most days. Tr. at 12. Prior to 2023, he thought the Individual had a problem with alcohol, but he has not had any concerns in the last two years. *Id.* at 13. The older brother believes that the Individual stopped consuming alcohol because he matured as a person and because he knew it would help him be more involved in the lives of his children. *Id.* at 16. The older brother stated that he and the Individual are very open with each other, and he feels that the Individual would reach out to him for help if he needed it. *Id.* The Individual has told his brother that he does not plan to consume alcohol in the future. *Id.* at 21.

The Individual's coworker testified that he met the Individual around September 2022 and that they began working directly together in January 2023. *Id.* at 27. While the coworker and the Individual do not see each other often currently, they saw each other every day for over a year in both work and social situations. *Id.* The coworker stated that in the time he has known the Individual, he has not been aware of the Individual consuming alcohol. *Id.* at 29. The coworker and the Individual had several discussions about how many of the Individual's problems came from his alcohol use. *Id.* The coworker does not consume alcohol and when the Individual decided to quit consuming alcohol, the coworker acted as an accountability partner. *Id.* The coworker and the Individual would exercise together and sometimes take breaks to talk about recovery and sobriety. *Id.* at 34. The coworker testified that he is very involved in Alcoholics Anonymous, including acting as a sponsor for new members. *Id.* Based on his experience working with people in early stages of sobriety, the coworker thought that the Individual was well-positioned to achieve

lasting sobriety. *Id.* at 36–37. He was particularly impressed with the Individual’s willingness to take complete responsibility for his actions. *Id.*

The Individual’s younger brother testified that he sees the Individual almost every day because the Individual rents from the younger brother and lives next door to him. *Id.* at 41. The younger brother explained that the Individual began renting from him in January 2024 after the Individual proved he was in a good situation by remaining sober for a year. *Id.* at 42. The younger brother stated that he knew the Individual had had issues with alcohol in the past and that because of those issues, he had not wanted his brother around his immediate family until he had proven he had overcome his troubles with alcohol. *Id.* at 43. The younger brother stated that he does not want anything to do with alcohol and explained that he had told the Individual that alcohol would not be allowed on his property while the Individual was renting from him. *Id.* at 47. The younger brother did not always find the Individual to be trustworthy when he was consuming alcohol, but now that he no longer consumes alcohol, the brother finds the Individual to be strong and trustworthy. *Id.* at 48–49. Given their close physical proximity and strong relationship, the younger brother believes that if the Individual was struggling with whether or not to have a drink in the future, the Individual could and would reach out to him for help. *Id.* at 51.

The Individual’s IOP counselor testified that the Individual was referred to the program in August 2024, and he completed an assessment in October 2024. *Id.* at 57. Shortly after that, the Individual began a twelve-week IOP program that he was scheduled to complete in early February 2025. *Id.* at 58. The counselor works with the Individual in his individual counseling sessions and is also the facilitator in his twice-weekly group sessions. *Id.* at 59. She has found him to be an active participant and good group member. *Id.* at 59–60. She has encouraged the Individual to participate in an aftercare program after his IOP is completed and also encouraged him to continue on with his individual counseling. *Id.* at 61. The counselor testified that the Individual has been a “very good, positive role model” for other group participants as well. *Id.* at 64.

The DOE Psychologist testified that based on the testimony he heard at the hearing and the information he reviewed in writing his report, he is confident that the Individual has not consumed alcohol for at least a year, though there are some signs that may point to a longer period of sobriety. *Id.* at 118–19. He explained that this meant that the Individual’s diagnosis was now AUD, Severe, in sustained remission. *Id.* at 120. The DOE Psychologist said that he was impressed with the Individual’s support network and the Individual’s willingness to reach out for help when he felt that he needed it. *Id.* at 122–23. He testified that he believes the Individual followed his recommendations to the extent that he was able to in the time given and that he demonstrated reformation. *Id.* at 124–25. The DOE Psychologist said the Individual’s prognosis was good. *Id.* at 125.

V. ANALYSIS

An individual may be able to mitigate security concerns under Guideline G though the following conditions:

- 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.

Here, the Individual has clearly acknowledged his maladaptive alcohol use. He is in the process of completing an IOP, and he has also taken two classes about alcohol use through his employer's EAP. The Individual has shown he has a support network of people who will assist him in his plan not to consume any alcohol. His counselor explained that the Individual is a supportive member of his IOP group, and the Individual later shared that the IOP group asked if he would be interested in becoming a peer support specialist in the future. The Individual has provided a wealth of testimonial and documentary evidence that shows he has successfully taken action to solve his problems with consuming alcohol.

Additionally, he has provided several different types of laboratory tests that show that he has not consumed any alcohol dating back to at least April 2024. To further support his claimed period of abstinence, the Individual provided the credible testimony of his brothers and coworker, who all supported the Individual's assertion that he has not consumed any alcohol since January 2023. Therefore, I find that the Individual has mitigated the security concerns pursuant to mitigating factor (b).

Accordingly, I find that the Individual has resolved the security concerns asserted by the LSO under Guideline G.

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 granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Erin C. Weinstock
Administrative Judge
Office of Hearings and Appeals