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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:	October 31, 2024)	Case No.: PSH-25-0017
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)	

Issued: March 19, 2025

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (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*. (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 him to hold a security clearance. On May 21, 2024, while at work, the Individual's manager detected the smell of alcohol on the Individual and directed the Individual to undergo alcohol testing. Exhibit (Ex.) 3 at 14.² At 10:54 a.m., on May 21, 2024, the Individual underwent a Breath Alcohol Test (BAT), the result of which was positive at a level of .025 g/210L. Ex. 8 at 34. In June 2024, the Local Security Office (LSO) issued a Letter of Interrogatory (LOI) to the Individual requesting additional details about his alcohol consumption. Ex. 9. In the LOI, the Individual reported that the night before reporting to work on May 21, 2024, he consumed three to four "9% [alcohol by volume (abv)] beers" between 8:00 p.m. and 10:30 p.m. *Id.* at 40.

Due to the security concerns raised by the Individual's LOI responses, the LSO referred the Individual for an evaluation by a DOE-contractor Psychologist (DOE Psychologist), who conducted a clinical interview of the Individual in August 2024 and issued a report (the Report) of

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 the 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 the DOE.

her findings. Ex. 10. Based on her evaluation of the Individual, the DOE Psychologist opined that the Individual met sufficient diagnostic criteria in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR)* for a diagnosis of Unspecified Alcohol-Related Disorder (UARD), and that he habitually and binge consumed alcohol to the point of impaired judgment. *Id.* at 55–56. The DOE Psychologist also concluded there was not “adequate evidence of rehabilitation or reformation.” *Id.*

In October 2024, the 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 6–7. 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. *Id.* at 5.

In October 2024, the Individual requested an administrative hearing, and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). Ex. 2. 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), I took testimony from seven witnesses: the Individual, the Individual’s step-father, the Individual’s girlfriend, the Individual’s co-worker, the Individual’s friend, the Individual’s girlfriend’s father, the Individual’s Employee Assistance Program (EAP) Therapist, and the DOE Psychologist. *See* Transcript of Hearing, OHA Case No. PSH-25-0017 (Tr.). Counsel for the DOE submitted 12 exhibits, marked as Exhibits 1 through 12. The Individual submitted five exhibits, marked as Exhibits A through E.

II. The Summary of Security Concerns

Under Guideline G, “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 under Guideline G include: “alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition,” and a “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.” *Id.* at ¶ 22(a), (d). Under Guideline G, the LSO cited the DOE Psychologist’s diagnosis of UARD and the Individual’s positive BAT. Ex. 1 at 5. 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

On May 21, 2024, the Individual arrived at work and was notified by a colleague that his breath smelled of beer. Ex. 9 at 37. He “checked his breath” and realized his breath *did* smell like beer, but he did not feel intoxicated, so he continued to work. *Id.* At some point later that morning, the Individual’s manager also noticed the Individual smelled like beer and directed the Individual to undergo a BAT. Ex. 3 at 14. At 10:54 a.m. on that day, the result of the Individual’s BAT was positive, at a level of .025 g/210L. Ex. 8 at 34. On May 22, 2024, the Individual was placed in his employer’s Fitness for Duty (FFD) program. Ex. 7 at 29. As part of the FFD, the Individual was required to undergo weekly alcohol testing while at work and participate in an Intensive Outpatient Program (IOP). Ex. 9 at 38.

In the June 2024 LOI, the Individual reported that the night before his positive BAT, he consumed three to four “9% [abv] beers,” between 8:00 p.m. and 10:30 p.m., and began his work shift at 6:30 a.m. the following morning, on May 21, 2024. Ex. 9 at 38, 40. He reported that he had not consumed alcohol since May 20, 2024. *Id.* at 41. He also reported that the FFD program required that he enroll in an IOP, but he did not have a chance to make an appointment with the program. *Id.* at 43.

During his August 2024 psychological evaluation, the Individual told the DOE Psychologist that he was surprised he tested positive for alcohol while at work, because he believed he followed his employer’s “eight-hour rule,” to not consume alcohol within eight hours of reporting to work, and he did not recall feeling intoxicated. Ex. 10 at 50. He said that the night before the positive BAT, he consumed three or four 9% abv 12-ounce beers, between 8:00 p.m. and 10:30 p.m. *Id.* at 49. The DOE Psychologist found that based on the Individual’s age, height, and weight, if he stopped drinking at 10:30 p.m. the night before, his blood alcohol concentration at the time he took the BAT, 12 hours later, would have been zero. *Id.* at 50. The DOE Psychologist also found that “it is more probable that [the Individual] drank more than he reported, or continued to drink later than 10:30 p.m., which would violate the eight-hour rule.” *Id.* at 50, 54. The Individual also stated he stopped drinking after his positive May 2024 BAT. *Id.* at 50.

The Report indicates that, as part of the FFD program, the Individual underwent Phosphatidylethanol (PEth)³ testing on June 14, 2024, three and a half weeks after he reportedly

³ The Report indicates that a PEth test “detects any significant alcohol use over the past three to four weeks” and “provide[s] some indication of the intensity” of one’s alcohol consumption. Ex. 10 at 52. “PEth levels in excess of 20 ng/mL are considered evidence of moderate to heavy ethanol consumption.” *Id.* at 72.

stopped consuming alcohol, the result of which was positive at a level of 44 ng/mL.⁴ Ex. 10 at 50. On July 12, 2024, the Individual took a second PEth test, the result of which was negative. Ex. 10 at 50; Ex. A at 1. The DOE Psychologist opined that the negative July 2024 test result supported the Individual's claim that he had not had alcohol since his positive BAT. Ex. 10 at 53–54. As part of the psychological evaluation, the Individual underwent PEth testing, on August 7, 2024, the result of which was negative. Ex. 10 at 52, 72–73; Ex. A at 2.

As for the Individual's alcohol treatment, the Individual told the DOE Psychologist that he had met with a therapist through his employer's EAP (EAP Therapist), for individual therapy sessions "every one to two weeks," and that the sessions were focused on helping him manage stress and anxiety. *Id.* at 52, 54.

In her Report, the DOE Psychologist opined that the Individual had been "habitually and binge consuming alcohol to the point of impaired judgment," and diagnosed him with UARD, without adequate evidence of rehabilitation or reformation. Ex. 10 at 55. She opined that, at the time of the evaluation, the Individual had not received enough alcohol education and/or treatment to provide evidence of rehabilitation. *Id.* at 54. She also opined that the Individual's sessions with his EAP Therapist were focused more on stress than topics related to his alcohol consumption, such as relapse prevention and avoiding triggers. *Id.* She opined that the Individual had begun a "path of reformation" by abstaining from alcohol for two and a half months, but she believed "two and a half months was not a sufficient period of time to demonstrate rehabilitation or reformation" from his UARD. *Id.* at 54. To show adequate evidence of reformation, the DOE Psychologist recommended that the Individual "provide [n]egative PEth test results for six months, starting with the first [n]egative test taken on [July 12, 2024]." *Id.* at 55. To demonstrate adequate evidence of rehabilitation, the DOE Psychologist recommended that the Individual participate in an alcohol education class for at least six weeks, then attend "an additional alcohol-focused group" for no less than 12 weeks, either through his EAP, or some other agency that provides similar alcohol education classes. *Id.*

From August 2, 2024, to November 1, 2024, the Individual attended an IOP, and he submitted a Certificate of Completion for the program. Ex. B. The Individual submitted a letter from the IOP's Clinical Supervisor, which indicated that the IOP consisted of "two psychoeducational groups, one SMART Recovery group, and one individual therapy session, weekly for 12 weeks." *Id.* at 1. The letter also indicated that the Individual had "a good attitude" during the program, maintained his sobriety during the program, and, as of January 14, 2025, continued to participate in the IOP's "After Care Treatment Program." *Id.*

From November 14, 2024, to January 9, 2025, the Individual attended a six-week alcohol awareness class through the EAP, and he submitted a Certificate of Completion for the course. Ex. C. A letter from the EAP Therapist indicated that the Individual "demonstrated excellent attendance, listened, shared, was open and honest, and initiated [and interacted] with other group participants" during the class. Ex. C at 1. A letter from the Lead Psychologist at his employer's

⁴ The DOE Psychologist opined that the result of the June 2024 PEth test was consistent with the Individual "consuming alcohol heavily/excessively for at least the 30 days prior to that result." Ex. 10 at 53. This statement does not appear consistent with her subsequent statement in the Report that the Individual had abstained from alcohol for approximately two and a half months following the BAT. *Id.* at 54. I have interpreted the DOE Psychologist's opinion as indicating that the Individual consumed alcohol at some point within 30 days of the June 2024 PEth test, but not throughout the 30 days preceding the test.

occupational medicine department indicated that the six-week alcohol awareness class focused on increasing one's awareness of their relationship to alcohol, including "its effect on the body, effects on relationships and money, and individual triggers to drink, or drink more than intended. Participants are also given support in defining what changes they want to make and how to start the change process." Ex. D. On January 30, 2025, the Individual started the EAP's 12-week support group. Ex. B at 1. The Individual also submitted documentation he underwent six additional PEth tests, from August 8, 2024, through February 2025, the results of which were all negative for alcohol consumption. Ex. A at 3–8.

The EAP Therapist testified that the Individual completed her alcohol awareness class and, as of the hearing, the Individual continued to attend her support group class, for which she serves as the "group facilitator." Tr. at 12–13. During the alcohol awareness class, the Individual increased his awareness of the effects of alcohol. *Id.* at 18. She stated the Individual's attendance in her support group had been excellent. *Id.* at 13. During the support group class, the Individual had "very, very good participation," he showed "his vulnerability," and he used the group to talk about himself, what he learned from his counseling and therapy, and his feelings. *Id.* at 15, 17. She had two individual counseling sessions with the Individual, on January 28, 2025, and February 26, 2025. *Id.* at 13–14. Her next session with the Individual was scheduled for March 3, 2025. Ex. C at 1. During the February 2025 counseling session, the Individual made the connection between his family history, his level of alcohol consumption, and how it led to his positive BAT at work. *Id.* at 17–18. The Individual also told her that he no longer spent time with certain family members who "like to party," he no longer attended bars, and his girlfriend supported his sobriety. *Id.* at 18–19. The Individual also told her that, at his relatively young age, he could not say he would never touch alcohol again, but for the time being, he was happy not drinking. *Id.* at 23. She was very impressed with the Individual's progress. *Id.* at 19. She stated that, as of the date of the hearing, the Individual's prognosis for abstaining from alcohol was "very good." *Id.* at 21.

The Individual's stepfather testified that he has known the Individual since 2020. Tr. at 28. He has seen the Individual in numerous social situations over the years and has never had concerns about his drinking. *Id.* He has not seen the Individual consume alcohol since May 2024. *Id.* He has seen the Individual at several events since that time, including a wedding and a gender reveal party, and the Individual did not drink alcohol. *Id.* at 28–29. He knew the Individual was required to attend alcohol treatment, and he was impressed with the Individual's dedication to attend all his group classes and counseling sessions. *Id.* at 29, 32–34.

The Individual's friend has known the Individual for over seven years. Tr. at 36. He stated they would typically drink beer at the Individual's home, but the last time he saw the Individual consume alcohol was in May 2024. *Id.* at 37, 42. He stated that he works in a doctor's office. *Id.* at 39. The Individual asked his friend about a health issue he was experiencing and was able to manage receiving a bad diagnosis without the use of alcohol. *Id.* at 39. The Individual told him his alcohol treatment has helped him see what he wants for himself in the future without alcohol. *Id.* at 43. He also stated that the Individual told him he does not intend to drink alcohol. *Id.* at 42.

The Individual's girlfriend testified that she has known the Individual for two years and they have lived together for the past year and a half. Tr. at 50, 53. She stated that there is no alcohol in their home, but their parents' home, which is on the same property, does have alcohol. *Id.* at 53. The last time she saw the Individual consume alcohol was May 2024. *Id.* at 50. The girlfriend knew the Individual attended alcohol treatment classes and she believed the Individual took the classes

very seriously. *Id.* at 51. She has seen the Individual bring home assignments from his alcohol support group that he completes to keep his mind “on the right path” and stay away from alcohol. *Id.* at 54–55. The girlfriend stated that since the Individual has stopped drinking, and he is calmer, more focused, less stressed, and a happier person. *Id.* at 51.

The Individual’s girlfriend’s father testified that the Individual and his daughter live in a small, external building on his property, and they have lived there for five months. Tr. at 64. He is a recovering alcoholic, he understands the problems alcoholics can face, and he has been sober for seven years. *Id.* at 61. He sees the Individual as a young man who is taking advantage of a second chance and seems to be taking his alcohol treatment seriously. *Id.* Since the Individual has been living with him and his daughter, he has not seen the Individual consume alcohol. *Id.* at 62. He believes the Individual’s alcohol treatment has helped him realize how problematic his alcohol use was. *Id.* at 65. He stated the Individual told him that his life is better without alcohol, and he does not think the Individual intends to drink again. *Id.* at 65.

The Individual testified that after his positive BAT at work, he was upset with himself for being irresponsible and arriving at work unfit for duty. Tr. at 70. Initially he felt frustrated because, after he lost his clearance, his work conditions changed. *Id.* at 69. But, after he read the Report, he realized how much he abused alcohol, and he realized he had a problem. *Id.* at 70. He has not consumed alcohol since his positive BAT. *Id.* at 81. Regarding his alcohol treatment, the Individual explained that he attended group therapy classes on Mondays and Wednesday, he attended his SMART Recovery class on Tuesdays, and on Fridays he had individual therapy sessions with his individual therapist. *Id.* at 78–80. Once he started the IOP, he began to understand that he had an unhealthy relationship with alcohol, even though he had been sober for several months at that point. *Id.* at 70. The IOP and SMART Recovery helped him identify ways to “remove triggers,” such as not going to bars and not hanging out with his friends if they were drinking alcohol. *Id.* at 71. Now, he meets his friends for coffee, during the day, rather than alcohol, and he explicitly tells his friends that he does not want alcohol present when he around. *Id.* at 71–72.

He explained that he had been attending the IOP’s aftercare program for the past four months. Tr. at 80. As of the hearing, he had two months of the aftercare program remaining. *Id.* at 83. He has seven weeks of the support group class remaining. *Id.* at 83. He also intends to continue his therapy sessions, for both his alcohol use and any other issues he may face. *Id.* at 83. Since he has stopped drinking, he spends more time working on his cars, pursuing his college degree, and spending time with his friends. *Id.* at 71. He has learned alcohol’s effect on his life and how removing it has improved his life. *Id.* He stated that seeing the damaging consequences of alcohol and experiencing the benefits of sobriety have made him want to stay sober for the foreseeable future. *Id.* at 82.

The DOE Psychologist testified that, based on the evidence and testimony presented at the hearing, the Individual had demonstrated adequate evidence of rehabilitation and reformation from his UARD. Tr. at 88. She stated the Individual has “exceeded” her treatment recommendations and no longer met the diagnostic criteria for a diagnosis of UARD. *Id.* at 87–88.

V. Analysis

Guideline G

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;
- (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.

Based on the evidence before me, I find that the Individual has mitigated the security concerns related to his alcohol consumption under ¶ 23(b) and ¶ 23(c) of the Adjudicative Guidelines. The Individual acknowledged his maladaptive alcohol use. He stated that it was irresponsible of him to arrive at work after having consumed alcohol. He also admitted that, after reading the Report, he realized his alcohol consumption was a problem. The Individual submitted evidence that he followed the treatment recommendations of the DOE Psychologist and successfully completed a six-week alcohol awareness class. He provided testimony from the EAP Therapist, which supported the Individual's documentation, that his attendance during the six-week class was excellent, and he interacted with other group participants. The Individual also completed a 12-week IOP and submitted a letter from the IOP's Clinical Supervisor, which indicated that the Individual had a good attitude and maintained his sobriety during the program. Finally, the Individual submitted six additional negative PEth tests, dated from August 2024 to February 2025, which, when taken with the July 2024 negative PEth test referenced in the Report, demonstrate a clear and established pattern of abstinence from alcohol for approximately seven months. The Individual has met all elements of mitigating factor ¶ 23(b) of the Adjudicative Guidelines.

As of the hearing, the Individual continues to receive alcohol treatment and counseling by participating in the IOP's After Care Treatment Program, and he testified that he intends to continue with the program for the next two months. The Individual also intends to continue his individual therapy sessions with the EAP Therapist and testified that he will continue attending the support group classes. The Individual has no previous history of treatment and relapse. The EAP Therapist testified that she was impressed with the Individual's progress through treatment and gave him a positive prognosis. Finally, the DOE Psychologist opined that the Individual provided adequate evidence of rehabilitation and reformation from his UARD. The Individual has met all elements of mitigating factor ¶ 23(c).

I conclude that the Individual has acknowledged his pattern of maladaptive alcohol use, has provided sufficient evidence he successfully completed a treatment program, and has demonstrated a clear and established pattern of abstinence sufficient to mitigate the stated Guideline G concerns. Adjudicative Guidelines at ¶ 23 (b)–(c).

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 brought forth sufficient evidence to resolve the concerns set forth in the SSC. Accordingly, the Individual has 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 be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals