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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:	November 20, 2024)	Case No.: PSH-25-0031
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Issued: April 1, 2025

Administrative Judge Decision

Janet R. H. Fishman, 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*. (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 a security clearance. On May 13, 2024, the Individual tested positive on a random workplace Breath Alcohol Test (BAT), the result of which was positive at a level of .025 g/210L. Exhibit (Ex.) 3 at 13; Ex. 7 at 34, 36.² 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. 8. In the LOI, the Individual reported that on the night of May 12, 2024, he consumed seven to eight glasses of "Red wine, Cabernet Sauvignon" between 5:00 p.m. and 10:30 p.m. *Id.* at 42–43.

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 July 2024 and issued a report (the Report) of her findings. Ex. 9. Based on her evaluation of the Individual, the DOE Psychologist opined that

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.

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 Alcohol Use Disorder, Moderate (AUD). *Id.* at 64–65. The DOE Psychologist also concluded there was not “adequate evidence of rehabilitation or reformation.” *Id.* at 65.

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 6–8. 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 four witnesses: the Individual, the Individual’s Employee Assistant Program (EAP) Counselor, the Individual’s Therapist, and the DOE Psychologist. *See* Transcript of Hearing, OHA Case No. PSH-25-0031 (Tr.). Counsel for the DOE submitted 11 exhibits, marked as Exhibits 1 through 11. The Individual submitted 12 exhibits, marked as Exhibits A through L.

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 AUD 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 13, 2024, on a random BAT performed at work, the Individual tested positive at a level of .025 g/210L. Ex. 3 at 13; Ex. 7 at 34, 36. The Individual stated that he consumed approximately seven to eight glasses of red wine, the evening before the positive BAT. Ex. 8 at 43. He admitted that his alcohol consumption between February 2024 and his May 13, 2024, positive BAT had increased significantly from a few glasses of wine on the weekends to consuming wine five to six times a week. *Id.* at 50. The Individual admitted that he previously attended an inpatient alcohol-related treatment program in 2021. *Id.* at 47. The program was voluntary. *Id.* He claimed that he was told his alcohol intake had increased due to the global pandemic and mild depression. *Id.* at 48. He asserted that he was told that he should “tamper his use and seek other outlets.” *Id.*

Immediately after the positive BAT, 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 attend an alcohol awareness program with EAP for six weeks, which he completed on July 18, 2024. Ex. 8 at 45; Tr. at 15; Ex. A. The Individual provided a certificate of completion for the alcohol awareness program. Ex. A. The EAP Counselor testified that following his active participation in the alcohol awareness program with EAP, he continued with the support group, of which she serves as a facilitator. Tr. at 15, 18; Ex. B. The Individual also provided a certificate of completion for the support group, which is a 12-week program.³ Ex. B.

The Report indicates that, as part of the FFD program, the Individual underwent Phosphatidylethanol (PEth)⁴ testing on May 3, 2024, May 29, 2024, June 12, 2024, and July 16, 2024. Ex. 9 at 63. The first three results were positive, with the July 16, 2024, result being negative. *Id.* The DOE Psychologist stated in her Report that the results “support [the Individual’s] claim of abstinence from alcohol since [May] 2024. *Id.* She recommended in her Report that, in addition to an EAP alcohol awareness program and therapy with his individual Therapist, the Individual would need to attend a 12-week support group and provide negative PEth tests for six months beginning in June 2024 in order to show rehabilitation. Ex. 9 at 65; Tr. at 104.

The EAP Counselor indicated that, in addition to the alcohol awareness program and the support group, she has met with the Individual for four individual sessions related to his alcohol use. Tr. at 21. She stated that the Individual shared that he is seeing the Therapist, working on abstinence, and attending Alcoholics Anonymous (AA) meetings, which he began attending in November 2024. *Id.* at 22–23. In the most recent session with the Individual, he disclosed to the EAP

³ Although the Individual completed the 12-week support group and received the certificate of completion, he continues to attend and can continue if he desires. Tr. at 12.

⁴ 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.

Counselor that he relapsed in February. *Id.* at 23. The EAP Counselor testified that she learned that the Individual had a positive PEth test result of 24 ng/mL on February 19, 2025. *Id.* at 24; Ex. L. She claimed that he told her that he consumed three glasses of wine on a Friday night and two more glasses on Saturday. *Id.* at 26. The Counselor stated that the Individual told her that he would be looking at starting the 12 steps of AA, but that he had not started yet. *Id.* at 30. She asserted that the Individual is utilizing his individual therapy, group therapy, and AA to “help him on this journey and to gain knowledge and information and skills.” *Id.* at 31. The EAP Counselor concluded that “as far as the relapse goes, . . . , using it as an opportunity to grow and to learn and [] making mistakes is part of [the] journey” to sobriety. *Id.* at 32.

The Individual’s Therapist testified the Individual has been in therapy with him every other week since June of 2024. Tr. at 38. The Therapist did indicate that he has not completed an official evaluation of the Individual. *Id.* He stated that the more they have discussed the Individual’s alcohol consumption, the Individual has increasingly been able to admit that his alcohol consumption is problematic. *Id.* The Therapist asserted that the Individual’s attendance at AA has been very helpful and has allowed the Individual to move forward. *Id.* at 40. He did stress that the Individual has just begun to determine what AA can provide to him. *Id.* at 41. The Therapist testified that he has encouraged the Individual to find an AA sponsor, especially after his relapse. *Id.* at 42, 54. He stated that the Individual admitted that he had consumed wine with friends one weekend, and although they have talked about what led to the relapse, they have not finished the discussion. *Id.* at 44. The Therapist believes the Individual has been honest with him through their therapy sessions. *Id.* He attributed the Individual’s relapse to the stress of preparing for the hearing. *Id.* at 45. Although they have discussed how to prevent another relapse, they do not have a relapse prevention plan. *Id.* at 51.

The Individual testified that he last consumed alcohol on February 15, 2025, approximately one month prior to the hearing. Tr. at 59. He stated that he consumed three glasses of wine on February 14, 2025, and two glasses of wine on February 15, 2025, basically finishing the bottle he had purchased the night before. *Id.* at 59–60. He claimed that he did not feel the effects of the wine. *Id.* The Individual declared “his alcoholic brain took over I’m still on the fence, reduce consumption versus no consumption.” *Id.* at 60. He also stated that “the phrase ‘I will never drink alcohol again’ frightens me.” *Id.* at 62. The Individual indicated that he has not told his siblings or many of his friends about his positive BAT, admitting that only one of the friends he was with on February 14, 2025, when he consumed alcohol knew that he was trying to maintain his sobriety. *Id.* at 63. The Individual indicated that, “it has been difficult opening up and sharing.” *Id.* He admitted that he has not been working the steps of AA, nor does he have a sponsor, which he sees as the first step to working those steps. *Id.* at 66.

Outlining the classes and therapy he has taken since his positive BAT, the Individual stated that he started with his Therapist on June 5, 2024. *Id.* at 68. The next day he started the EAP alcohol awareness program. *Id.* After completing that six-week program on July 18, 2024, he started the support group at EAP on August 29, 2024. *Id.* at 69. He asserted that the support group recommends abstinence. *Id.* at 71. Finally, he stated that he started attending AA on November 1, 2024, the day after he received the SSC with the DOE Psychologist’s Report. *Id.* at 71. The Individual submitted four negative PEth tests from October 2024, November 2024, December 2024, and January 2025, along with two positive tests from September 2024 and February 2025. Ex. L; Tr. at 72, 75–76. The Individual admitted that he was consuming alcohol during August. Tr. at 73. The Individual admitted that he does not have a plan to deal with triggers which would

cause him to want to drink. *Id.* at 81. He did assert that he has been focusing on his mental and physical health by reading the 12steps of AA, doing yoga, exercising, mountain biking, and playing the acoustic guitar. *Id.* at 81–82. The Individual admitted that he has not identified anyone he could call if he has the desire to consume alcohol again. *Id.* at 92. He asserted that his future intention regarding alcohol is long-term sobriety, but that he will not “be feeling comfortable until [he] . . . [has] 12 months of continued sobriety.” *Id.* at 94. The Individual is still in FFD, and when his February 2025 PETH test result came back positive, there were no ramifications to his employment because his clearance is currently suspended. *Id.* at 99.

At the hearing, the DOE Psychologist confirmed her diagnosis of the Individual as suffering from AUD, Moderate. Tr. at 103. She asserted that he had not demonstrated adequate rehabilitation. *Id.* at 103, 105. Her opinion at the hearing was that he had also not yet shown adequate reformation. Tr. at 106. The DOE Psychologist based that opinion on the fact that the Individual has not been able to remain abstinent for six months. *Id.* She asserted that she is concerned that the Individual is “self-sabotaging” by not being able to maintain his sobriety for six-months. *Id.* She commended the Individual for his long-term goal of remaining abstinent for 12 months, stating that he “really does need [his sobriety] extended to at least 12 months.” *Id.* at 107. She concluded that his prognosis would be good, if he accomplishes what he outlined in his testimony of getting a sponsor, doing the twelve steps of AA, maintaining his community support, and developing a formalized relapse prevention plan. *Id.* at 111.

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 not mitigated the security concerns related to his alcohol consumption under any of the conditions in paragraph 23 of the Adjudicative Guidelines. The Individual last consumed alcohol a month prior to the hearing. His alcohol usage did not occur under an unusual circumstance that is unlikely to recur. His consumption occurred at home after work, almost every evening. The Individual has not met any elements of mitigating factor ¶ 23(a) of the Adjudicative Guidelines.

While the Individual acknowledged his maladaptive alcohol use and has attempted to overcome the problem by attending the alcohol awareness program and support group, along with individual therapy, he has not demonstrated a clear pattern of either modified consumption or abstinence. The Individual consumed three glasses of wine on February 14, 2025, and another two on February 15, 2025. He blamed his “alcoholic brain” for his alcohol consumption. The Individual has not met all elements of mitigating factor ¶ 23(b) of the Adjudicative Guidelines.

As of the hearing, the Individual testified that he continues to receive alcohol treatment and counseling by participating in the EAP’s support group. The Individual also intends to continue his individual therapy sessions with the EAP Counselor and his Individual Therapist. However, the Individual does have a previous history of treatment in 2021. Further, while the EAP Counselor and Therapist indicated that the Individual is making progress in a treatment program, they both testified that he had a relapse in February. The Therapist testified that he has encouraged the Individual find an AA sponsor, which he has not yet done. The Individual has not met all elements of mitigating factor ¶ 23(c).

Finally, while the Individual has successfully completed a treatment program along with the required aftercare, as evidenced by his completion of the alcohol awareness program and the support group, the Individual has not established a pattern of modified consumption or abstinence in accordance with treatment recommendations. He is still attending the support group, which he testified recommends abstinence, yet he consumed alcohol in February. Further, the DOE Psychologist’s recommendations to show rehabilitation or reformation specifically state that he should be abstinent for six months. As of the hearing, he had been abstinent for one month. The Individual has not met all elements of mitigating factor ¶ 23(d).

I conclude that none of the mitigating conditions under Guideline G are applicable. Accordingly, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

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.

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