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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: February 24, 2021) Case No.: PSH-21-0021
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Issued: April 29, 2021

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (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 security clearance should be restored.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. The Individual completed an Electronic Questionnaire for Investigations Processing (e-QIP) on March 14, 2018. Exhibit (Ex.) 7 at 35. The Individual disclosed on the e-QIP that on September 15, 2014, a coworker reported to the Individual’s manager that he detected the smell of alcohol on the Individual’s breath while at work. *Id.* at 30. The Individual also disclosed that on October 13, 2017, his coworker again reported to the Individual’s manager that he thought he smelled alcohol on the Individual’s breath while at work. *Id.* During an Enhanced Subject Interview (ESI) conducted on March 19, 2019, the Individual disclosed that he had consumed five to six mixed alcoholic beverages on the night before the September 2014 incident. Ex. 8 at 58. He also disclosed that he had consumed five to six alcoholic beverages on the night before the October 2017 incident. *Id.*

During a subsequent ESI on March 25, 2019, the Individual voluntarily disclosed an alcohol-related incident that occurred in April 2018. Ex. 8 at 62–63. He stated that in April 2018, he sought

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.

medical treatment at his employer's medical department for an injury to his hand. Ex. 8 at 62. While being evaluated, the doctor smelled alcohol on his breath. *Id.* The Local Security Office (LSO) obtained medical records regarding the incident, which reflected that the Individual told the doctor that he had consumed alcohol on the previous night, April 1, 2018. *Id.* at 71.

Due to three alcohol-related incidents at work, the LSO recommended that the Individual undergo an evaluation by a DOE-contracted psychologist (DOE Psychologist). Ex. 3 at 1. Following a clinical interview of the Individual, the DOE Psychologist issued a psychological report (Report) in which she concluded that the Individual met the diagnostic criteria for Alcohol Use Disorder (AUD), Moderate, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. Ex. 5 at 7.

The LSO informed the Individual, in a letter dated May 20, 2020 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. In an attachment to the letter (Summary of Security Concerns), the LSO explained that the derogatory information raised security concerns under Guideline G of the Adjudicative Guidelines. Ex. 1.

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 subsequently conducted an administrative review hearing. The LSO submitted eight numbered exhibits (Ex. 1-8) into the record and presented the testimony of the DOE psychologist at the hearing. The Individual submitted 13 exhibits (Ex. A through M) into the record and presented his own testimony.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the basis for suspending the Individual's security clearance. Ex. 1. 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. The Summary of Security Concerns listed as relevant facts: The DOE Psychologist diagnosed the Individual with Alcohol Use Disorder (AUD), Moderate, without adequate evidence of rehabilitation or reformation; in April 2018, a physician evaluated the Individual for an injury at his work site and detected the smell of alcohol on the Individual's breath during the evaluation; in October 2017, a coworker reported to the Individual's manager that he suspected the Individual was under the influence of alcohol at work because he smelled alcohol on the individual's breath, and the Individual subsequently admitted to consuming alcohol the night before reporting to work; and in September 2014, a coworker reported to a manager that he suspected the Individual was under the influence of alcohol at work because he smelled alcohol on the individual's breath, and the Individual subsequently admitted to consuming alcohol on the night prior to reporting to work. Ex. 1.

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 entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. 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 so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 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

The Individual completed an Electronic Questionnaire for Investigations Processing (e-QIP) on March 14, 2018, and disclosed his two alcohol-related incidents at work that occurred on September 15, 2014, and October 13, 2017. Ex. 7 at 30, 35. During his March 19, 2019 interview with an Office of Personnel Management (OPM) investigator, the Individual admitted to consuming five to six mixed alcoholic beverages on the night before the September 2014 incident and again on the night before the October 2017 incident. Ex.8 at 58. On March 25, 2019, OPM conducted an additional interview per the Individual's request, and the Individual self-reported his April 2018 alcohol-related incident. *Id.* at 62–63.

The medical records of the April 2018 alcohol-related incident indicated that when the examining physician confronted the Individual regarding the smell of alcohol on his breath, the Individual admitted to consuming an unknown amount of whiskey on the previous night. *Id.* at 71. He was then sent to take a Breath Alcohol Test (BAT) and a urine drug screen, both of which showed negative results. *Id.*

On January 14, 2020, the Individual met with the DOE Psychologist for a clinical interview. Ex. 5 at 1. During the clinical interview, the Individual reported that his alcohol consumption was at its highest between 2014 and 2017. *Id.* at 5. He initially reported to the DOE Psychologist that he, along with his brother, would drink 3-4 shots of whiskey at a time, 4-5 times per week. *Id.* However, when reminded that he told the OPM investigator that he was drinking 5-6 alcoholic drinks per episode, he admitted that this figure was probably a more accurate estimate. *Id.*

The Individual further reported to the DOE Psychologist that since he began living with his girlfriend, his alcohol consumption decreased further, and estimated that he consumed less, about 4-6 alcoholic beverages per week. *Id.* The Individual acknowledged that he and his brother had discussed decreasing their alcohol intake due to their concerns that they were drinking excessively. However, it had been difficult to make that change because of their bachelor lifestyle. *Id.* The Individual also stated that, before they began to live together, his girlfriend had expressed concern that he was consuming too much alcohol. *Id.* He further reported that his physician had previously discussed his “fatty liver” condition and advised him to “limit (his) intake” of alcohol, which the Individual had begun to do. *Id.*

At the request of the DOE Psychologist, the Individual underwent two laboratory tests, an Ethyl Glucuronide (EtG) test and a Phosphatidylethanol (PEth) test, immediately following the clinical interview. *Id.* at 6. The EtG test was positive at a level of 676 ng/ML, and according to the medical doctor who provided the test results to the DOE Psychologist, the EtG test results “provide strong evidence that the [Individual] consumed alcohol during the three days prior to the sample collection.” *Id.* The Individual’s PEth test was positive at a level of 378 ng/mL. *Id.* The doctor who provided the test results reported, “A PEth at this level is consistent with heavy alcohol consumption.” *Id.* The Individual reported that he consumed two beers prior with a meal on the night prior to the evaluation, and one more beer after he arrived home from the meal. *Id.* He also reported that he had “a couple” of beers the previous week. *Id.* The DOE Psychologist stated in her report that the Individual’s laboratory results do not support his report of current alcohol consumption of 4-6 alcoholic beverages per week. *Id.* at 7.

On January 23, 2020, the DOE Psychologist issued her report in which she concluded that the Individual met the diagnostic criteria for AUD, Moderate, without adequate evidence of rehabilitation or reformation. *Id.* at 8. The DOE Psychologist recommended that the Individual demonstrate rehabilitation or reformation by abstaining from alcohol for at least six months, attending alcohol rehabilitation counseling, either on an individual basis with a therapist specializing in alcohol/substance abuse counseling who also provided group meetings or by attending Alcoholic Anonymous (AA) meetings at least twice weekly with the support of a sponsor, or by attending another evidence based treatment such as the SMART treatment approach. *Id.* The DOE Psychologist recommended that the Individual’s attendance should be documented, and she also recommended alcohol testing including PEth tests to be conducted not fewer than three times over the six months on an every-two-month time basis. *Id.*

The Individual submitted laboratory tests of drugs and alcohol. Ex. I; Ex. J. He submitted a total of 23 urine analysis (UA) tests, including substance abuse panels, from April 17, 2020, through March 8, 2021 and all test results were negative Ex. I. He also submitted a total of 22 Breath Alcohol Tests (BAT) from April 17, 2020, through March 8, 2021, and all test results were negative. Ex. J. In addition, the Individual submitted a certificate of completion from his Intensive Outpatient Treatment (IOP) program which stated that he successfully completed an IOP program on July 16, 2020. Ex. F. In addition, the Individual submitted a copy of a PEth test that he took on June 26, 2020, and the test results were negative. Ex. 2 at 27.

The Individual also submitted a letter from his treating clinical therapist (Therapist) from his IOP recovery program dated March 25, 2021. Ex. G. The Therapist verified that the Individual

completed the IOP program that began on April 30, 2020, and ended on July 20, 2020. *Id.* She also stated that immediately after completing his IOP program, the Individual transferred to the Aftercare group where he continued to attend the groups on a weekly basis. *Id.* In addition to attending Aftercare, the Therapist also stated that the Individual works with her directly and meets with her individually at least once a month. *Id.* She opined that the Individual has demonstrated sincere motivation and engagement in all programming and activities, and he appears to be committed to long term sobriety as evidenced by his attendance, and ongoing utilization of the weekly structure of the Aftercare program to create new habits. *Id.* The Therapist opined that the Individuals' prognosis for long term recovery is excellent, as evidenced by his ability to develop impulse control and insight regarding his long-term recovery needs and dedicated participation in all parts of his recovery program. *Id.* The Therapist had also submitted a previous letter dated June 17, 2020, in which the Therapist stated that the Individual was participating in an IOP, was also attending the SMART Recovery treatment component, and was participating in individual therapy with her every week. Ex. 2 at 10.

The Individual also submitted an April 6, 2021 letter from his girlfriend who has been his partner (Partner) for seven years. Ex. H. She stated her belief that the suspension of his clearance (Suspension) served as a "wake-up call to get help." *Id.* She explained that on the day he read his DOE Suspension letter, he immediately began abstaining from alcohol and he has not consumed any alcohol since that day. *Id.* She further stated that, in the past, his shame regarding his alcohol consumption had prevented him from entering outpatient treatment; however, after his Suspension and learning about his treatment options, he immediately contacted the IOP program. *Id.* The Individual's Partner asserted that, "one year out, I see in [the Individual] a man who is less anxious and more engaged...[h]e sleeps better, ...has lost [weight], ... has replaced '[h]appy hour with walking hour,' [and]...[h]e is much less irritable." *Id.* She concluded that she is "so very proud of his achievements and impressed by his commitment to himself and his recovery." *Id.*

Evidence from the LSO shows that the Individual signed a Formal Agreement for Recovery/Abstinence with his employer on March 11, 2020. Ex. 2 at 9. Also, the Individual had provided the LSO with liver function tests from October 11, 2019 (before he stopped consuming alcohol) and March 11, 2020 (after he had started abstaining from alcohol). *Id.* at 21–24. The results showed that his October 2019 elevated liver enzymes had decreased to a normal range, as reflected in the March 2020 test results. *Id.* at 21, 24.

V. HEARING TESTIMONY

At the hearing, the Individual did not dispute the allegations in the Summary of Security Concerns (SSC). Transcript (Tr.) at 11–14. He also agreed with the findings of the DOE Psychologist's report. *Id.* at 14. The Individual testified as to how his alcohol consumption had changed from when he previously consumed alcohol heavily when he lived with his brother. *Id.* at 17–18. He indicated that when he previously lived with his brother, their concept of having "a good time" involved alcohol use. *Id.* at 18, 29–30. However, when he moved into a separate residence to begin living with his Partner in April 2018, he began decreasing his alcohol consumption in response to her concerns about his alcohol use. *Id.* at 19–20. He admitted that, on past occasions, he had tried on his own to stay sober, but usually his sobriety would last for only short periods of a month, and ultimately those efforts proved unsuccessful. *Id.* at 15–16.

Regarding his mitigation efforts, the Individual indicated that he received the SSC in approximately February 2020, and shortly thereafter, he saw an EAP counselor. *Id.* at 20. He admitted that previously in 2019, he had met with the same EAP counselor because, “I knew I had a problem [a]nd I was seeking information.” *Id.* at 21. He stated that when he began meeting with his EAP counselor in or about February 2020, she told him about the IOP program that he ultimately completed. *Id.* at 21–22. He also stated that in working with his EAP counselor, he signed an Abstinence Agreement which also required him to take two random drug tests per month, both breathalyzer and urine analysis, for two years, and he was required to meet with his EAP counselor on a regular basis. *Id.* at 22; Ex. 2 at 9. He testified that to date he continues to meet with his EAP counselor to discuss the status of his case. Tr. at 22–23.

The Individual also acknowledged that he is an alcoholic and testified that he has been sober since his last consumption of alcohol on February 17, 2020. *Id.* at 34, 43. He asserted that as of the date of the hearing, he had been sober for 413 days. *Id.* at 37, 46. He testified that he intends to remain sober by maintaining total abstinence. *Id.* at 33, 47. He also admitted that after his past attempts to remain abstinent without participating in a treatment program were unsuccessful, he recognized that he needed to participate in a structured recovery program to achieve sobriety. *Id.* at 43–44. He asserted that he has complied with treatment recommendations by completing his IOP program and submitting copies of his urine and breathalyzer tests. *Id.* at 39; Ex. F; Ex. I; Ex. J. He also testified that after completing the IOP Program, he immediately began participating in Aftercare in group meetings once per week for 12 months, which he still attends. *Id.* at 23–24, 36. While he did not have copies of sign-in sheets or attendance records from his Aftercare meetings, he provided a letter from his Therapist that stated that he was attending Aftercare meetings. *Id.* at 24; Ex. G. He also offered to obtain Aftercare attendance records and the Administrative Judge agreed to hold the record open for not longer than two weeks to obtain those records. *Id.* at 69, 75. The individual subsequently submitted the Aftercare attendance records after the hearing.

The Individual explained why he was attending Aftercare meetings just once a week, despite the fact that the DOE Psychologist’s recommendation was that he attend twice weekly. *Id.* at 25. He indicated that he had originally planned to attend two online sessions per week of Aftercare. *Id.* However, after attending online Aftercare sessions, he came to realize that it was more valuable to his recovery process if he instead attended in-person Aftercare meetings once a week with the people he knew who had participated in the IOP program with him, rather than attend online Aftercare meetings with strangers. *Id.* The Individual testified regarding the lessons he has learned from his IOP program including how to address cravings, how to identify triggers, and how to develop and use coping mechanisms to deal with life stressors without consuming alcohol. *Id.* at 25, 38. He provided a specific example of how he experienced an unexpected trigger on one occasion that led to a craving for alcohol, and despite this craving, he was able to successfully resist the urge to consume alcohol. *Id.* at 25–26. He testified that he then discussed the craving with his Therapist, and with his IOP group, both of which taught him how to address and endure the discomfort that occurs while having cravings, which in turn leads to growth and ongoing success in maintaining his sobriety. *Id.* at 26–27.

The Individual testified that he has maintained a support network that primarily consists of the small group of people with whom he attended his IOP program (IOP small group) as well as his

brother and his Partner. *Id.* at 26, 35. He testified that he occasionally spends time with his IOP small group outside of meetings, and they send text messages to each other. *Id.* at 27. Regarding his brother, he stated that they currently see each other approximately once per week, but when they are together, they do not consume alcohol. *Id.* at 30. Instead, they spend time working on remodeling projects, watch tv and movies, and eat meals together at the Individual's house. The Individual stated that he consumes fizzy water or Coke Zero instead of alcohol. *Id.* at 30–31. The Individual testified that his brother is supportive of his sobriety and loves him, so his brother does not consume alcohol when he is in the presence of the Individual. *Id.* at 31. The Individual further testified that he also spends time with his Partner, and she has been an active part of his sobriety journey. *Id.* at 31. He testified that his Partner occasionally drinks wine, but indicated this does not cause him any problems with his own sobriety because he was never a wine drinker. *Id.* at 28.

The DOE Psychologist testified last, after observing the hearing and all of the testimony offered therein. She testified that she diagnosed the Individual with Alcohol Use Disorder, moderate. *Id.* at 54. She further testified regarding her recommendations including six months of abstinence, and emphasized the importance of submitting PEth tests as proof of abstinence. *Id.* at 55. She stated that, regarding her recommendations for counseling, the Individual has complied by working with a counselor who specializes in substance abuse counseling. *Id.* The DOE Psychologist also credited the Individual for his completion of his IOP program. *Id.* She also noted that the Individual is only partially compliant with her recommendation to attend an Aftercare program twice weekly. *Id.* at 60. However, the DOE Psychologist noted that the individual had a level of openness and trust with his Aftercare small group. *Id.* at 71–72. She further opined that she would not require the Individual to change his Aftercare small group attendance because of the openness and trust benefits it offers. *Id.* at 72. Regarding her assessment of the Individual's support network, she testified that the Individual described himself as never having been particularly social other than with his brother and his Partner, so given his personality style, his support network is sufficient for him. *Id.* at 62, 74.

The DOE Psychologist testified that the Individual has acknowledged that he is an alcoholic. *Id.* at 68. She also stated that, while the Individual has been abstinent for over a year, she took issue with the lack of PEth tests in the record, specifically that the only PEth test in the record at the time of the hearing was a test result from ten months prior to the hearing.² *Id.* She explained that “the PEth test is the gold standard” and it is “extremely reliable, very valid.” *Id.* at 57. She testified that PEth tests provide a measure of the volume of alcohol that has been consumed, and they can detect whether a person has been drinking heavily or moderately or even lightly or not at all, for a period of three to four weeks prior to the test. *Id.* at 58. The DOE Psychologist also noted that the Individual had submitted records of his breath alcohol tests and urine analysis tests, however, she opined that those tests are not as reliable as PEth tests. *Id.* at 56–57. Ultimately, the DOE Psychologist, upon questioning, stated that if the Individual could submit a new PEth test after the hearing which reflected a negative test result, then “that would be sufficient to demonstrate his rehabilitation.” *Id.* at 74.

² The record reflects that there was some confusion by the Individual regarding the DOE Psychologist's recommendation for him to take two additional PEth tests. The Individual's testimony indicated that he was confused about whether the DOE Psychologist wanted him to take additional PEth tests after his evaluation or if he was supposed to wait until the hearing to obtain an order to direct him to take more PEth tests. Tr. at 50, 52.

After the hearing, the Individual submitted post-hearing evidence to further support his mitigation efforts. He submitted a PEth test that he took on the same date as the hearing after the hearing ended. Ex. L. He also submitted the test result dated April 11, 2021, for that PEth test, which was negative for alcohol use. Ex. M. In addition, the Individual submitted proof of attendance records for his Aftercare program which verified that he has attended Aftercare meetings weekly from May 10, 2020, through April 1, 2021. Ex. K.

VI. ANALYSIS

Guideline G

The Individual's alcohol-related incidents at work, and the DOE Psychologist's diagnosis of the Individual with AUD, raise security concerns under Guideline G of the Adjudicative Guidelines. Adjudicative Guidelines at ¶ 22(b), (d). An individual may mitigate security concerns under Guideline G, in relevant part, if 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; and the individual has successfully completed a treatment program along with any required aftercare. Adjudicative Guidelines at ¶ 23(b), (d).

The Individual provided credible testimony in which he acknowledged his maladaptive alcohol use and testified to actions that he has taken to overcome his alcohol problem. His testimony is bolstered by the supporting evidence that he provided, including proof of completion of his IOP program, attendance records from his Aftercare program spanning weekly meetings for the past 11 months, and random breath alcohol tests and urine analysis tests from April 17, 2020, through March 8, 2021, all of which showed negative results. In addition, his treating Therapist's opinion of his excellent progress and verification of his previous, current and ongoing participation in Individual therapy, as well as his participation in an Aftercare program lends further support to his assertions of maintaining his sobriety for over 12 months.

The Individual has also demonstrated a level of self-awareness of his previous maladaptive alcohol use which has proven valuable in his sobriety journey. He admits that he needed a structured IOP program to achieve sobriety, has provided specific examples of how he has applied the lessons he has learned from his IOP program, and has discussed with both his Therapist and his support network his experience with triggers and cravings, and how to cope with them. He has also testified with specificity regarding how he has changed his recreational activities with his brother such that they do not involve alcohol. Further, his letter of reference from his life Partner shows that his lifestyle change of abstinence is evident to her and has improved their relationship. Equally, if not more importantly, the Individual provided an updated PEth test that he took immediately after the hearing, and the test result was negative for alcohol use. This new PEth test is significant because the DOE Psychologist opined that an updated, negative PEth test would be sufficient evidence to demonstrate the Individual's rehabilitation.

The Individual has acknowledged his maladaptive alcohol use, provided evidence of actions taken to overcome his problem, completed an IOP program, continues to attend Individual therapy, and Aftercare meetings, has maintained an effective support network, and has maintained sobriety for

over 12 months. Accordingly, I find that the Individual has satisfied the requirements to successfully demonstrate mitigation under Adjudicative Guidelines at ¶ 23(b), (d).

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 Guidelines G of the Adjudicative Guidelines. After considering all of 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 restored. The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Office of Hearings and Appeals