

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

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

In the Matter of: Personnel Security Hearing)
)
Filing Date: June 29, 2021) Case No.: PSH-21-0080
)
)
_____)

Issued: August 26, 2021

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXX XXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should not be granted.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position which requires her to hold a security clearance. During her background investigation, derogatory information was discovered regarding the Individual’s alcohol consumption. The Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding her eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). 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), the Individual presented the testimony of two witnesses. The LSO presented the testimony of the DOE psychologist who had evaluated the Individual. *See* Transcript of Hearing, Case No. PSH-21-0080 (hereinafter cited as “Tr.”). The LSO submitted nine exhibits, marked as Exhibits 1 through 9 (hereinafter cited as “Ex.”). The Individual submitted seven exhibits, marked as Exhibits A through G.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

¹ Under the regulations, “Access authorization” means 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). Such authorization will also be referred to in this Decision as a security clearance.

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for a security clearance. That information pertains to Guideline G of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process.

Guideline G (Alcohol Consumption) states: “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 conditions set forth in the Guidelines that could raise a disqualifying security concern are alcohol-related incidents, at or away from work, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder; Alcohol Use Disorder diagnosis by a duly qualified medical or mental health professional; failure to follow treatment advice after diagnosis; alcohol consumption that is not in accordance with treatment recommendations after a diagnosis of alcohol use disorder; and failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence. Adjudicative Guidelines at ¶ 22.

The LSO alleges that, from January 2018 to June 2019, the Individual consumed a bottle of wine per day about five days per week. The LSO further alleges that, in September 2020, a DOE Contractor Psychologist (the Psychologist) opined that the Individual consumed alcohol at a level that impaired her judgment and that she was not rehabilitated. The Individual did not dispute these allegations. Accordingly, the LSO's security concerns under Guideline G are 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 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), cert. denied, 499 U.S. 905 (1991) (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 her 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.

Below, I present my factual findings—which are based upon a weighing of the testimony and exhibits submitted by both parties—and apply the regulatory standards and “whole person concept” to those facts.

IV. FINDINGS OF FACT

After evaluating the Individual, the Psychologist made treatment recommendations which were provided to the Individual with the Notification Letter at the beginning of the administrative review process. Tr. at 36. The Psychologist recommended that the Individual should participate in an Intensive Outpatient Program (IOP), participate in weekly verbal therapy, remain abstinent from alcohol (no timeframe provided), and document her abstinence every six weeks with phosphatidylethanol (PEth) testing. Ex. 7 at 7. The Psychologist’s recommendations also indicated that the Individual would benefit from a psychiatric evaluation to determine if medication was needed, particularly because she also suffered from depression. *Id.* at 7–8. The Individual submitted into evidence the results of PEth tests covering the time from January to August 2021, except for an eight-week gap lasting from the middle of May to the middle of July. Ex. D; Ex G. All tests indicated that the Individual had not consumed alcohol. Ex. D; Ex. G. The Individual completed an IOP in March 2021. Tr. at 49.

The Individual’s spouse testified that he and the Individual had lived together since 2006. Tr. at 11. During that time, he had not had any concerns about her alcohol use. *Id.* at 11–12. He testified that the Individual did not drink often until just a few years ago and that his impression was that she drank socially. *Id.* at 12. He testified that the Individual participated in an IOP and that he learned a lot from the treatment process, specifically about what constitutes alcohol misuse and what triggers and stressors contributed to the Individual’s alcohol consumption. *Id.* at 14–15. He believed that the Individual’s life had improved since she became abstinent. *Id.* at 23. He further testified that the Individual has not had any alcohol since receiving the Notification Letter and that there was no alcohol in their home. *Id.* at 13. The spouse testified that he believed the Individual was committed to maintaining her abstinence. *Id.* at 16–17. He was committed to supporting her in her abstinence as well and had observed that the Individual was maintaining a satisfactory social life without alcohol. *Id.* at 18–20. The spouse also testified that the Individual’s closest friends were aware of her decision to abstain from alcohol. *Id.* at 19. The spouse went on to testify that though he still consumed alcohol in front of the Individual, he would be happy to refrain from doing so if she asked. *Id.* at 19–20.

The Individual’s friend testified that she had known the Individual for about 10 years, having met when their children were in pre-school and kindergarten together. Tr. at 26. They talked by phone and text message several times per week. Additionally, they usually met about every other week. *Id.* at 26–27. During the pandemic they saw each other less but during the past few months they met socially several times. *Id.* at 27. The friend testified that she had not seen the Individual consume alcohol since June 2019. *Id.* On that occasion, the friend observed the Individual consume one or two glasses of wine with food and did not observe any signs of intoxication by the Individual.

Id. at 27–28. She had never had concerns with the Individual’s alcohol consumption and had never observed the Individual undergo behavioral changes after consuming alcohol. *Id.* at 28. The friend testified that the Individual told her about her alcohol treatment and that the treatment seemed to have benefited the Individual. *Id.* at 28–29. However, the friend was not aware of details about the program. *Id.* She testified that the Individual had gone out with their social group to celebrate birthdays on several occasions and had always ordered a non-alcoholic drink. *Id.* at 29. During those occasions, the friend observed the Individual being very comfortable and confident at these events, even when others were drinking alcohol. *Id.* at 30. Though they had not specifically discussed it, the friend believed that the Individual had made a lasting shift to an abstinent lifestyle. *Id.* at 30–31.

The Individual testified that she had worked to follow the Psychologist’s recommendations and began researching alcohol treatment programs immediately after receiving them. Tr. at 36. The Individual last consumed alcohol on December 9, 2020, the day before receiving the recommendations. *Id.* at 36, 54. She enrolled in an IOP at the earliest available date after having received the recommendations. Tr. at 36–37; Ex. A at 4. The Individual had tried to stop drinking in the past, but had never been able to last more than a few days because she always craved a cocktail at the end of the workday. Tr. at 38. She testified that by the third week of her IOP, she no longer had those cravings every day and felt that the group and individual sessions she had attended were helping her recover. *Id.* at 37–38. The Individual no longer thinks about drinking in the evening. *Id.* at 41. She feels calmer and feels like she is more present for her family. *Id.* She testified that her IOP helped her see the ways her genetics and family history contributed to her alcohol consumption, as well as the effects alcohol has on the human body. *Id.* at 38–39. She had developed a greater understanding of the brain chemistry involved in alcohol consumption and addiction and in behavioral changes that occur after alcohol consumption. *Id.* at 39–41.

The Individual felt that her depression was well-controlled as of the hearing date. Tr. at 47, 69. The Individual testified that she had interpreted the recommendations regarding therapy and PEth testing to be applicable to her time during the IOP. *Id.* at 66–67. She had intended to continue weekly sessions with her IOP therapist after the program ended but decided not to because she “felt really good” and “really in control”. *Id.* at 68. She had an individual therapy appointment scheduled with a new provider for a few days after the hearing. *Id.* at 47. She felt positively about the pending appointment, stating,

I’m very much looking forward to having a regular therapist, like sort of talk therapy, like, ‘This is what’s going on in my life. How do I’ —you know, ‘How do you recommend dealing with this?’ I will have someone to talk to about that kind of thing, but I—You know, for a while there I was feeling like, you know, I wasn’t sure I wanted to be married anymore, and those things have gotten better[.]

Id. at 60.

The Individual described several coping mechanisms, new activities, and stress relief techniques that help her remain abstinent. She began doing yoga and meditation, learning a new language, using massage, and learning to play golf. Tr. at 43–45. She stated that she replaced alcohol with a non-alcoholic sparkling brut wine and that she “would have to have that every night.” *Id.* at 48. She described the non-alcoholic wine as a kind of “security blanket.” *Id.* The Individual had tried

Alcoholics Anonymous (AA), but did not feel like she fit in because she does not crave alcohol. *Id.* at 47. She believed that she did not need AA or a different group sobriety program, and stated, “I’m sure a lot of people say, ‘I just don’t need it,’ but I really, literally after three weeks in that [IOP] program, stopped thinking about alcohol at 5 o’clock, and that was the time I would think about it.” *Id.* at 59.

The Individual testified that she does not intend to consume alcohol in the future and that her life has improved since abstaining from alcohol. *Id.* at 52–53, 55, 63–64. The Individual named two people who she could call if she was craving a drink or had relapsed. *Id.* at 56. Initially, the Individual stated that she would call a woman who she met in her IOP, then abruptly changed her mind and stated that she would call a long-time friend who has been sober and in AA for about 15 years. *Id.* at 56–57. The Individual had not maintained significant contact with members of her IOP in recent months. *Id.* at 45, 56. She had not discussed AA with the friend who had been sober for 15 years. *Id.* at 57. The Individual also described the three women she considers her “core group of girlfriends” as women who had chosen to stop consuming alcohol, one of whom is the friend with 15 years of sobriety. *Id.* at 49–50. The Individual described two of her “very good friends” as “definitely functioning alcoholics” and stated that she told them it was ok to consume alcohol around her because she had non-alcoholic sparkling wine with her. *Id.* at 50. She felt that her friends have been supportive of her recovery. *Id.* at 50.

The Psychologist evaluated the Individual on September 17, 2020. Tr. at 80. He testified that her alcohol issue is now in remission and that he felt she had substantially complied with his recommendations. *Id.* at 81. The Psychologist testified that he did not recommend AA or another group abstinence program because the Individual has a strong social support system and did not consume as much alcohol as those to whom he typically recommends such programs, though his report indicated that the Individual consumed alcohol until she reached a likely blood alcohol content (BAC) of 0.11 about 20 times per month. *Id.* at 83; Ex. 7 at 5. He testified that he intended the individual therapy recommendation to be in addition to the IOP because he had concerns about the effect of her depression on her alcohol consumption, and he still recommends that the Individual participate in such therapy. *Id.* at 83–84. He stated that the Individual is not an alcoholic, but has misused alcohol, and has done everything she can do to improve. *Id.* at 85. He testified that the Individual is in the process of reformation, but clinically speaking, the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) does not allow for sustained remission without 12 months of abstinence. *Id.* at 86. However, he stated that, as of the hearing, he did not believe that alcohol consumption was affecting the Individual’s judgment. *Id.* at 87–88. He further testified that he believes that the Individual’s depression will be improved by her abstinence. *Id.* at 88. The Psychologist testified that the Individual appeared to be “on a high” about her new abstinence, which was common in his experience. *Id.* at 81. He testified that, in his experience, people with such a feeling can sustain abstinence, but a large percentage do not. *Id.* However, he gave her a good to excellent prognosis for remaining abstinent for the next year, with her two-year prognosis declining slightly from there. *Id.* at 87.

V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and

confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a commonsense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO’s security concerns have been mitigated such that granting the Individual’s clearance is not an unacceptable risk to national security.

Guideline G provides that security concerns arising from alcohol consumption can be mitigated when:

- (1) the individual’s alcohol use was so infrequent or so long ago that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or judgment;
- (2) the individual acknowledges her pattern of alcohol abuse, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence;
- (3) the individual has no history of relapse and is making satisfactory progress in treatment or counseling; or
- (4) the individual has successfully completed a treatment program and has demonstrated an established pattern of modified consumption or abstinence.

Adjudicative Guidelines at ¶ 23.

Mitigating conditions (1) and (3) are inapplicable to the Individual because, according to her own testimony, her alcohol use is recent and she had made several unsuccessful attempts to abstain from alcohol in the past. However, mitigating conditions (2) and (4) may be relevant to the Individual because she has acknowledged that alcohol poses a problem for her, and has completed an IOP. However, she has failed to demonstrate an established pattern of abstinence.

A. Acknowledgement, Corrective Action, and Treatment

The Individual acknowledged her issues with alcohol by immediately seeking help upon receiving notice of the Psychologist’s recommendations. At no point in the hearing did she dispute the allegation that her alcohol use was problematic or excessive. She was able to articulate ways in which her life, attitude, and mental state had improved since abstaining from alcohol.

The Individual's completion of the IOP has clearly changed the way she views alcohol and stress management. At the hearing, she demonstrated that she had internalized the concepts taught in the IOP and found ways to apply them to her daily life. She could successfully identify triggers and apply coping mechanisms to deal with those triggers without consuming alcohol.

B. Demonstration of a Pattern of Abstinence

Whether the Individual has demonstrated a pattern of abstinence is not as clear as the other variables in mitigating conditions (2) and (4). Upon weighing the evidence, I conclude that the Individual has not demonstrated a pattern of abstinence sufficient to overcome any doubts about the effects of alcohol consumption on her judgment, trustworthiness, or reliability.

The Individual's testimony and evidence indicate that she has abstained from alcohol for over nine months, beginning on the very day that she received the Psychologist's recommendation. The Individual's evidence is bolstered by the Psychologist's opinion at the hearing that the Individual's current level of alcohol consumption does not medically affect her judgment. These factors weigh strongly in the Individual's favor.

In contrast, the Individual's testimony about the therapeutic and behavioral aspects of her treatment and abstinence give rise to serious concerns. The Individual's confidence that a three-week IOP provided sufficient treatment to essentially "cure" her alcohol issues is concerning, as is the Individual's heavy dependence on a replacement beverage that simulates alcohol. Additionally, as indicated by the Psychologist's testimony, the Individual has not yet gone a full year without alcohol, a time period which can be a strong indicator of lasting change.

A review of the Individual's claimed support system also raises doubts. The Individual testified that her group of friends includes people who drink to excess. Her husband continues to consume alcohol in front of her. She has not significantly engaged with her sober friends about abstaining from alcohol. She had not engaged with friends from her IOP in several months. She chose not to continue therapy after her IOP ended, even though she testified that she looked forward to being able to work through issues in that setting and described struggles with serious issues like her marriage. While the Individual certainly has many people in her life who support her, she does not appear to have a support system attuned to maintaining abstinence from alcohol.

The Individual's reliance on a specific non-alcoholic wine is also cause for concern. She testifies that she must have this beverage every day and that she drinks it when spending time with friends who are consuming alcohol. Rather than forming new patterns of behavior, the Individual has used this beverage as a stand-in for the alcohol she used to consume. She still craves a special type of drink after work every day and chooses to satisfy that craving with a drink that simulates her alcoholic beverage of choice. This reduces the credibility of her testimony that she no longer thinks about alcohol at five o'clock, the reason she gave for not needing continued group or individual treatment.

Though the Individual is not currently consuming alcohol, the Guideline G concerns also encompass the probabilities of future behavior. When asked at the hearing what her plan was in case of relapse, the Individual changed her answer mid-way through, indicating that she had not

given significant thought to the plan before that moment. I find that significant questions remain about how—indeed, *whether*—the Individual would course correct in the event of a relapse.

At this time, the Individual has demonstrated a period of abstinence, but has not demonstrated an established, sustained pattern of abstinence. She completed an IOP but did not fully fulfill the Psychologist’s recommendations for PEth testing or individual therapy. Furthermore, because questions remain about her long-term abstinence, doubts about her future trustworthiness, reliability, and judgment also remain. The law requires that these doubts be resolved in favor of the national security. Therefore, I am unable to find that the Individual has mitigated the LSO’s concerns under Guideline G.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual’s eligibility for a security clearance under Guideline G of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that granting DOE access authorization to the Individual “will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not grant access authorization to the Individual at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Kristin L. Martin
Administrative Judge
Office of Hearings and Appeals