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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: June 29, 2021) Case No.: PSH-21-0076
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Issued: October 27, 2021

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “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, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should not be granted.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In July 2020, the Individual completed a Questionnaire for National Security Positions (QNSP). Ex. 7. In the QNSP, the Individual revealed that he left his previous employer “by mutual agreement following charges or allegations of misconduct.” *Id.* at 37. The Individual described the misconduct as an “alcohol test.” *Id.* Subsequently, the Individual underwent a psychological evaluation by a DOE consultant psychologist (Psychologist) in December 2020. Ex. 5.

Due to unresolved security concerns related to the Individual’s alcohol use, the LSO informed the Individual, in a 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 Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline G (alcohol consumption) of the Adjudicative Guidelines. Ex. 1.

¹ Access authorization is defined 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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted eight numbered exhibits (Exhibits 1-8) into the record and presented the testimony of the Psychologist. The Individual introduced three lettered exhibits (Exhibits A-C) into the record, and presented the testimony of four witnesses, including himself. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

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 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).

An individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). An individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 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.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the Individual’s eligibility for access authorization. The information in the letter specifically cites Guideline G of the Adjudicative Guidelines. Guideline G relates to security risks arising from excessive alcohol consumption. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses and can raise questions about an individual’s reliability and trustworthiness. Guideline G at ¶ 21.

In citing Guideline G, the LSO relied upon the Psychologist’s determination that the Individual “habitually or binge consumes alcohol to the point of impaired judgment” and has not demonstrated adequate evidence of rehabilitation or reformation. *Id.* In addition, the LSO cited that the Individual resigned from his previous employment, in lieu of termination, after testing positive on an alcohol test. *Id.* The LSO noted the Individual’s admission that he “consumed two or three mixed drinks

during his lunch hour in an effort to alleviate his hangover from his alcohol consumption the night before when he and a friend shared a 750 ml bottle of vodka.” *Id.*

IV. Findings of Fact

As stated above, due to unresolved security concerns surrounding the Individual’s alcohol consumption, the Individual underwent a psychological evaluation with the Psychologist in December 2020. Ex. 5. The Psychologist’s report (Report) explained that, in October 2019, within a few months of being hired into a position with his previous employer, the Individual “was disciplined for his use of alcohol and failing an alcohol test.” *Id.* at 3. According to the Report, the night prior to the alcohol test, the Individual and his friend shared a 750 ml bottle of vodka, which resulted in the Individual waking the following morning with a hangover. *Id.* During the evaluation, the Individual revealed that he was not planning to work that day, but his employer requested that he report to work. *Id.* The Individual recalled that, given the pace of work on that day, he assumed he would not be required to work in the afternoon, and therefore, he consumed two margaritas over his lunch break. *Id.* at 4. According to the Report, the Individual revealed, during a previous interview with an investigator, that he was attempting to “nurse his hangover.” *Id.*

The Individual stated that his manager called him during his lunch break and requested that he return to work for the afternoon. *Id.* When he returned, a co-worker complained that he smelled of alcohol. *Id.* The Individual told his manager that he had not consumed alcohol, but he may have smelled of alcohol due to his consumption during the previous night. *Id.* The Individual was subsequently required to undergo a breath alcohol test, which, according to the Individual’s memory, revealed his breath alcohol content (BAC) to be .21g/210L.² *Id.* The Individual stated that, due to the positive alcohol test, his manager gave him the choice of termination or resignation. *Id.* The Individual chose to resign. *Id.*

The Psychologist noted that he interviewed “a source,” who stated that, although the Individual “did not typically use alcohol while at work, ...he would smell of alcohol from his use the night before.” *Id.* According to the Report, this person perceived the Individual to have a problem with alcohol during the entire period that the Individual worked for this employer. *Id.* This person indicated that she smelled alcohol on the Individual approximately four times per month and considered this to be the Individual’s pattern. *Id.*

The Individual explained that his alcohol consumption, at the time of the evaluation, consisted of “two or three glasses of wine once every one or two months,” and that once or twice a month, he would have four or five shots of liquor over three or four hours. *Id.* He noted that he last consumed alcohol approximately ten days prior to the evaluation, when he consumed four or five shots over three or four hours. *Id.* at 7-8.

During the evaluation, the Individual told the Psychologist that learning that his girlfriend, at the time, was pregnant impacted his alcohol consumption. *Id.* at 4. He stated that “he was ‘not really ready’ for a commitment or becoming a father and responded by increasing his consumption of alcohol.” *Id.* According to the Report, the Individual attested that there is “no chance that his use of alcohol would ever be a problem again as he has matured and he now has a family and job

² The Psychologist noted that a BAC of .21g/210L was so high as to indicate either that the Individual’s memory was incorrect, or that he had engaged in “heavy alcohol consumption.” Ex. 5 at 7. The Psychologist indicated that two margaritas consumed over a lunch break would not have resulted in such a high BAC. *Id.*

responsibilities.” *Id.* at 5. The Psychologist noted, however, that at the time of his positive alcohol test, the Individual had already been cohabitating with his girlfriend for a number of months, and his child had already been born. *Id.* Furthermore, the Psychologist noted that the Individual admitted that he had missed one or two Mondays with his current DOE contractor employer due to heavy alcohol consumption on the prior Sunday, rendering him unfit to report to work on Monday. *Id.* The Individual additionally admitted that, on days when he was not required to report to work, he consumed two shots the morning after a night of heavy alcohol consumption to help with hangovers. *Id.*

The Psychologist requested that the Individual undergo a phosphatidylethanol (PEth) test. *Id.* The test returned results of 662 ng/mL, which, the Report indicates, “is consistent with very heavy alcohol consumption.” *Id.* The Psychologist opined that the Individual is consuming much more alcohol than he is admitting. *Id.* at 9. The Psychologist ultimately concluded that the Individual “is a habitual and heavy consumer of alcohol” and has not shown adequate evidence of rehabilitation. *Id.* at 9-10. To demonstrate adequate evidence of rehabilitation or reformation, the Psychologist recommended that the Individual abstain permanently from alcohol consumption and show laboratory evidence of abstinence for a period of nine months in the form of one PEth test every six weeks. *Id.* The Psychologist additionally noted that he would have more confidence in the Individual’s reformation if the Individual participated in an intensive outpatient program (IOP). *Id.* Following the completion of the IOP, the Psychologist recommended that the Individual attend Alcoholics Anonymous (AA) at least four times per week or participate in an aftercare program. *Id.*

At the hearing, four witnesses testified on the Individual’s behalf: an Employee Assistance Program (EAP) counselor (Counselor), his colleague and friend (Colleague), a previous coworker and friend (Coworker), and the Individual himself. The Colleague testified that he has known the Individual for approximately 15 years, through high school, and currently works with him Tr. at 12. The Colleague stated that he and the Individual interact in their personal lives approximately a “couple times a month,” and he has never seen the Individual overindulge on alcohol. *Id.* at 13-14. He described the Individual as a social drinker, consuming “a beer here and there.” *Id.* at 14. The colleague explained that the Individual had not consumed alcohol in “about a year.” *Id.* at 15. When asked whether he thought the Individual would ever consume alcohol in the future, the Colleague answered that he thought the Individual would indeed consume alcohol again, but that his mind is focused on his family now and he wants to “proceed with getting his clearance so he can further his career.” *Id.* at 16, 18.

The Coworker testified that she has known the Individual for approximately eight years and worked with him at the job from which he resigned due to the positive alcohol test. *Id.* at 24. She explained that she and the Individual would get together approximately every other day to “hang out after work,” and they consumed alcohol socially. *Id.* at 24, 34. The Coworker stated that at the time he tested positive for alcohol at work, “he was having some rough times.” *Id.* at 27. She noted that the Individual had not consumed alcohol in “well over six to eight months” and has “changed quite a bit” to become a “different, more responsible person.” *Id.* at 26, 29. She testified that, although she did not believe the Individual kept alcohol in his home, his family would bring alcohol in a cooler. *Id.* at 30. She felt that having alcohol around the Individual was “not an issue” for him as she knows that “it’s important to him to be on the right track.” *Id.* The Coworker explained that she does not

believe that the Individual misses consuming alcohol “as much as maybe just...figuring out how to...communicate in his social life without it.” *Id.* at 30.

The Counselor testified that she first met the Individual in March 2021 in her role as an alcohol education group facilitator. *Id.* at 37. She explained that the group is a six week-long “alcohol awareness and education” group, but “it is not a treatment or class, or type of therapy group.” *Id.* at 38. She noted that the Individual initiated participation in the group of his own accord. *Id.* at 39. After completing the alcohol education group, the Counselor explained that the Individual sought out and successfully completed, in June 2021, a “managing changes and substance use” group, which was also a six-week program that “takes a deeper dive into education around triggers...and sensitive situations.” *Id.* at 40. The Counselor noted that the Individual reported that he had been abstinent from alcohol since February 2021. *Id.* at 44, 47. She opined that “for now, [the Individual’s] goal is to abstain” from alcohol, but he is exploring the idea of whether or not he will consume alcohol again in the future.” *Id.* at 47.

The Individual testified that he sought to mitigate the security concerns raised by the LSO. *Id.* at 51. He explained that after graduating from high school, he had been a “regular,” “social drinker,” who had “a beer here or there.” *Id.* The Individual testified that at the time he tested positive for alcohol at his previous job, he was “just basically going through life...being younger, figuring out how to deal with things, and...making mistakes.” *Id.* at 51-52. He explained that he felt that this was part of “growing up, learning, and getting better from it.” *Id.* at 52. The Individual, however, revealed that around Thanksgiving of 2020, while taking time off from work, he binged alcohol while “dealing with difficult times.” *Id.* at 53. He also revealed that, when he first started working for the DOE contractor, he “called in one time maybe” as the result of having a hangover. *Id.* at 72. Nonetheless, the Individual does not believe that he has a problem with alcohol, but he feels that the groups in which he participated with the Counselor helped him to become more responsible with alcohol. *Id.* at 56-57.

The Individual stated that he became abstinent from alcohol in February 2021 when he received the Notification Letter and Summary of Security Concerns from the DOE. *Id.* at 61. He noted that, after receiving those documents, he “got really serious about it and quit cold turkey.” *Id.* The Individual explained that he sought out the EAP group with the Counselor and “started doing what [he] needed to do in order to mitigate any concerns.” *Id.* He testified that although he “tried to” participate in AA, he was unsuccessful both online and in person. *Id.* at 57. Further, he did not enroll in an IOP. *Id.* at 72. Instead, he used YouTube videos to listen to “other people’s experiences and how they dealt with their issues with alcohol.” *Id.* He felt that the YouTube videos were a “big help.” *Id.* at 57.

The Individual stated that consuming alcohol “crossed [his] mind” when he saw other people consume it, “but not to the point where [he] had to drink.” *Id.* at 60. The Individual submitted three negative PEth tests from April 2021, July 2021, and September 2021. Ex. 2; Ex. A, C. Turning to his future intentions regarding alcohol, the Individual testified that although alcohol is not “on [his] mind” at this time, it “would be pretty farfetched” to state that he was “never going to drink another day in [his] life.” Tr. at 65. However, the Individual noted that, if he does consume alcohol in the future, he believes he can do so responsibly, given his alcohol education. *Id.* The Individual explained that he previously used alcohol as a coping mechanism, but now he is “keeping his mind occupied with other things.” *Id.* at 68.

The Psychologist, after observing the hearing and listening to the testimony offered by the Individual and all other witnesses, testified that he “was concerned about the amount that [the Individual] was drinking, or the level of intoxication that he would get to.” *Id.* at 83. The Psychologist explained that although the Individual was not “particularly disturbed about” the amount of alcohol he was consuming, it was a “very high level.” *Id.* He explained that having a BAC of .21g/210L, as the Individual did at his previous place of employment, is “about two and a half times the legal limit.” *Id.* at 83-84. The Psychologist additionally noted that the amount of alcohol the Individual was consuming would cause “most people, who don’t drink very much,” to become unconscious. *Id.* at 84. The Individual’s ability to function given his high level of consumption suggested to the Psychologist that the Individual had developed a tolerance over many months of alcohol consumption. *Id.*

The Psychologist testified that he recommended that the Individual permanently abstain from alcohol consumption, and he stated that he maintains his recommendations as he does not feel that the Individual would be able to control his alcohol consumption. *Id.* The Psychologist opined that the Individual’s sense of what is “proper” alcohol consumption “is probably different than what legally we would consider proper.” *Id.* He noted that, by just completing the EAP groups and skipping the completion of an IOP, the Individual was not able to gain the “powerful” benefits of “group confrontation,” where “people that have themselves been alcoholics really know how to challenge each other and see though things that people might need.” *Id.* at 85.

The Psychologist added that he believes that the Individual will return to consuming alcohol, and he opined that “it will be hard for him to remain in a controlled drinking-manner.” *Id.* at 87. The Psychologist explained that, in his experience, the Individual lives in a particular area where “the culture for dinking is more acceptable,” and he does not believe that the Individual will have “good cultural support.” *Id.* Further, the Psychologist noted that because the Individual did not participate in an IOP or in AA, he has a high risk of relapse, as research shows that people who abstain from alcohol without the help of these programs relapse at a rate of approximately 60 or 65 percent. *Id.* at 88. He explained that because the Individual previously consumed “a very, very high level” of alcohol, that usage “engrain[ed] a coping mechanism.” *Id.* at 94. Ultimately, the Psychologist testified that the Individual has not shown adequate evidence of rehabilitation, and although, he has “made some efforts to reform,” only “time will tell” if the reformation was successful. *Id.* at 90.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the Individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual has not sufficiently mitigated the security concerns noted by the LSO regarding Guideline G. I cannot find that granting the Individual’s DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual’s security clearance should not be granted. The specific findings that I make in support of this Decision are discussed below.

“Habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with an alcohol use disorder,” is a condition that could disqualify a person from holding a security clearance. Guideline G at ¶ 22(c). Additionally, alcohol-related incidents at work could raise disqualifying security concerns. *Id.* at ¶ 23(b). If an individual acknowledges his 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, he may be able to mitigate the security concern. *Id.* at ¶ 23(b). Furthermore, an individual may be able to mitigate Guideline G security concerns if he successfully completes 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. *Id.* at ¶ 23(d).

In this case, the Individual was forced to resign from his previous employment as the result of arriving at work impaired, at more than twice the legal limit. *Id.* at ¶ 23(b). After an evaluation, the Psychologist determined that the Individual “is a habitual and heavy consumer of alcohol,” who has not shown adequate evidence of rehabilitation or reformation. *Id.* at ¶ 23(c); Ex. 5 at 6. The Individual further admitted, both to the Psychologist and during the hearing, that he called out of work at his current position because of a hangover. Guideline G at ¶ 23(b); Tr. at 73; Ex. 5 at 5. Although it is admirable that, following receipt of the Notification Letter and Summary of Security Concerns, the Individual has been abstinent from alcohol for approximately seven months and has educated himself about alcohol consumption, as of the hearing, he had not yet fully met the Psychologist’s recommendation of abstinence for nine months. *Contra* Guideline G at ¶ 23(b). Furthermore, the Individual declined to enroll in an IOP and complete the accompanying aftercare, or AA, as recommended by the Psychologist. *Contra id.* at ¶ 23(d).

The Individual acknowledged that he previously overused alcohol as a coping mechanism in difficult times; however, he did not indicate that, since becoming abstinent from alcohol, he has worked through any significant stressors. As such, it has yet to be seen whether the Individual can manage difficult times that will inevitably arise without using alcohol as a coping mechanism. Therefore, I cannot conclude that the Individual has demonstrated a clear and established pattern of modified consumption. *Contra id.* at ¶ 23 (b), (d). Furthermore, although the Individual indicated that he overused alcohol in the past, he does not acknowledge that he has a problem with alcohol. *Contra id.* at ¶ 23(b). Additionally, despite the recommendation of the Psychologist that he permanently abstain from alcohol, the Individual testified that, at this time, a cannot commit to permanent abstinence from alcohol. *Contra id.* at ¶ 23(d). As such, I cannot, at this time, determine that the Individual has mitigated the Guideline G security concerns.

VI. Conclusion

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline G. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I have determined that the Individual’s access authorization should not be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals