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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: August 23, 2021) Case No.: PSH-21-0100
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Issued: November 23, 2021

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (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 access authorization should be restored.

I. Background

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. On August 14, 2020, the Individual was called to submit to a random Breath Alcohol Test (BAT), pursuant to the terms of his employment, which indicated results of .030, .036, and .037. Ex. 6; Ex. 7 (hereinafter cited as "Ex."). The acceptable limit was .019, and the Individual was subsequently asked to leave the worksite and was placed on administrative leave. Ex. 8 at 1; Ex. 10 at 2; Ex. 9 at 2.

The Local Security Office (LSO) instructed the Individual to complete a Letter of Interrogatory (LOI), which was signed and submitted on September 3, 2020, with an addendum submitted on September 4, 2020. Ex. 8; Ex. 9. In the LOI, the Individual admitted that he had consumed six total beers--four sixteen-ounce beers and two twelve-ounce beers, in the span of approximately three hours the night before he was tested. Ex. 8 at 1; Ex. 9 at 1. Additionally, he disclosed that he was arrested in 1998 for Driving While Impaired after consuming four beers in three hours, and that in 2014, he was arrested for Public Intoxication after consuming three to four beers over two

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.

hours. Ex. 9 at 3. Since 2019, he had consumed approximately four or five beers over two to three hours one night per week. Ex. 9 at 4. He stated that his Employee Assistance Program (EAP) counselor recommended that he remain abstinent for twelve months, which he stated he intended to do. Ex. 8 at 2; Ex. 9 at 5. At the time he completed the LOI, the Individual had attended sixteen Alcoholics Anonymous (AA) meetings and was endeavoring to receive outside counseling sessions. Ex. 8 at 2.

As questions regarding the Individual's fitness remained, the Individual underwent a psychological evaluation by a DOE-contracted Psychologist (DOE Psychologist), who compiled a report on December 22, 2020. Ex. 10.² The DOE Psychologist noted that the Individual's "pattern of alcohol consumption over the past twenty or more years has been to drink approximately six beers per week, typically consuming no more than four beers in one sitting" in a period of two to three hours. Ex. 10 at 4. Although the Individual had begun abstaining from alcohol by the time the psychological evaluation was conducted, he did admit that he consumed two twenty-four-ounce beers in August 2020 and a glass of wine in November 2020. Ex. 10 at 5. In describing his ongoing attempts to remain abstinent, the Individual noted the fact that he had consumed "fake beer" during an outing with friends and refrained from attending another such social event, knowing he would not be able to remain sober if he attended. Ex. 10 at 5. The DOE Psychologist diagnosed the Individual with Alcohol Use Disorder, Mild, pursuant to the criteria listed in the *Diagnostic and Statistical Manual of the American Psychiatric Association, Fifth Edition* (DSM-5). Ex. 10 at 9. As the Individual had last consumed alcohol approximately one month prior to the evaluation, the DOE Psychologist did not find any evidence of rehabilitation or reformation, and further, she recommended the Individual remain abstinent for twelve months, submitting to random breath tests, followed-up by regular EtG and PEth tests. Ex. 10 at 9. The DOE Psychologist also recommended active participation in either AA or an acceptable alternative program. Ex. 10 at 9.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his 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 Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of two other witnesses. *See* Transcript of Hearing, Case No. PSH-21-0067 (hereinafter cited as "Tr."). He also submitted sixteen exhibits, marked as Exhibits A through P. The DOE Counsel presented the testimony of one witness and submitted fourteen exhibits marked as Exhibits 1 through 14.

² In conjunction with the examination, two laboratory tests were performed, a Phosphatidylethanol (PEth) test and an Ethyl Glucuronide (EtG) test. Ex. 10 at 5. The EtG test results provided "strong medical evidence that the subject was abstinent from alcohol during the three days prior to the sample collection." Ex. 10 at 5. However, the Individual's PEth test results suggested "significant alcohol consumption." Ex. 10 at 5. An analysis of the results indicated that the Individual was "minimizing his alcohol use, either intentionally in an attempt to forestall negative judgment and avoid consequences or out of denial that he has a drinking problem." Ex. 10 at 6.

II. Notification Letter and the Associated Concerns

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline G of the Adjudicative Guidelines. Ex. 1. Under Guideline G (Alcohol Consumption), “[e]xcessive 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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are “alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition...or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder[,]” and “[d]iagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder.” *Id.* at ¶¶ 22(a), (c)-(d).

With respect to Guideline G, the LSO alleged that: (1) in a December 22, 2020 report, the DOE Psychologist stated that she determined the Individual met the criteria for Alcohol Use Disorder (AUD), Mild, pursuant to the DSM-5, without evidence of rehabilitation or reformation; (2) the Individual consumed six beers the evening before a random BAT was administered at his workplace, with BAT results of .036, .030, and .037; (3) the Individual was arrested for Public Intoxication on February 19, 2014, after consuming three or four beers; (4) the Individual was arrested and charged with Driving While Ability Impaired in 1998 after consuming four beers. Ex. 1 at 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 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 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. Individual's Exhibits

An August 30, 2021, letter from a Department of Veterans Affairs staff psychologist (staff psychologist) indicates the Individual had been participating since May in outpatient treatment for his alcohol use. Ex. A at 1. At the time the letter was authored, the Individual had attended eight sessions, and his “receptive, cooperative, and active[]” participation was noted. Ex. A at 1. The staff psychologist diagnosed the Individual with AUD, Mild, in remission. Ex. A at 1.

Additionally, the Individual submitted attendance confirmation sheets for one-hour live, online AA meetings. Ex. P. From March 2021 to September 2021, the Individual attended approximately fifty-seven of these meetings. Ex. P. He also attended approximately fourteen in-person AA meetings from August 2021 to September 2021. Ex. L. Further, the Individual submitted negative PEth test results from July 6, 2021, and September 7, 2021, a negative EtG hair test result from September 10, 2021, and three negative EtG urine test results from September 2, 2021, September 9, 2021, and September 16, 2021. Exs. H, J, K, M.

The record in this matter further contains seven letters of support from character references. Exs. C, D, E, F, G, N, and O. The letters describe an Individual who is reliable, loyal, trustworthy, responsible, kind, hard-working, and dedicated to serving his country. *Id.*

V. Hearing Testimony

The Individual's longtime friend, who described the Individual as “one of the most honest people on the planet,” testified that the Individual had informed him of the suspension of his security clearance contemporaneously with the occurrence of the precipitating event, expressing remorse over the matter. Tr. 12-13, 20, 30. To the witness's knowledge, the Individual had not consumed alcohol since the incident that gave rise to present proceedings. *Id.* at 22. The witness, who has remained sober for nearly a decade, stated that he has provided the Individual with some advice regarding the Individual's ongoing sobriety and noted the Individual's desire to remain “on track” to provide for his family. *Id.* at 15-18, 23. Further, the witness stated that the Individual's loyalty to his employer similarly incentivizes the Individual to remain sober. *Id.* at 18-19. Not only does the witness offer his support to the Individual, but the Individual also counsels the witness as they both endeavor to remain abstinent from alcohol. *Id.* at 24-25, 28. He identified the Individual as a reliable person. *Id.* at 31.

Another witness, who helped train the Individual for his current employment, indicated that outside of the incident that gave rise to the LSO's stated concerns, he had never observed the Individual in an intoxicated state in the workplace. Tr. at 35. He described the Individual as loyal, trustworthy, prompt, hardworking, and “a super intelligent guy,” and expressed that the Individual had won the witness's hard-earned trust. *Id.* at 35-36. On the occasions the witness shared a social dinner with the Individual, the Individual refrained from consuming alcohol. *Id.* at 38-39. Further, as a matter of routine after the positive BAT, the witness specifically questioned the Individual regarding his ongoing sobriety, and accordingly, learned of the last occasion the Individual consumed alcohol, which he estimated was at least five-to-six months prior to the hearing. *Id.* at 40-41.

The Individual, who did not dispute the DOE Psychologist's diagnosis of AUD, Mild, remembered experiencing mild surprise after testing positive for alcohol on August 14, 2020. Tr. at 44-45. He admitted that he continued to consume "nonalcoholic" beer on a weekly basis after the incident but stated that he discontinued the practice in April 2021. *Id.* at 46-47.³ As he endeavored to comply with the DOE Psychologist's recommendation that he remain abstinent, he did not believe he was consuming alcohol when he proceeded to consume the nonalcoholic beer. *Id.* at 47-48. Although the Individual could not state with absolute certainty that he would not consume alcohol in the future, he did acknowledge the fact that his prior alcohol consumption caused him considerable stress. *Id.* at 48-49.⁴ He acknowledged that his alcohol use was problematic, despite his prior notions of how problematic alcohol consumption presented. *Id.* at 71-72.

In addition to attending an average of two AA meetings per week, the Individual attended one counseling session "every other week for approximately three or four months." Tr. at 49-50, 68.⁵ Although the Individual continues to participate in the same activities that would usually include the consumption of alcohol, he has abstained, stating that his understanding of problematic alcohol consumption and the gravity of the situation in which he found himself had shifted. *Id.* at 51-57, 61-62.⁶ The Individual also denied any urge to consume alcohol while participating in said activities, as abstaining from alcohol while those around him partake in its consumption "just become second nature to [him]." *Id.* at 62-65.

In her testimony, the DOE Psychologist stated that based on her review of the evidence and the testimony provided, she believes the Individual "has done a very good job at demonstrating adequate rehabilitation and reformation[.]" and is in early remission. Tr. at 93-94. Although the

³ The Individual confirmed that he last consumed any amount of alcohol in April 2021 when he consumed a nonalcoholic beer. Tr. at 74. Although in small quantities, these beverages do contain alcohol. *Id.* at 74-75, 83. The Individual further stated that he last consumed a "standard alcohol beverage" in November 2020, although the DOE Psychologist's report indicates that testing was inconsistent with the Individual's reported date of last consumption. *Id.* at 83-84. The Individual accounted for this discrepancy by explaining that he was consuming more than six, but less than twelve nonalcoholic beers every week at the time he reported for the psychological evaluation. *Id.* at 84. His counselor also recommended that he discontinue the use of nonalcoholic beers, as they are a "trigger[.]" but the Individual had already discontinued use prior to the first meeting with his counselor. *Id.* at 85-86.

⁴ In later testimony on cross examination, the Individual said that although he could not definitively state that he will refrain from future alcohol consumption, he can state with certainty that he will refrain from drinking "alcohol to the excessive levels that [he] did in the past." Tr. at 72-73, 81-82. Further, he does not intend to consume alcohol to the point of experiencing intoxication or prior to reporting to work. *Id.* at 73-74.

⁵ Although the Individual attends an average of two AA meetings per week, he disclosed the fact that he has failed to secure a sponsor and is currently on Step One of the AA 12-step program. *Id.* at 68, 75-76. As the AA program progressed, he found himself less aligned with the religious messages conveyed to attendees. *Id.* at 76. He confirmed that the online AA meetings have hindered his efforts in building a relationship with a potential sponsor, and further, he is unable to identify with most of the Individuals who attend the meetings. *Id.* at 69-70. However, the Individual did identify specific benefits to attending the meetings. *Id.* at 70. He also stated his intention to continue attending AA meetings until he can find an analogous program. *Id.* at 77-78.

⁶ The Individual did state that his wife continues to keep alcohol in the home. Tr. at 57

Individual was abstinent for less than twelve months at the time of the hearing,⁷ the DOE Psychologist noted that the Individual had met all of her recommendations, because he was able to remain “abstinent for a sustained period of time[,]” he was able to identify the benefits to remaining abstinent, and he has demonstrated a shift in his desire to consume alcohol. *Id.* at 94-95. The Individual evidenced an understanding that his prior alcohol consumption was problematic and understands that sobriety has had a positive impact on his life. *Id.* at 95-96. Further, although complete abstinence will prevent future problematic use, “controlled drinking would be potentially okay for [the Individual].” *Id.* at 96, 99. As the Individual undertook and met the DOE Psychologist’s recommendations, created a support network, and can be around alcohol without consuming alcohol, the DOE Psychologist indicated his prognosis was good. *Id.* at 98.

VI. Analysis

The Adjudicative Guidelines provide that an Individual can mitigate security concerns under Guideline G if:

- 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 judgement;
- 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 modification 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 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 patter of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23(a)-(d).

Admirably, since the positive BAT, the Individual has recognized his maladaptive alcohol use and took commendable steps toward mitigating Guideline G concerns. Although the Individual has not, by his own testimony, been sober for twelve months, the DOE Psychologist expressed her belief that he has shown adequate evidence of rehabilitation and reformation. She noted the fact that she believed the Individual appropriately executed all the recommendations she had made in her report and stated that his prognosis is good. The credible testimony provided during the hearing established the fact that the Individual enjoys a strong support system in his family and at least one close confidant with whom the Individual had discussed the events leading up to the hearing and

⁷ As noted, the individual testified that he last consumed a nonalcoholic beer in April 2021. He credibly testified that he had not believed that he was consuming alcohol when he consumed nonalcoholic beer. He further credibly testified that he last consumed a “standard alcohol beverage” in November 2020.

his ongoing efforts to remain sober. Not only did the testimony reveal the Individual's understanding that his maladaptive alcohol consumption posed a threat to his livelihood and that of his family, but it revealed the remorse the Individual felt regarding the matter. The Individual also provided evidence of subsequent negative tests results, and proof that he had scheduled and attended eight counseling sessions and attended in-person as well as online AA sessions at a rate of approximately two meetings per week.

The sweeping actions the Individual took to address the consequences of his alcohol misuse resulting in a positive BAT, his ongoing abstinence, as well as expert opinion that the Individual has been rehabilitated from his AUD diagnoses, have mitigated the security concerns raised in the Notification Letter.

VII. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline F of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be restored. Either party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

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