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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 27, 2021) Case No.: PSH-21-0115
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Issued: December 20, 2021

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (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 be restored.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In December 2019, the Individual was arrested and charged with Public Intoxication. Following the arrest, the Individual underwent an evaluation with a Substance Abuse Professional (SAP) as ordered by his employer. Ex. 9. He subsequently underwent a psychological evaluation with a DOE consultant psychologist (Psychologist) in January 2021. Ex. 7.

Due to unresolved security concerns related to the Individual’s alcohol use, the Local Security Office (LSO) informed the Individual, in a March 2021 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 11 numbered exhibits (Exhibits 1-11) into the record and presented the testimony of the Psychologist. The Individual introduced 15 lettered exhibits (Exhibits A-T) 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).

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 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 met the *Diagnostic and Statistical Manual of Mental Disorders 5th Edition*, (DSM-5) criteria for Alcohol Use Disorder, Mild, without adequate evidence of rehabilitation or reformation. Ex. 1. It also relied upon the Individual’s admission in his SAP Evaluation that he consumed five shots of liquor and three beers prior to his 2019 Public Intoxication arrest. *Id.* The LSO additionally cited the Individual’s December 2019 arrest for Public Intoxication, as well as a February 2004 arrest

for Driving Under the Influence and Illegal Consumption of Alcohol and a July 2003 citation for open container. *Id.*

IV. Findings of Fact

As stated above, in December 2019, the Individual was arrested and charged with Public Intoxication. *Id.* Approximately a week later, the Individual underwent an SAP evaluation, during which he explained the circumstances leading up to the arrest. Ex. 9. The Individual explained that, prior to the arrest, he consumed five shots of liquor and three beers over the course of an evening. *Id.* at 1-2. The SAP diagnosed the Individual with “Alcohol Intoxication, with Mild Use Disorder” and recommended that the Individual complete 25 hours of counseling and education related to alcohol and substance use, including participation in Alcoholics Anonymous (AA), or a similar program. *Id.* at 2. The SAP further recommended five individual counseling sessions. *Id.* In a follow-up evaluation in January 2020, the SAP confirmed that the Individual had successfully completed all treatment recommendations. *Id.* at 3.

In January 2021, the Psychologist conducted an evaluation of the Individual. Ex. 7. During the evaluation, the Individual explained that he “barely drinks at all” since he was arrested in December 2019 and specified that he was consuming “a couple of beers” once a week. *Id.* at 3. As part of the evaluation, the Psychologist ordered a Phosphatidylethanol (PEth) test, which was positive at a level of 161 ng/mL. *Id.* at 4. A physician evaluated the results and indicated that the Individual’s results were inconsistent with his reported alcohol consumption. *Id.* at 4. The Psychologist opined that the Individual was minimizing his alcohol consumption. *Id.* Ultimately, she diagnosed the Individual with Alcohol Use Disorder, Mild, without adequate evidence of rehabilitation or reformation. *Id.* at 7. She recommended that the Individual abstain from alcohol for at least 12 months, participate in random breathalyzers through his employer, undergo at least two PEth tests over a 12-month period, and participate in AA meetings, at least once per week. *Id.*

At the hearing, four witnesses testified on the Individual’s behalf: the Individual’s supervisor (Supervisor), the Individual’s counselor (Counselor), the Individual’s AA sponsor (Sponsor), and the Individual himself. The Supervisor testified that he has known the Individual approximately six years. Tr. at 31. He explained that he was aware that the Individual had been going through a divorce, and it was clear that the Individual was “bothered by what was going on in his personal life.” *Id.* at 32. The Supervisor noted that the Individual was “doing the best...he could do” and has always “taken his job responsibilities seriously.” *Id.* at 33. He explained that Individual never arrived to work intoxicated or smelling of alcohol, and the Supervisor has recently “noticed a tremendous change in [the Individual], that things are much better for him. *Id.* at 32-33

The Counselor testified that she began working with the Individual at the beginning of 2020, shortly after he was arrested. *Id.* at 13. She stated that she initially diagnosed the Individual with Alcohol Use Disorder, Mild. *Id.* at 15. The Counselor noted that the Individual had “a lot going on in his personal life,” including a divorce and anxiety, and he was “admittedly using alcohol” to cope. *Id.* She stated that the Individual quickly recognized that his alcohol use “was something that he needed to get under control and learn to cope with [his] emotions in a healthier way.” *Id.* She opined that, over the year prior to the hearing, the Individual consistently demonstrated that “he knows how to and can execute those things that are going to promote and maintain his sobriety.” *Id.* The Counselor stated that the Individual consistently attended all sessions and demonstrated active

participation, and he was diligent about attending AA, working with a sponsor, and working through the Twelve Steps of AA. *Id.* at 13-14. She felt confident that the Individual would maintain his abstinence from alcohol and had demonstrated evidence of rehabilitation or reformation from the diagnosis of Alcohol Use Disorder, Mild. *Id.* at 16, 27.

The Sponsor testified on the Individual's behalf, stating that he, himself, had been a member of AA for 34 years and had "sponsored dozens of people over the years." *Id.* at 44. He explained that he had known the Individual for a little over six months and had served as the Individual's sponsor since that time. *Id.* at 44-45. The Sponsor noted that he speaks with the Individual approximately once per week, but the Individual can and does call him anytime. *Id.* at 46. Regarding the Individual's future intentions toward alcohol, the Sponsor testified that the Individual stated that "he doesn't want to drink," and the Sponsor sees that the Individual "is doing what people [who] don't want to drink do." *Id.* at 47. Specifically, he stated that the Individual is "working the program," which he explained means that the Individual is working through the steps of AA. *Id.* The Sponsor indicated that he believes that the Individual is "genuine in his effort." *Id.*

In his testimony, the Individual did not dispute the allegations in the Summary of Security Concerns and sought to mitigate the issues raised therein. *Id.* at 78-81. He testified that he last consumed alcohol on April 3, 2021. *Id.* at 61. The Individual explained that, since that time, he participates in both virtual and in person AA groups approximately "three or four times a week."² *Id.* at 63-64. He explained that AA has been "really beneficial" to him, and once he started working through the AA steps, he realized that AA "is something that what you put into it is what you get out of it." *Id.* 61-62. As such, he had tried his "hardest to put in a good effort." *Id.* at 62. The Individual testified that since becoming active in AA, he has "found resources to help [him] through a difficult time, and [he] plan[s] on continually using those resources throughout the rest of [his] life to get where [he] need[s] to be and to remain sober." *Id.* at 74. The Individual stated that he has worked through the Twelve Steps and is in a continued maintenance stage, which he explained as looking "at yourself daily and just rework[ing] the steps every day." *Id.* at 92-93.

The Individual testified that he "realized that alcohol has a power over [him] that [he] can't control. So there's no reason to drink at all, because every bad thing that's...pretty much happened in [his] life has had alcohol somewhere in the midst of it." *Id.* at 65. Specifically, the Individual stated that he intends to remain permanently abstinent from alcohol and continue to participate in AA. *Id.* He explained that he continues to remain abstinent from alcohol as he has discovered a "newfound peace" and "freedom." *Id.* at 65-66. The Individual described this to mean that there is "nothing that has [him] bound down, and [he] has more energy and willingness to see the world in a different way." *Id.* at 66.

Turning to the Psychologist's report, the Individual acknowledged that he underreported his alcohol consumption during the evaluation. *Id.* at 88. He explained that he may have been "in a little bit of denial." *Id.* Regarding the Psychologist's laboratory testing recommendations, the Individual stated that, over the prior eight months, he has undergone three PEth and three Ethyl Glucuronide (EtG)³ tests at his own expense. *Id.* at 70. He additionally participates in random alcohol testing through

² The Individual submitted a list of the AA lectures he has attended as well as his AA attendance record. Ex. O, Q.

³ "EtG is a metabolite of ethyl alcohol that is present in the urine for up to 80 hours after any alcoholic beverage is consumed." Ex. 7 at 4.

his employer. *Id.* All test results have been negative for the presence of alcohol. *Id.*; see Ex. B-G, S, T.

After observing all the hearing testimony, the Psychologist testified. *Id.* at 95. The Psychologist opined that the Individual has demonstrated adequate evidence of rehabilitation or reformation from the Alcohol Use Disorder, Mild. *Id.* at 99-101. Specifically, she stated that she was “very pleased with the steps [the Individual] has taken,” and she felt that the steps the Individual undertook demonstrated “exactly what [she] was hoping he would demonstrate.” *Id.* at 99. The Psychologist noted that the Individual went beyond her recommendations and had “done a very thorough job.” *Id.* at 100. Regarding the 12 months of abstinence from alcohol that she initially recommended, the Psychologist stated that she was “not concerned” that, at the time, of the hearing, the Individual had only been abstinent eight months. *Id.* She explained that the Individual had “covered all of his bases in terms of the vulnerability and the risk factors that [she] would be looking at.” *Id.* The Psychologist added that the Individual demonstrated that he has a “safety net...lots of motivation, lots of support, and he’s treating” the underlying issues for which he was using alcohol to cope. *Id.* at 100-101. She felt that the Individual would be able to carry on his abstinence from alcohol for more than the additional four months needed to reach her initial recommendation of 12 months of abstinence. *Id.* at 101. As to a prognosis, the Psychologist opined that the Individual had “set himself up to have the best prognosis possible.” *Id.*

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 sufficiently mitigated the security concerns noted by the LSO regarding Guideline G. I find that restoring 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 be restored. The specific findings that I make in support of this Decision are discussed below.

Pursuant to Guideline G, diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder is a condition that could raise a security concern and may disqualify an individual from holding a security clearance. Guideline G at ¶ 22(d). Additionally, alcohol-related incidents away from work could raise a disqualifying security concern. *Id.* at ¶ 22(a). If, however, an individual acknowledges the 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, the individual may be able to mitigate the security concern. *Id.* at ¶ 23(b).

In this case, the Individual’s Counselor and the Psychologist diagnosed the Individual with Alcohol Use Disorder, Mild, after he was arrested for Public Intoxication. See Guideline G at ¶ 22(a), (d). However, since that time, the Individual has acknowledged that he had a problem with alcohol and has completed, or is working to complete, all treatment recommendations. *Id.* at ¶ 23(b). The Individual has sought out individual counseling, participated regularly in AA meetings, found a

sponsor, worked through the Twelve Steps of AA, and has successfully maintained his abstinence from alcohol for a period of eight months, as demonstrated by his laboratory test results. *Id.* Both the Counselor and the Psychologist are pleased with the progress he has shown and opined that he has demonstrated adequate evidence of rehabilitation or reformation from the Alcohol Use Disorder, Mild, diagnosis. For the foregoing reasons, I find that the Individual has mitigated the Guideline G security concerns. As such, I find that the DOE should restore access authorization to the Individual.

VI. Conclusion

After considering all 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 brought forth sufficient evidence to resolve the security concerns associated with Guideline G. 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 regulations set forth at 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals