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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: October 27, 2021)	Case No.: PSH-22-0005
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Issued: February 25, 2022

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (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

The DOE employs the Individual in a position that requires possession of a security clearance. In 2021, the Individual submitted an incident report disclosing his arrest for Driving While Intoxicated (DWI). The DOE Local Security Office (LSO) investigated this incident and requested that the Individual be evaluated by a DOE-consultant psychologist (“Psychologist”). After the Psychologist’s evaluation, the LSO informed the Individual by letter (“Notification Letter”) that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns, the LSO explained that the derogatory information raised a security concern under Guideline G of the Adjudicative Guidelines.

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.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. *See* Transcript of Hearing (Tr.). At the hearing, the Individual presented the testimony of four witnesses and testified on his own behalf. The LSO presented the testimony of the Psychologist. The Individual submitted five exhibits, marked Exhibits A through E. The LSO submitted nine exhibits, marked Exhibits 1 through 9.²

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Ex. 1. Guideline G provides that "[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. Conditions that could raise a security concern include "[a]lcohol-related incidents away from work, such as driving while under the influence," "[h]abitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder[.]" and "[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist . . .) of alcohol use disorder[.]" *Id.* at ¶ 22(a), (c), and (d). In the Notification Letter, the LSO cited the Psychologist's conclusion that the Individual met the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, criteria for Unspecified Alcohol-Related Disorder, without evidence of rehabilitation or reformation; the Psychologist's conclusion that the Individual habitually or binge consumes alcohol to the point of impaired judgement, reliability, and trustworthiness; and the Individual's 2021 arrest and related DWI charge. Ex. 1. The above information justifies the LSO's invocation of Guideline G.

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 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).

² The LSO's exhibits were combined and submitted in a single, 74-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This Decision will cite to the LSO's exhibits by reference to the exhibit and page number within the combined workbook where the information is located as opposed to the page number that may be located on the page itself.

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 or her 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. *Id.* at § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

The record includes a March 2021 Letter of Interrogatory which contains the Individual’s responses to questions regarding his February 2021 DWI arrest. Ex. 7. On the date of the incident, the Individual consumed more than five, unmeasured alcoholic drinks and several beers over nine hours before driving his vehicle. *Id.* at 32. He admitted, in retrospect, that he “should never have been driving” that night. *Id.* at 39. He also stated that he had not consumed alcohol since the night of the incident. *Id.*

The record includes the report produced by the Psychologist who evaluated the Individual in May 2021. Ex. 8. During the evaluation, the Individual stated that he received Deferred Adjudication regarding his DWI charge, which he described as a form of probation. *Id.* at 51. Under its terms, he was required to complete community service, pay court fees, complete DWI school, attend a Victim Impact Panel, and use an ignition interlock system for one year. *Id.* at 51. The Individual also reported attending his employer’s Employee Assistance Program (EAP). *Id.* He further reported that he had been meeting with a Licensed Professional Clinical Counselor (LPCC). *Id.* at 52. The Psychologist confirmed through the LPCC that the Individual had been participating in alcohol awareness and education classes focused on alcohol use. *Id.*

The report also included the results of a Phosphatidylethanol (PEth) test and an Ethyl Glucuronide (EtG) test administered to the Individual on the date he met with the Psychologist. *Id.* at 62, 63. Both tests are used to detect recent alcohol consumption. *Id.* at 53. During the evaluation, the Individual again stated that he last consumed alcohol on the date of his DWI. *Id.* at 52, 53. However, the PEth test was positive at a level that indicated the Individual had consumed a large amount of alcohol several days prior to the test. *Id.* at 54. The PEth results therefore indicated that the Individual had not been truthful regarding his alcohol consumption. *Id.* The Psychologist diagnosed the Individual with Unspecified Alcohol-Related Disorder “[b]ased upon his arrest for [DWI] and on-going heavy use of alcohol as demonstrated by his laboratory results[.]” *Id.* The Psychologist further explained that the laboratory testing confirmed that the Individual had been “heavily consuming alcohol, either by bingeing or drinking significant amounts of alcohol on a frequent basis[.]” which “would impair his judgment, as well as his reliability and trustworthiness as evidenced by his dishonesty in reporting his alcohol use.” *Id.*

At the conclusion of the report, the Psychologist stated that the Individual could demonstrate rehabilitation or reformation from his alcohol-related disorder by either (1) participating in an intensive outpatient rehabilitation program (IOP) for twelve to sixteen weeks, or a four to six week program that meets four times a week, and post-IOP aftercare meetings for six months, or (2) participating in Alcoholics Anonymous (AA) meetings for twelve months with PEth testing conducted every two months. *Id.* at 54-55.

The record contains the results of three PEth tests subsequently undergone by the Individual: one in August 2021, one in November 2021, and one in January 2022. Ex. C; Ex. D; Ex. E. Each test result is negative. *Id.* The record also contains a letter from a Licensed Mental Health Counselor (LMHC) who has provided group treatment (“Treatment Program”) and individual counseling to the Individual since June 2021. Ex. A. The LMHC reported that the Individual is “a valued member of the group[,]” a “weekly attendee” of group therapy, and a “regular participant[.]” *Id.* In both therapy settings, the Individual has worked on understanding alcohol use and abuse, understanding triggers, coping with urges, and maintaining sobriety. *Id.*

At the hearing, a coworker testified on the Individual’s behalf. The coworker is a long-time acquaintance of the Individual and retrieved the Individual’s vehicle on the night of his DWI. Tr. at 25. The coworker testified that, since the incident, the Individual’s attitude has improved at work and that the Individual explicitly stated his intent to abstain from alcohol. *Id.* at 28-29.

An AA member testified that that the Individual has been regularly attending AA meetings approximately three times a week. *Id.* at 42-43, 45, 52. The AA member’s testimony is corroborated by a log sheet documenting the Individual’s regular AA attendance since September 2021. Ex. B. The AA member stated that the Individual participates during AA meetings, and he last observed the Individual attend a meeting two days prior to the hearing. Tr. at 52, 54.

During his testimony, the Individual confirmed that he has a problem with alcohol. *Id.* at 78. He acknowledged that he received the DWI because he had not yet addressed this problem. *Id.* at 80. He explained that he drank alcohol heavily by himself on weekends due to the difficulty he experienced adjusting to living in a new state and dealing with the death of his grandmother. *Id.* at 82-84. He began seeking help after realizing his alcohol use negatively impacted his career and after experiencing the psychological evaluation conducted by the Psychologist. *Id.* at 86. From the evaluation, he learned that he had been in denial regarding his alcohol use, and he admitted that he had been consuming alcohol at the time of the psychological evaluation. *Id.* at 86-87.

The Individual also testified about his participation in the Treatment Program and his sobriety. He explained that he initially attended the Treatment Program, later added counseling sessions from the same provider, and then began attending AA meetings in August 2021. *Id.* at 88, 90, 93-94. He testified that he last consumed alcohol in early July 2021. *Id.* at 89. He has continued to attend the weekly counseling sessions, and he stated that he intends to do so indefinitely. *Id.* at 90, 92. He testified that the sessions include discussion of treatment tools, feelings, triggers, and communication. *Id.* at 92. Regarding AA, the Individual testified that he attends at least three meetings per week and that he intends to find a sponsor with a similar schedule. *Id.* at 94, 95, 97. He also testified that he intends to stay in AA indefinitely. *Id.* at 98. The Individual testified that he had a sponsor for about a month, but the Individual’s academics, career, and treatment

commitments prevented him from meeting that sponsor's requirements.³ *Id.* at 95-96. He testified that he has considered reducing his academic workload, if needed, to maintain his significant treatment regimen. *Id.* at 99. He also testified that he has the support of other AA members who help keep him accountable. *Id.* at 100.

The Psychologist testified last and opined that the evidence of the Individual's Treatment Program, counseling sessions, AA attendance, and negative PEth test results indicate that the Individual has met or exceeded the recommendations contained in the Psychologist's report. *Id.* at 111-12. The Psychologist noted that, during evaluations, "it's more common than not . . . that people will either underreport or not report at all [] how much they've been drinking [alcohol]." *Id.* at 108. The Psychologist testified that, based on the Individual's efforts, the Individual's treatment had been trending in a positive direction by "going from the lower level intervention . . . to really intensive treatment and intervention." *Id.* at 113. The Psychologist concluded that the Individual had a very good prognosis and that there was a low risk of the Individual relapsing. *Id.* at 115.

V. ANALYSIS

A. Guideline G Considerations

One of the conditions that can mitigate security concerns based on alcohol consumption is that "[t]he individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations[.]" Adjudicative Guidelines at ¶ 23(b).

I find that the Individual put forth sufficient evidence to apply the above mitigating condition. First, the Individual admitted his pattern of maladaptive alcohol use by explicitly admitting that he has a problem with alcohol. He also acknowledged that he was previously in denial regarding his alcohol use. Second, he provided evidence of the significant actions he has taken, and continues to take, to overcome the problem by successfully remaining abstinent and regularly attending the Treatment Program sessions, individual counseling sessions, and AA meetings. His testimony, the AA member's testimony, and the LMHC's letter provide evidence that he actively participates in treatment and works to augment his treatment tools. He also has the support of AA members who hold him accountable. And he credibly established his intent to continue treatment and remain abstinent into the future.⁴ Finally, the record demonstrates a clear and established pattern of modified consumption in accordance with treatment recommendations. The testimony and clinical test results establish that the Individual has continued to abstain from alcohol, and the record demonstrates that he has done so by following the Psychologist's treatment recommendations, which resulted in the Psychologist concluding that the Individual has a good prognosis and low

³ The Individual explained that he works 60 hours a week in addition to his full-time academic program and treatment obligations. Tr. at 95. He further explained that he reports to work at 6:00 a.m., and his former sponsor wanted him to wake up at 4:00 a.m. to complete assignments. *Id.* The Individual determined he was "not physically able" to meet that requirement. *Id.*

⁴ I find the Individual's testimony credible despite his previous misrepresentation of his alcohol use. I attribute the Individual's prior dishonesty to his unaddressed problem with alcohol after duly considering the Psychologist's testimony regarding the common underreporting of alcohol use during evaluations and after evaluating the other evidence in the record.

risk of relapse. I am persuaded to accept the Psychologist's conclusion given that it is based on the Individual's sustained abstinence and evidence of the Individual's progress combining the suggested treatment paths by simultaneously pursuing individual and group counseling alongside regular AA attendance. Accordingly, I conclude that the Individual has resolved the Guideline G security concerns.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised a security concern under Guideline G of the Adjudicative Guidelines. 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 find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should be restored.

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

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals