

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

In the Matter of: Personnel Security Hearing)		
)		
Filing Date: December 1, 2021)	Case No.:	PSH-22-0021
)		
_____)		

Issued: March 10, 2022

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXX (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 should be granted access authorization.

I. BACKGROUND

The DOE employs the Individual in a position that requires possession of a security clearance. During an investigation, the DOE Local Security Office (LSO) discovered information regarding the Individual’s alcohol use that prompted the LSO to request that the Individual be evaluated by a DOE-consultant psychologist (“Psychologist”). After the Psychologist completed the evaluation and provided a report to the LSO, 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.

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

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.

Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. *See* Transcript of Hearing (Tr.). At the hearing, the Individual testified on his own behalf. The LSO presented the testimony of the Psychologist. The Individual submitted 31 exhibits, marked Exhibits A1 through G3. The LSO submitted seven exhibits, marked Exhibits 1 through 7.²

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[.]" 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 Alcohol Use Disorder (AUD), Mild, without evidence of rehabilitation or reformation; the Psychologist's conclusion that the Individual habitually or binge consumes alcohol to the point of impaired judgement; and the Individual's 2015 arrest and charges for alcohol-related offenses that include Resisting Arrest, Criminal Mischief, Wanton Mischief, and several counts of Misdemeanor Assault. 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).

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

² The LSO's exhibits were combined and submitted in a single, 169-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.

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 report from the Office of Personnel Management (OPM) containing information regarding the Individual's past alcohol use, including the information contained in a 2018 Questionnaire for National Security Positions. Ex. 7 at 109. Therein, the Individual reported that there were several instances where alcohol negatively impacted his life between 2015 and 2018. *Id.* He also indicated that he consumed alcohol "too much per occasion" but did not engage in "[c]ontinuous drinking." *Id.* at 109-110. He further reported that his employer's Employee Assistance Program (EAP) counselor suggested that he seek treatment for alcohol use. *Id.* at 110. After speaking with a therapist, he voluntarily began a chemical dependence recovery program, which he completed in early 2018 despite not following the rules and being dishonest about his alcohol use. *Id.* at 110-11, 126.

During a 2019 interview with an OPM investigator, the Individual reported that his alcohol-related charges stemmed from a night where he drank too much alcohol and blacked out.³ *Id.* at 124. He consequently completed a required one-year diversion program. *Id.* The Individual also told the OPM investigator that he was currently binge drinking weekly. *Id.* He explained that he consumed alcohol because he felt lonely and depressed, and he had not made any changes to stop his consumption even though his behavior negatively affected his work performance. *Id.* The OPM report also includes information provided by the EAP psychologist who treated the Individual until 2018. *Id.* at 150. The EAP psychologist diagnosed the Individual with AUD, Mild to Moderate. *Id.*

The record also includes the 2021 Psychologist's report, which details the information the Individual provided during the evaluation. The Individual specifically admitted that he never disclosed his alcohol use during his completed 2018 chemical dependence recovery program. *Id.* at 22. The Individual reported that he was currently seeing a counselor bimonthly who had been treating the Individual since early 2020 and had diagnosed the Individual with AUD, Severe. *Id.* at 22-23. The Psychologist contacted the counselor, and the counselor reported that the Individual had been taking a medication to "reduce the euphoria associated with consuming alcohol" as part of his treatment. *Id.* at 23. The counselor reported that the Individual was making progress in therapy; however, the counselor expressed concern over the alcohol consumption the Individual reported to the Psychologist in the course of the evaluation, which is detailed below. *Id.*

³ The OPM report indicates that the Individual's friend contacted Emergency Medical Services (EMS) and the police due to concern for the Individual's wellbeing. *Id.* at 158. When the EMS and police attempted to rouse the Individual, "[the Individual] became combative and uncooperative with [them]," and the police arrested him. *Id.*

During the April 2021 evaluation, the Individual reported drinking three times a week. *Id.* at 23. Twice a week, he would consume two or three alcoholic drinks over four hours. *Id.* In the remaining instance, he would consume six to eight drinks over a five-hour period. *Id.* He reported that he becomes intoxicated when he drinks, but only when he consumes six or more drinks. *Id.* He also reported driving to bars and drinking up to six drinks before driving home. *Id.* at 24. The Individual stated his intent to moderate his alcohol consumption instead of remaining abstinent. *Id.* In his report, the Psychologist opined that the reported alcohol consumption before driving indicated that the Individual operated a vehicle while intoxicated, which indicated impaired judgement. *Id.* The Psychologist also noted that the Individual “continues to show a pattern of binge drinking once per week to intoxication and impairment while on [medication] and undergoing alcohol counseling.” *Id.* at 25.

The Psychologist concluded that the Individual met the criteria for AUD, Mild, without adequate evidence of rehabilitation. *Id.* at 26, 27, 28. To rehabilitate or reform the condition, the Psychologist made the following recommendations. First, that the Individual complete at least six months of abstinence to provide confidence that the Individual could curtail his consumption. *Id.* at 28. Second, that the Individual complete an Intensive Outpatient Program (IOP) and participate in the Alcoholics Anonymous 12-step program (AA) for twelve months with documented attendance. *Id.* The Psychologist defined participation as attending four AA meetings per week, having a sponsor, and actively working the steps. *Id.* at 28. Lastly, the Psychologist recommended that the Individual document his abstinence with Phosphatidylethanol (PEth) laboratory testing conducted every two months. *Id.*

Prior to the hearing, the Individual submitted a letter from his psychologist indicating that the Individual had successfully completed a three-month early recovery group treatment program (“Group Program”) in September 2021. Ex. C3. The program required abstinence, two group therapy sessions per week, and periodic individual therapy. *Id.* Thereafter, the Individual continued a long-term recovery group treatment program with the same provider, which met weekly and required a one-year commitment to attendance and abstinence from alcohol. Ex. C8. The Individual’s psychologist provided a February 2022 letter that stated that the Individual had self-reportedly remained abstinent for 310 days. *Id.* The Individual’s psychologist’s most recent treatment notes indicate that the Individual’s alcohol use disorder was in early remission. Ex. C7 at 2. The record also includes the results of five PEth tests taken by the Individual since August 2021. The test results indicate that the Individual has remained abstinent since the date of the first test. Exs. F1-F5.

The record also includes a letter from the Individual’s mother. Therein, she stated that she had encouraged the Individual to obtain counseling and seek treatment for his alcohol use. Ex. G1 at 1. She stated that she has observed his recent abstinence and that she and the Individual’s father have been supportive of the Individual’s efforts. *Id.*

At the hearing, the Individual did not dispute the information contained in the record and attempted to demonstrate a substantial change in circumstances regarding his alcohol use. The Individual testified that he has not had any involvement with law enforcement authorities since his 2015 arrest. Tr. at 19. He also testified that he agreed to a yearlong diversion program as a result of his 2015 arrest, and all related charges had been expunged. *Id.* at 19.

The Individual testified regarding his past dishonesty during his 2018 treatment program. *Id.* at 25. He now understands that he needs to be honest with his treatment providers to receive the best treatment. *Id.* He also asserted that he had been candid throughout the security clearance process by reporting his previous dishonesty. *Id.* at 25.

Next, the Individual described his conduct since the Psychologist's evaluation. The Individual testified that during the evaluation he believed he could successfully moderate his alcohol consumption, but he changed his opinion shortly thereafter and decided to abstain for a year. *Id.* at 20. He testified that he last consumed alcohol in March 2020. *Id.* at 21. Then, after a few months of abstinence, he decided to abstain indefinitely because he noticed significant improvements in his life. *Id.* at 20-21. Even though he completed the three-month Group Program in September 2021, he continues with long-term, weekly group treatment, which he also intends to continue indefinitely. *Id.* at 21-22, 43. During the treatment meetings, he talks about his triggers and methods to deal with stress and anxiety, such as meditation, and he explained that the group "helps with accountability." *Id.* at 42-43.

When questioned as to why he began documenting his abstinence with PEth tests in August, instead of immediately after starting his sobriety, he explained that he had not yet received the Psychologist's report and recommendations. *Id.* at 49. He testified that he took his first PEth test "a couple days after receiving the report." *Id.* at 34. He also testified that the report made him realize that he had been "on the right path with abstaining from alcohol." *Id.* at 33.

Regarding AA attendance, the Individual testified that he began attending meetings in November 2021 based on the Psychologist's recommendations. *Id.* at 34-35. He testified that it took him from August 2021, when he received the Psychologist's report, to November 2021 to attend his first AA meeting because he was attending the frequent Group Program meetings and he was nervous about attending his first AA meeting. *Id.* at 35-36. He testified that he had since been "going to three or four [meetings] a week[.]" and he "secured a sponsor" who he meets with once a week. *Id.* at 22. He introduces himself at AA by stating he is "an alcoholic." *Id.* at 36. He described his sponsor as supportive, and they discuss alcohol abuse, their experiences, and the AA steps. *Id.* at 23. The record includes a letter from the person identified by the Individual as his sponsor, and the letter corroborates the Individual's testimony. Ex. G3. The Individual testified that he had been attending AA meetings three to four times a week since November. *Id.* at 49.

The Individual described having a more positive disposition. He engages in social activities including climbing, meeting up with groups to do other activities, and dating. *Id.* at 22. He also talks to his parents more. *Id.* at 23. He feels less anxious and at ease most of the time, and he stated that his relationships have improved. *Id.* He testified that he has been able to avoid drinking alcohol when he goes out to restaurants with coworkers and on holidays by consuming nonalcoholic drinks. *Id.* at 24, 44. He testified that he had been abstinent for over ten months, and it has become easier for him not to think about consuming alcohol. *Id.* at 45.

The Psychologist testified that the Individual had met the criteria the Psychologist established for the Individual to address his alcohol use problem and that the Individual had rehabilitated his condition. *Id.* at 58, 59. The Psychologist testified that the Individual was "approaching his

recovery . . . in a much more mature fashion” since the evaluation. *Id.* at 58. He stated that the Individual had “entered a good recovery process” and was “doing what is asked of him[,]” and he therefore gave the Individual a good prognosis. *Id.* at 58. The Psychologist explained that although he originally recommended twelve months of abstinence with AA, he typically reduces the amount of abstinence needed to give a positive prognosis when individuals meet the criteria for AUD, Mild, and their actions demonstrate progress into a good recovery process, such as gaining awareness of the impact of their behavior and participating in programs such as AA and the Individual’s Group Program. *Id.* at 61.

V. ANALYSIS

A. Guideline G Considerations

According to Guideline G, security concerns based on alcohol consumption can be mitigated if “[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 mitigating condition described in ¶ 23(b). The evidence demonstrates that the Individual acknowledged his pattern of maladaptive alcohol use because he identified himself as an alcoholic and explained that his life has improved because of his abstinence from alcohol. These facts demonstrate his recognition and understanding that his prior alcohol use negatively impacted his life. Furthermore, the record demonstrates that the Individual has taken significant action to overcome his problem. Since being evaluated by the Psychologist, the Individual stopped consuming alcohol, he successfully completed a three-month early recovery treatment program, he has continued to participate in a long-term group recovery treatment program, he has been attending AA meetings, and he has been working with an AA sponsor. The record also demonstrates that the Individual changed his mindset around his treatment by acknowledging the importance of honesty and expressing his intent to remain abstinent indefinitely. In addition to maintaining sobriety, the benefits of his efforts are evident in his improved relationship with his parents, who support his abstinence, and his ability to engage in other activities, including socializing with coworkers and family members, without consuming alcohol. He has also avoided being arrested for any alcohol-related conduct since 2015. Further still, the Individual has demonstrated a clear and established pattern of abstinence by establishing through testimony and PEth test results that he has remained abstinent since being evaluated by the Psychologist. And the record demonstrates that the Individual has maintained his abstinence in accordance with the Psychologist’s treatment recommendations, which resulted in the Psychologist concluding that the Individual is rehabilitated and has a good prognosis. 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 security concerns under Guideline G of the Adjudicative Guidelines. 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 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 should be granted access authorization.

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