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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: November 30, 2021) Case No.: PSH-22-0010
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Issued: April 22, 2022

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled “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 Individual is employed by a DOE contractor in a position which requires that he hold a security clearance. On August 5, 2020, the Individual self-reported that he began inpatient alcohol treatment on August 4, 2020. Ex. 6 at 2. Based on this information, the Local Security Office (LSO) asked the Individual to undergo a psychological evaluation, which was conducted by a DOE-consultant psychologist (DOE Psychologist). Ex. 7. In addition to conducting a clinical interview of the Individual, the DOE Psychologist also reviewed the Individual’s personnel file, administered a personality inventory psychometric test, and consulted with three other mental health professionals. Ex. 7 at 3. The DOE Psychologist issued a report of his findings and conclusions on May 10, 2021, indicating the Individual suffered from Alcohol Use Disorder (AUD)² Ex. 7. After receiving the DOE Psychologist’s report, the LSO began the present

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified mater 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.

² Phosphatidylethanol (PEth) and Ethyl Glucuronide (EtG) urine tests were administered in conjunction with the psychological evaluation. Ex. 7 at 3, 7. The EtG test detects alcohol up to 80 hours after any alcoholic beverage is

administrative review proceeding by issuing a Notification Letter to the Individual, informing him that his security clearance had been suspended and that he was entitled to a hearing before an Administrative Judge to resolve 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 four other witnesses, his wife, a clinical psychologist (Clinical Psychologist), his coworker, and a licensed therapist (Licensed Therapist). *See* Transcript of Hearing, Case No. PSH-22-0010 (cited as "Tr."). The Individual also submitted nine exhibits ("Ex."), marked as Ex. A through I. The DOE Counsel presented the testimony of one witness, the DOE Psychologist, and submitted nine exhibits marked as Ex. 1 through 9.

II. Notification Letter and Associated Concerns

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created 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 is a "[d]iagnosis by a duly qualified medical or mental health professional...of alcohol use disorder[.]" Adjudicative Guidelines at ¶ 22(d). With respect to Guideline G, the LSO alleged that in his May 2021 report, the DOE Psychologist concluded that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) criteria for AUD, Moderate, In Early Remission, and that the Individual had not shown adequate evidence of rehabilitation or reformation. Ex. 1 at 1.

III. Regulatory Standards

A DOE administrative review process under Part 710 requires me, as Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgement, made after consideration of all the relevant evidence, favorable or 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).

consumed. Ex. 7 at 7. The PEth test detects alcohol use during the previous three to four weeks. Ex. 7 at 7. The results of both tests were negative. *Id.*

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.

IV. Findings of Fact

The Individual admitted that his alcohol consumption increased during the period from 2015 to 2016 due to personal and professional stressors. Ex. 7 at 4. At that time, the Individual reported that he was consuming “three [twelve-ounce] cans of beer over the course of two hours four times a week[] and drinking five to six [twelve-ounce] cans of beer and/or mixed drinks over the course of six hours on both days of the weekend.” Ex. 7 at 4. The Individual began seeing the Clinical Psychologist in September 2017 due to family and life stressors. Tr. at 47-48, 56, 64, 81; Ex. 7 at 5. However, the Clinical Psychologist noted that over the course of their therapy sessions, “alcohol [issues] did come up with some regularity[.]” Tr. at 48, 57, 65. Later, around the end of 2018, as a result of a referral to a nonprofit organization from his employer’s Occupational Medicine (OM) office, the Individual began also seeing the Licensed Therapist concerning possible issues with alcohol use. Tr. at 15-16.

The Clinical Psychologist testified that although the Individual had intermittently attempted periods of abstinence, in the winter or spring of 2020, he recommended that the Individual seek “more...defined treatment” for his alcohol consumption, and in August 2020, the Individual voluntarily enrolled himself in an inpatient recovery program, since, in the opinion of the Clinical Psychologist, the Individual had not experienced “robust success at addressing” the matter of his alcohol consumption on an “outpatient level[.]” Tr. at 34, 58, 65, 82, 84; Ex. A; Ex. 7 at 5. Prior to admitting himself into the inpatient recovery program, the Individual was consuming two to eight alcoholic beverages, either twelve-ounce cans of beer or mixed drinks, over the span of two to four hours approximately six times per week. Ex. 7 at 4. The Individual testified that although he knew that alcohol was detrimental to him, he was initially somewhat resistant while in the program. Tr. at 83-84. However, as time went on, his resistance dissipated and he “began to engage in the program at a more personal level.” Tr. at 84-85. Upon his completion of the inpatient recovery program in September 2020, the Individual was placed in his employer’s Fitness for Duty (FFD) program.³ Ex. 7 at 5. Pursuant to the requirements of the FFD program, the Individual completed his employer’s Employee Assistance Program (EAP) alcohol education class in December 2020. The Individual completed the FFD program in April 2021. Exs. C and D.

³ Pursuant to the requirements of the FFD program, the Individual underwent 22 EtG tests from September 2020 through March 2021, all of which had negative results save for one October 2020 test, coinciding with a reported October 2020 one-time relapse described below. Ex. B; Tr. at 88. He also voluntarily underwent monthly PEth tests from February 2021 through February 2022, with a gap in April/May 2021, totaling 12 tests. Exs. G and I. All PEth test results were negative for alcohol. Exs. G and I.

Although he had been discharged from the inpatient recovery program in September 2020 with a “good prognosis,”⁴ the Individual suffered a relapse in October 2020, about which he informed his wife. Tr. at 20-21, 36, 49, 103; Ex. A. The Individual testified that, on this one occasion, having failed to take a moment to consider his actions, he went to a gas station and purchased a bottle of vodka. Tr. at 92. Since then, he has realized that consuming alcohol in moderation is not a realistic endeavor for him, and he has since committed himself to abstinence. Tr. at 87, 98. He indicated that he would reach out to his spouse, friends, or his therapist in the event he feels he is experiencing a craving. Tr. at 99-100.

In her testimony, the Individual’s wife denied having any knowledge of the Individual consuming alcohol since October 2020 and stated that not only does she feel that the Individual is not tempted to drink, but that he has never expressed any cravings for alcohol since his relapse. Tr. at 35, 37. She also testified that the past family stressors that caused the Individual to drink are no longer present or have improved. Tr. at 37-38.

The Individual’s coworker, who also sees the Individual outside of the workplace, testified that she had not seen the Individual consume alcohol since October 2020. Tr. at 72. She confirmed that he had abstained from alcohol in social situations where alcohol was readily available. Tr. at 72-73. Not only did the Individual abstain from alcohol, she stated, but he also did not reveal any feelings of cravings for alcohol. Tr. at 73. Further, she has seen the Individual “actively engag[ed] in [his] recovery activities and [his] meetings[,]” and she has never observed the Individual to be under the effects of alcohol while in the workplace. Tr. at 72-74. She endorsed the Individual as a reliable, trustworthy, and responsible person. Tr. at 75.

The Licensed Therapist testified that the Individual entered an intensive outpatient program (IOP) in December 2020 and completed it in May 2021. Tr. at 16-19, 85-86; Ex. E. The Licensed Therapist testified that depending on a person’s attendance, the IOP takes approximately five or six months to complete and consists of individual therapy and four separate groups designed to teach different skills. Tr. at 17-18, 26. While attending the IOP, the Individual also attended the Self-Management and Recovery Training (SMART) program.⁵ Tr. at 28, 87-88; Ex. F. The Licensed Therapist testified that based on the records in his possession, the Individual experienced “a lengthy period of...sobriety that is confirmed by the substance testing[,]” and accordingly, he gave the Individual a good prognosis. Tr. at 20, 23-24. He also stated that he believes the Individual has the necessary tools to deal with any triggers that may arise. Tr. at 22.

The Individual’s Clinical Psychologist confirmed that the Individual was approaching two years of sobriety, and as she believes he has been making “excellent progress” in his treatment, she sees the Individual less frequently. Tr. 48, 50. Further, she indicated that the Individual has a “Relapse

⁴ The Individual’s Clinical Psychologist testified that when she spoke to the treating physician at the inpatient recovery center, the doctor informed her that she had “never [before] discharged a graduate with a prognosis of good[.]” Tr. at 49, 62.

⁵ Having attended Alcoholics Anonymous (AA) meetings while enrolled in the inpatient recovery program from August to September 2020, the Individual determined that he prefers SMART meetings to AA and continues to attend these meetings. Ex. 7 at 5; Tr. at 87-88, 102-03; Ex. F. The Individual testified that the SMART program allows him to identify his triggers and to cope with them. Tr. at 90.

Prevention Plan,” to which she has seen the Individual adhere. Tr. at 51, 96; Ex. H. The Individual’s recovery plan includes his continued involvement in the SMART program, a list of tools to help him cope with cravings, and a primary focus on improving his quality of life. Ex. H. The Clinical Psychologist stated that the Individual understands “that alcohol [is not] part of [his] life[.]” Tr. at 53.

In his report summarizing his evaluation of the Individual, the DOE Psychiatrist observed that the Individual had approximately twenty years of problematic alcohol consumption, and he diagnosed the Individual with AUD, Moderate, In Early Remission. Ex. 7 at 7-8. He did not find adequate evidence of rehabilitation or reformation at that time. Ex. 7 at 8. The DOE Psychologist recommended that the Individual abstain from alcohol for at least twelve months, participate in regular individual counseling, and attend SMART meetings twice per week. Ex. 7 at 8. At the hearing, the DOE Psychologist indicated the Individual was in sustained remission, as the Individual had demonstrated more than twelve months of abstinence. Tr. at 112. The DOE Psychologist further testified that in his opinion the Individual had presented adequate evidence of rehabilitation and reformation. Tr. at 113.

V. 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 judgment;
- (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 modified 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 and 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 pattern of modified consumption or abstinence in accordance with treatment recommendations.

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

The record establishes that years prior to the issuance of the Notification Letter, the Individual recognized his maladaptive alcohol use and took tangible steps toward treating the issue. He began by seeking therapy from a Clinical Psychologist with whom he discussed the matter of his alcohol consumption. After reaching the understanding that he needed more focused support and treatment for his alcohol consumption, the Individual voluntarily enrolled in an inpatient recovery program, participated in an IOP, involved himself in self-help groups like AA and SMART, and continued to receive individual therapy. After being discharged from the inpatient recovery program in

September 2020, he complied with and successfully completed his employer's FFD program. Not only did he submit to more than twenty required EtG tests during the FFD program, but he also submitted to PEth tests, which confirmed the Individual's assertion that he last consumed alcohol in his one-time October 2020 relapse. The Individual enjoys a strong and support system and continues to prioritize his goal of lifelong abstinence. Importantly, he has complied with the DOE Psychologist's recommendations, and at the time of hearing, the DOE Psychologist amended his diagnosis to indicate that the Individual was in sustained remission. The DOE Psychologist further opined that the Individual has shown adequate evidence of rehabilitation and reformation. The expert testimony from the Clinical Psychologist and the Licensed Therapist was consistent with the DOE Psychologist's opinion. Accordingly, given the state of the Individual's rehabilitation from his diagnosis of AUD, I find that the Individual has mitigated all Guideline G concerns raised in the Notification Letter. *See* Adjudicative Guidelines at ¶ 23(b), (d).

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G 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 Notification Letter. 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, I find that the Individual's security clearance should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals