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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: December 29, 2021) Case No.: PSH-22-0040
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Issued: April 18, 2022

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXX (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, Subpart A, entitled “General 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 not be restored.

I. Background

On October 26, 2020, police charged the Individual with Aggravated Battery on a Household Member. Ex. 6 at 1; Ex. 7 at 1. The Individual admitted consuming alcohol prior to this incident. Ex. 6 at 1; Ex. 8 at 1. This information led a Local Security Office (LSO) to request the Individual to undergo an evaluation by a Psychiatrist (Psychiatrist), who conducted a clinical interview (CI) of the Individual on April 8, 2021. Ex. 9 at 1. During the CI, the Individual claimed that he had not consumed alcohol since December 2020. Ex. 9 at 5. In addition to interviewing the Individual, the Psychiatrist reviewed the Individual’s personnel security file, and ordered two blood tests for the Individual: an Ethyl Glucuronide (EtG) urine test (which detects alcohol consumption up to 80 hours prior to the test); and a Phosphatidylethanol (PEth) blood test (which detects alcohol use during the previous 28-days).² Ex. 9 at 7. The EtG test results were negative, indicating that the

¹ An 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 an access authorization or security clearance.

² Although the Psychiatrist asked the Individual to take the PEth and EtG tests on April 8, 2021, the date of the CI, the Individual delayed taking the tests until April 12, 2021. Ex. 9 at 7.

Individual had not consumed alcohol for the previous several days. Ex. 9 at 7. However, the PEth test was positive at 41 ng/ml suggesting that the Individual had consumed alcohol in the previous 28 days.³ Ex. 9 at 7.

The Psychiatrist also contacted a counselor (Counselor) who had been providing group alcohol education services to the Individual since December 10, 2020. Ex. 9 at 6. The Counselor indicated that the Individual attended the group for 12 weeks and was now attending individual sessions with the Counselor. Ex. 9 at 6. The Counselor opined that the Individual was “practicing sobriety and learning the stages of change.” Ex. 9 at 6.

The Psychiatrist issued a report of his findings (the Report) on April 21, 2021. Ex. 9 at 9. In the Report, the Psychiatrist concluded that the Individual met the criteria for Alcohol Use Disorder, Mild (AUD) set forth in the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition* (DSM-5). Ex. 9 at 9. Noting that the Individual’s laboratory testing indicated that he was still using alcohol and was being less than honest about his alcohol consumption, the Psychiatrist recommended that the Individual abstain from the use of alcohol for one year, participate in an Intensive Outpatient Program (IOP) (including six months of aftercare), and attend weekly Alcoholics Anonymous (AA) meetings for a full year. Ex. 9 at 9.

After receiving the Report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual, informing him that his security clearance was suspended and 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 the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from eight witnesses: the Individual, his Sponsor (the Sponsor), his ex-girlfriend (the Girlfriend), his shop superintendent, two of his fellow AA members, his former union president, and the Psychiatrist. *See* Transcript of Hearing, Case No. PSH-22-0040 (hereinafter cited as “Tr.”). The LSO submitted 11 exhibits, marked as Exhibits 1 through 11 (hereinafter cited as “Ex.”). The Individual submitted four exhibits, marked as Exhibits A through D.

The Individual’s Ex. A is a “recommendation” from a manager at the Individual’s employer indicating that the Individual is an exemplary employee. The Individual’s Ex. B is a statement by his union’s Safety Advocate indicating that the Individual is “an exceptionally well rounded individual and worker who is constantly expressing good work ethics, loyalty, respect and integrity.” Ex. B at 1. The Individual’s Ex. C is an AA attendance sheet indicating that the Individual attended 12 AA meetings between January 10, 2022, and March 28, 2022. The Individual’s Ex. D is a photograph of four AA coins, which are used to mark specific periods of sobriety.

³ The laboratory report indicates that “PEth levels in excess of 20 ng/mL are considered evidence of moderate to heavy ethanol consumption,” but cautioned that “the Center for Substance Abuse Treatment (CSAT) advises caution in interpretation and use of biomarkers alone to assess alcohol use. Results should be interpreted in the context of all available clinical and behavioral information.” Ex. 9 at 14.

II. The Notification Letter and the Associated Security 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. In support of this determination, the LSO cited Guideline G of the Adjudicative Guidelines. Under Guideline G (Alcohol Consumption), the LSO cited the Individual's alcohol-related arrest and the Psychiatrist's conclusion that the Individual met the DSM-5 criteria for AUD. This information adequately justifies the LSO's invocation of Guideline G. The Adjudicative Guidelines state: "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. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern, under Guideline G, are "alcohol-related incidents away from work, . . . regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder," and "diagnosis by a duly qualified medical or mental health provider . . . of alcohol use disorder." Guideline G at §§ 22(a) and (d).

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 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.

IV. Hearing Testimony

At the Hearing, the Individual's Sponsor testified that he is also the Individual's former Union President. Tr. at 20, 22. They often see each other at the union hall. Tr. at 23. He further testified that he has never observed the Individual using alcohol or observed that he was intoxicated or "hung over," although the Sponsor testified that he had previously noticed that the Individual was exhibiting signs of depression. Tr. at 20-21. The Sponsor is himself a recovering alcoholic. Tr. at 21. He has been providing the Individual with advice and guidance in the Individual's efforts to

address his alcohol issues. Tr. at 21. He is helping the Individual work his Twelve Step program and they are currently working on Step Three. Tr. at 21-22. They meet every other Saturday to read through AA's Big Book. Tr. at 22-23. The Sponsor testified that the Individual "is showing all the signs that he genuinely wants to make this work," and "change his life." Tr. at 31. He testified that he has observed a "major change" in the Individual over the past two and a half months, specifically, the Individual has more confidence, has lost weight, has begun to apply himself professionally and has become much more engaged in his training. Tr. at 22-25. The Sponsor testified that he believes that the Individual recognizes that he has a problem with alcohol, intends to permanently abstain from alcohol use, and is doing everything he needs to succeed in the program. Tr. at 25, 31-33. There are several AA members in the Individual's union, and they provide each other with support and have formed a tight group. Tr. at 30. The Individual's relationship with his girlfriend has been a problem for him, and the Individual is ending that relationship, because he realizes their relationship is a distraction from his sobriety. Tr. at 22-23, 31.

The Girlfriend testified that they are no longer together but are remaining roommates until she can find new housing. Tr. at 44. When she was asked about the incident that led to the Individual's arrest, she testified that they had both consumed alcohol prior to the incident. Tr. at 45. She testified that the Individual "doesn't drink" and has been sober for over a year. Tr. at 46, 48. The last time she observed the Individual using alcohol was the day of his arrest. Tr. at 51. They don't keep alcohol in their home, and she does not drink around him. Tr. at 47-47. As of the date of the hearing, they almost never spend time together. Tr. at 48. She also confirmed the Individual's attendance at AA. Tr. at 48, 52.

The Individual's Shop Superintendent testified that the Individual had worked for him from time to time during the past three years. Tr. at 58. He does not socialize with the Individual outside of work hours. Tr. at 58-59. He has never observed the Individual under the influence or with a hangover. Tr. at 59. He testified that he had previously advised the Individual to curtail his drinking. Tr. at 60. He noticed that the Individual has recently become a more dependable and productive employee and that he now exhibits some leadership skills. Tr. at 61.

A fellow AA member (A) testified at the Hearing. He has known the Individual "for a couple of months." Tr. at 67. He sees him once a week when they attend AA meetings together. Tr. at 67. The Individual identifies himself as an "alcoholic" at those meetings. Tr. at 68. The Individual is "actively involved" during those AA meetings. Tr. at 69.

Another fellow AA member (B) also testified at the Hearing. He testified he sees the Individual every week at an AA meeting and sometimes they socialize outside of the meetings. Tr. at 83- 84. He also talks to the Individual one to three times a week. Tr. at 86. The Individual is an active participant at AA meetings who identifies himself as an "alcoholic" who is committed to getting and staying sober. Tr. at 83, 85.

The Individual's former union president testified at the Hearing. He testified that he had observed "a huge change" in the Individual's attitude. Tr. at 94. He knows that the Individual is working the Twelve Step Program with the Sponsor and that the Sponsor thought the Individual was making good progress. Tr. at 94.

The Individual testified that he uses “January” as his sobriety date in AA, but also claimed he “maybe” stopped drinking after his arrest. Tr. at 101-102. He subsequently testified that he could not remember when he last consumed alcohol but stated that it was “a really long time” ago and “probably” prior to the CI. Tr. at 112. When asked for the third time when he last used alcohol he stated: “Probably way back when [the Psychiatrist] had mentioned,” and then, instead of fully addressing the question at hand, changed the subject. Tr. at 120-121. When he was confronted with his positive PEth test, he attributed it to his use of mouthwash. Tr. at 103. The Individual testified that he no longer uses alcohol and does not like to be around people that drink. Tr. at 103. He stated that he no longer has the urge to drink. Tr. at 104. However, he has not had any laboratory testing to verify his abstinence, because he cannot afford it. Tr. at 103-104. He testified that he has not had any alcohol treatment other than AA. Tr. at 104-105. However, he later recalled his work with the Counselor. Tr. at 119. He stated that he intends to stay in AA and eventually become a sponsor. Tr. at 109-110. He testified that he is now “a lot . . . happier” and “more positive.” Tr. at 114. The Individual’s “ultimate goal is to keep alcohol out of my life and to not use it anymore, because it’s created more issues in my life than positives.” Tr. at 101, 116. The Individual testified that he knows he “basically screwed up” and that he realizes that “drinking” caused a lot of problems and left him unhappy. Tr. at 99, 102.

The Psychiatrist testified at the Hearing after observing the testimony of each of the other witnesses. The Psychiatrist testified that he diagnosed the Individual with AUD in early remission. Tr. at 128. He believed that the Individual was “off to a good start” but is not yet reformed or rehabilitated. Tr. at 130. First, he noted that the Individual had developed a high tolerance to alcohol. Tr. at 130. Second, he noted that the Individual had not followed his treatment recommendations to attend an IOP and to attend AA meetings for a full year. Tr. at 130. Finally, he noted that the Individual had not documented his abstinence from alcohol with laboratory tests. Tr. at 131. The Psychiatrist did cite the Individual’s AA involvement as a positive step towards his sobriety, however, he noted that the Individual has only been attending AA for three months. Tr. at 131-132. The Psychiatrist also noted that the Individual had not continued his therapy with the Counselor. Tr. at 131-132.

V. Analysis

Guideline G

The Individual does not dispute that he was properly diagnosed with AUD. Instead, the Individual has attempted to mitigate the security concerns raised under Guideline G by unconvincingly claiming that he has abstained from alcohol use for an indeterminately “long time,” acknowledging that he has an alcohol problem, and showing that he has become involved in AA. While the Individual has taken the important first steps of sincerely acknowledging that he has AUD, attending AA meetings, and working AA’s Twelve Step Program with the support of his Sponsor, he has not shown that he has sufficiently complied with the reasonable and appropriate recommendations of the Psychiatrist. First, the Individual has not shown that he has abstained from alcohol use for 12 months. During this process, the Individual has shown himself to be an unreliable historian concerning his alcohol use. During the CI, the Individual claimed to have completely abstained from alcohol use for several months, yet four days later the Individual

submitted a blood sample for a PEth test which tested positive for alcohol consumption in the prior 28 days. At the hearing, the Individual provided vague and evasive answers concerning his last use of alcohol and an implausible explanation for his positive PEth test. Additionally, I do not find the Girlfriend's testimony to be credible on this issue. Further, the Individual did not show that his attendance at the group alcohol education classes taught by the Counselor were the functional equivalent of the IOP followed by six months of aftercare recommended by the Psychiatrist. Lastly, while the Individual has become meaningfully engaged in AA, that meaningful engagement only began approximately three months prior to the Hearing, which is well short of the 12 months recommended by the Psychiatrist.

The Adjudicative Guidelines provide that an individual may 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; or
- (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.

Guideline G at § 23(a)-(d).

The mitigating condition set forth at § 23(a) is not present. Only 18 months have passed since the Individual's alcohol-related arrest. Since the Individual has not provided sufficient evidence of his long-term abstinence or his reform or rehabilitation, his AUD continues to cast doubt on his current reliability, trustworthiness, and judgment, as exhibited by his failure, during the present proceeding, to accurately report his alcohol use.

The mitigating condition set forth at § 23(b) is not present. While the Individual has fully acknowledged that he had a problem with alcohol use, he has not provided evidence of sufficient actions taken to overcome this problem and has not sufficiently demonstrated a clear and established pattern of abstinence.

The mitigating conditions set forth at § 23(c) and § 23(d) are not present since the Individual has not participated in a treatment program.⁴

In sum, I find that none of the mitigating factors listed above are applicable in this case. Accordingly, I find that the Individual has not mitigated or resolved the security concerns raised under Guideline G by his alcohol-related arrest and AUD diagnosis.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G. After considering all of the evidence, both favorable and unfavorable, in a commonsense manner, the Individual has not mitigated the concerns raised under Guideline G. Accordingly, the Individual has not 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 not be restored. The parties may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals

⁴ The Individual had not submitted sufficient evidence at the Hearing to show that the alcohol education classes were the functional equivalent of an IOP.