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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 12, 2021) Case No.: PSH-22-0022
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Issued: April 27, 2022

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (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, 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 not be granted.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In May 2021, the Individual was arrested for Aggravated Driving While Under the Influence of Intoxicating Liquor or Any Drug (DWI) after hitting a car with his vehicle. Ex. 8. Subsequently, the Individual was evaluated by a DOE consultant psychiatrist (Psychiatrist) in August 2021. Ex. 10. The Psychiatrist diagnosed him with Alcohol Use Disorder, Mild, in early remission. *Id.* at 9. The Psychiatrist also determined that the Individual had not demonstrated adequate evidence of rehabilitation or reformation. *Id.*

Due to unresolved security concerns related to the Individual’s alcohol use, the Local Security Office (LSO) informed the Individual in a Notification Letter that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. In the Summary of Security Concerns attached 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 12 numbered exhibits (Exhibits 1-12) into the record and presented the testimony of the Psychiatrist. The Individual introduced six lettered exhibits (Exhibits A-F) into the record and presented his own testimony as well as the testimony of his mother. 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).

An 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). An 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 Summary of Security Concerns cites security concerns under Guideline G of the Adjudicative Guidelines. Ex. 1. 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.” Adjudicative Guidelines at ¶ 21.

In citing Guideline G, the LSO relied upon the Psychiatrist’s determination that the Individual met the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), criteria for Alcohol Use Disorder, Mild, in Early Remission, without adequate evidence of rehabilitation or reformation. Ex. 1. It additionally cited the May 2021 DWI and violation for Immediate Notice of

an Accident.² *Id.* Lastly, the LSO cited a February 2021 incident in which the Individual's girlfriend contacted law enforcement and claimed that the Individual slapped her while he was intoxicated. *Id.*

IV. Findings of Fact

As stated above, due to unresolved security concerns, the Individual underwent an evaluation with the Psychiatrist in August 2021. Ex. 10. The Psychiatrist's report (Report) noted that the Individual asserted that he had not consumed any alcohol until he turned 21 in late 2020. *Id.* at 2. The Individual estimated that, after his birthday, he consumed alcohol "about every three months or so, consuming about four beers on special occasions." *Id.* He claimed that he became intoxicated "maybe one time" and was "careful not to ever drink and drive." *Id.* at 3.

According to the Report, in early February 2021, law enforcement responded to a domestic dispute call at a hotel. *Id.* When law enforcement arrived, the Individual's girlfriend (Girlfriend) claimed that, after spending time in the hotel bar, the couple returned to their room where they argued. *Id.* The Girlfriend asserted that the Individual subsequently slapped her in the face and left the room. *Id.* She stated that she unsuccessfully attempted to stop the Individual as he was intoxicated. *Id.* The Report noted that the Girlfriend did not press charges as she "did not want to harm [the Individual's]...career."³ *Id.* During the evaluation, the Individual reported that he did not "remember [the incident] at all." *Id.*

Turning to the day of the DWI, the Individual told the Psychiatrist that he began consuming alcohol at approximately 2:30 p.m. when he drank one beer with lunch. *Id.* at 3-4. He told the Psychiatrist that he continued to consume alcohol and estimated that he drank approximately five beers and one shot. *Id.* at 4. After having an argument with the Girlfriend at her house, the Girlfriend and her friend (Friend) decided to take a ride in the Friend's car. *Id.* The Individual then went to leave in his car and bumped the Friend's car as the women were planning to leave the Girlfriend's house.⁴ *Id.* The Individual testified that the Friend called the police, and he left the scene of the accident to wait for law enforcement to arrive as the Friend became violent. *Id.* When the police officers

² Although it is not explained in the Summary of Security concerns, examination of the record reveals that this is a charge for a hit and run. *See* Ex. 12 at 95.

³ During the hearing, the Psychiatrist stated that he obtained this information regarding the domestic incident from the Individual's personnel security file. Tr. at 77. The account of the incident at the hotel as detailed in the Report is supported by the Office of Personnel Management Investigation Services (OPM) report, which is part of the Individual's personnel security file and was submitted by DOE as an exhibit in this case. *See* Ex. 12 at 62. The OPM report indicates that the information regarding the incident was obtained from law enforcement records which are not part of the record in this case. *Id.*

⁴ There is some dispute in the record as to the circumstances of the accident. The Individual testified that he bumped the Friend's car by accident. However, according to the Psychiatrist, the police report, which is summarized in the OPM report, indicated that the Friend asserted that the Individual told her that he was going to deliberately hit her car. Ex. 10 at 4; *see* Ex. 12 at 90.

arrived, they administered field sobriety tests, which the Individual failed. *Id.* His blood alcohol concentration (BAC) was measured at .17.⁵

The Psychiatrist stated in his Report that, following the DWI arrest, the Individual was released on bond, and his conditions of release included abstinence from alcohol for a period of 90 days. *Id.*; Ex. 6. The Psychiatrist noted that, during the evaluation, the Individual stated he was aware of these conditions of his release pursuant to a 90-day probation order. Ex. 10 at 5. The Individual told the Psychiatrist that he was not enrolled in any alcohol treatment program and had never participated in Alcoholics Anonymous (AA) or any other substance abuse treatment or counseling. *Id.* The Individual reported that he had last consumed alcohol on May 11, 2021, approximately four months prior to the evaluation, and when asked about his future intentions regarding alcohol, the Individual stated, “maybe later on, but be [smarter] about it.” *Id.*

As part of the evaluation, the Psychiatrist ordered a Phosphatidylethanol (PEth) test, which measured the Individual’s PEth at 28 ng/mL, “mak[ing] it medically certain that [the Individual] ha[d] been drinking within the...21-28 days” prior to the test. *Id.* at 6. The Psychiatrist also ordered an Ethyl Glucuronide (EtG) test, which was negative, indicating that the Individual had not consumed alcohol in the three days prior to the evaluation. *Id.* The Psychiatrist noted that, given that the Individual had not consumed alcohol in the three days prior to the evaluation, the PEth test revealed that he “had been drinking on one or more occasions during the month of August,” which was inconsistent with the Individual’s reported consumption and a violation of his conditions of release. *Id.*

Ultimately, the Psychiatrist diagnosed the Individual with Alcohol Use Disorder, Mild, in early remission. *Id.* at 9. The Psychiatrist concluded that the Individual did not show adequate evidence of rehabilitation or reformation, and to demonstrate sufficient evidence, the Individual would first need to complete any court-ordered treatment. *Id.* He additionally recommended that the Individual enter a voluntary outpatient treatment program of moderate intensity, such as AA at least once per week, and individual alcohol counseling. *Id.* The Psychiatrist recommended that the treatment program include the maintenance of sobriety “for one year from his last drink in order to provide adequate evidence of rehabilitation or reformation.” *Id.*

At the hearing, the Individual’s mother (Mother) testified on his behalf. Tr. at 11. The Mother stated that she did not believe that the Individual consumed too much alcohol or had ever had a problem with alcohol. *Id.* She indicated that the last time she saw the Individual consume alcohol was approximately three weeks prior to the hearing when he consumed three beers at a barbeque. *Id.* at 12.

The Individual testified on his own behalf. The Individual corroborated the Mother’s testimony, stating that he last consumed alcohol at a barbeque approximately three weeks prior to the hearing when he consumed three beers over the span of four to five hours. *Id.* at 21. He further testified that, prior to the barbeque, he consumed one beer on New Year’s Eve 2021. *Id.* at 22. When asked about his future intentions regarding alcohol consumption, he stated, “as of right now, I’d say, ... having a drink here and there would be okay, but...I don’t know. I really don’t know.” *Id.* at 55.

⁵ The Psychiatrist noted that, had the Individual consumed the six drinks he reported drinking that day, his BAC would have been approximately .010. Ex. 10 at 4. This indicates that the individual drank significantly more than he reported.

The Individual did not dispute that he was intoxicated when he was arrested for DWI, but he maintained that he did not recall the incident in which the Girlfriend alleged that he had slapped her while he was intoxicated. *Id.* at 47-48. The Individual initially stated that the first time he heard of this incident was when the Psychiatrist asked him about it during the August 2021 evaluation. *Id.* at 48. The Individual, however, clarified this statement, saying that the first time he heard about the incident was in May 2021 when his background investigator inquired as to what had occurred in the hotel. *Id.* at 51. He attributed his lack of knowledge of the incident to the Girlfriend falsely reporting it to law enforcement to harm his career.⁶ *Id.* at 50.

In turning to the steps he has taken to mitigate the Guideline G security concerns, the Individual explained that he completed a three-day “DWI school,” which “talked about issues with drinking” and provided information about alcohol consumption.⁷ *Id.* at 23-24. The Individual also stated that the DWI school included a group session where people were “getting feedback off of each other.” *Id.* at 24. The Individual testified that he also completed an alcohol education program through his employer’s Employee Assistance Program (EAP) in July 2021. *Id.* at 25; Ex. B. He explained that this was a six-week long program that provided “feedback about alcohol.” Tr. at 25-26. The Individual stated that, throughout the program, he remained abstinent from alcohol, per the recommendation, and was required to undergo random alcohol testing. *Id.* at 26.

The Individual also testified that he completed a 12-week intensive outpatient treatment (IOP) in February 2022. *Id.* at 28. He stated that the program entailed two classes per week as well as one individual therapy session once per week. *Id.* at 28-29. The Individual noted that the program never recommended that the participants remain abstinent from alcohol through its completion, and one of his treatment goals was to limit his alcohol consumption when he chose to drink it so as not to engage in binge drinking. *Id.* at 30-31. He stated that, in the IOP, he determined that he could engage in moderate consumption of alcohol as he now had the knowledge to avoid problematic consumption. *Id.* at 36, 38. The Individual explained that the IOP was “sort of like AA,” but “mostly what this class would talk about is alternatives to having an urge” for alcohol.⁸ *Id.* at 33.

Turning to the Psychiatrist’s Report, the Individual stated that he had first read the Report the week prior to the hearing.⁹ *Id.* at 40. The Individual stated that he believed that the Psychiatrist’s recommendations were correct based on the initial evaluation. *Id.* When asked about the Psychiatrist’s recommendation to abstain from alcohol for a period of one year, he stated, “if it’s going to benefit my job, then yes, I will do it.” *Id.* at 42. Turning to the positive PEth test result, the Individual stated that his report to the Psychiatrist was not entirely accurate as he likely

⁶ It should be noted that, according to the summary of the police report contained in the OPM report, the Girlfriend told law enforcement that she did not want to press charges as she did not want to harm his career. Ex. 10 at 3. Further, she did not disclose this incident when she was questioned by the background investigator. *See* Ex. 12 at 68.

⁷ The DWI School Compliance Report indicates that the Individual completed the class in September 2021. Ex. A.

⁸ The Individual clarified that he did not participate in any AA meetings. Tr. at 39.

⁹ The Individual claimed he did not find the Report in his email inbox until a week prior to the hearing; however, the Report was transmitted to the Individual with the Notification Letter and Summary of Security Concerns in October 2021. Ex. 1.

consumed “a beer or two” approximately 23 days before the PEth test. *Id.* at 57. He stated that he did not disclose this information to the Psychiatrist because he was scared. *Id.* at 58

The Psychiatrist, after observing the hearing and listening to the testimony offered by the Individual, confirmed his initial diagnosis of Alcohol Use Disorder, Mild, in early remission, and stated that nothing he heard during the hearing would change his diagnosis. *Id.* at 77, 84. The Psychiatrist explained that this diagnosis was the result of three “serious alcohol related problems”: (1) the domestic violence incident at the hotel,¹⁰ (2) the aggravated DWI,¹¹ and (3) the consumption of alcohol contrary to the prohibitions of his conditions of release.¹² *Id.* at 82, 84, 86.

Addressing the Individual’s consumption of alcohol in violation of his conditions of release, the Psychiatrist noted that the conditions of release were in place at the time of the Individual’s positive PEth test. *Id.* at 87. As such, the PEth test “gave medically certain evidence that [the Individual] was drinking during his conditions of release.” *Id.* Furthermore, the Psychiatrist explained that, had the Individual consumed “a beer or two” approximately 23 days before the PEth test, as he reported in his testimony, the Individual would not have tested positive for alcohol at a level of 28 ng/mL as PEth molecules would have been eliminated from his system. *Id.* at 89. The Psychiatrist characterized this reported consumption to be a “significant underestimation.” *Id.* at 90. Ultimately, the Psychiatrist testified that, at the time of the hearing, the Individual had still not demonstrated adequate evidence of rehabilitation or reformation as, first and foremost, the Individual had not remained abstinent from alcohol for a period of one year as the Psychiatrist had recommended. *Id.* at 95.

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 not sufficiently mitigated the security concerns noted by the LSO regarding Guideline G. I cannot find that granting 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 not be granted. The specific findings that I make in support of this Decision are discussed below.

A diagnosis of alcohol use disorder by a duly qualified medical or mental health professional, including a psychiatrist, is a condition that could raise a security concern and may disqualify an

¹⁰ The Psychiatrist testified that, based upon the credible details contained in the Girlfriend’s report of the incident, as documented in the police report, he believed the domestic violence did occur despite the Individual asserting that he could not remember it. Tr. at 78. The Psychiatrist opined that the Individual was either “just denying it” or he truly could not remember due to an alcoholic blackout. *Id.* at 80-81.

¹¹ The Psychiatrist noted that this was the second alcohol-related incident that involved a “problem” with another person. Tr. at 86.

¹² The Psychiatrist expressed particular concern that each of these incidents occurred within seven months of the Individual consuming alcohol for the first time. Tr. at 82.

individual from holding a security clearance. Adjudicative Guidelines at ¶ 22(d). An Individual's failure to follow treatment advice once he is diagnosed, or the consumption of alcohol which is not in accordance with a treatment recommendation, after a diagnosis of alcohol use disorder, may disqualify and individual from holding a clearance. *Id.* at ¶ 22(e), (f). Additionally, alcohol-related incidents away from work or the failure to follow any court order regarding abstinence could raise a disqualifying security concern. *Id.* at ¶ 22(a), (g). If 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, an individual may be able to mitigate the security concern. *Id.* at ¶ 23(b). Furthermore, if so much time has passed, or the behavior was so infrequent, or it occurred under such circumstances that it is unlikely to recur or does not cast doubt on an individual's current reliability, trustworthiness, or judgment, an individual may be able to mitigate the security concern. *Id.* at ¶ 23(a).

In this case, the Psychiatrist diagnosed the Individual with Alcohol Use Disorder, Mild, in early remission after the Individual was arrested and charged with aggravated DWI and accused by the Girlfriend of engaging in domestic violence while intoxicated. Although the Individual has undergone treatment in the form of the EAP class and an IOP, he has not committed to any extended period of abstinence from alcohol as was recommended by the Psychiatrist. As such he has failed to demonstrate an established pattern of abstinence in accordance with treatment recommendations. *See id.* at ¶ 23(b). Additionally, the Individual failed to abide by the prohibition on the consumption of alcohol contained within his conditions of release. *See id.* at ¶ 22(g).

I do not find that the Individual's concerning behaviors surrounding his alcohol consumption occurred under such circumstances that they are unlikely to recur or do not cast doubt on his current reliability, trustworthiness, or judgment. *Id.* at ¶ 23 (a). The Individual has been at the very least repeatedly unreliable, and at worst dishonest, throughout the personnel security process. The Individual's retelling of events on the night of the DWI does not match the version contained in the police report, and his reported alcohol consumption on that night is not accurate based upon his BAC at the time of his arrest. The Individual misrepresented his alcohol consumption leading up to the PEth test, both in the psychiatric evaluation as well as in his hearing testimony. Furthermore, the Individual claims not to recall the incident of domestic violence at the hotel, asserting instead that the Girlfriend falsely reported it in order to harm his career, an assertion that is not in line with the evidence in the record.

Of particular concern, however, is, as the Psychiatrist described it, the Individual's "problems" with other people when he is consuming alcohol. The Individual's developing pattern of behavior is a propensity to engage in violence when he has been consuming alcohol. Aside from the incident the Girlfriend alleged, which I believe occurred as she described it, the Friend alleged that the Individual threatened to hit her car with his car and then proceeded to carry out this threat. Because these incidents stem from the Individual's excessive alcohol consumption, which remains an unmitigated security concern, I cannot find that these actions are unlikely to recur or that they do not cast doubt on the Individual's current reliability, trustworthiness, or judgment. As such, find that the Individual has not mitigated the Guideline G security concerns.

VI. Conclusion

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 have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline G. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I have determined that the Individual's access authorization should not be granted. 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