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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 17, 2021) Case No.: PSH-22-0033
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Issued: May 16, 2022

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 Individual is employed by a DOE contractor in a position that requires possession of a security clearance. The DOE Local Security Office (LSO) discovered information regarding the Individual’s alcohol-use-related arrest, which prompted the LSO to request that the Individual be evaluated by a DOE-consultant psychologist (“Psychologist”). Afterward, 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 (SSC), the LSO explained that the derogatory information raised security concerns 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 Administrative Judge in this matter, and I subsequently conducted an administrative review

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.

hearing. *See* Transcript of Hearing (Tr.). At the hearing, the Individual presented the testimony of one witness and testified on his own behalf. The LSO presented the testimony of the Psychologist. The Individual submitted seven exhibits, marked Exhibits A through G. The LSO submitted twelve exhibits, marked Exhibits 1 through 12.²

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 at 5. 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 . . . spouse abuse," "[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). The SSC cited the following information:

1. [In June 2021, the Psychologist] evaluated [the Individual]. In her report dated July 2, 2021, [the Psychologist] concluded that [the Individual] engages in the heavy consumption of alcohol, either by bingeing or drinking significant amounts of alcohol on a frequent basis (habitually) and such consumption would impair his judgment, reliability and trustworthiness. [The Psychologist] further concluded that [the Individual] met the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) criteria for Unspecified Alcohol-Related Disorder [AUD], without adequate evidence of rehabilitation or reformation.
2. [In May 2020, local authorities] arrested and charged [the Individual] with Aggravated Battery Against a Household Member (no great bodily harm). He admitted to consuming six beers prior to his arrest.

Ex. 1 at 5.

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 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

² The LSO's exhibits were combined and submitted in a single, 555-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.

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 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

In May 2020, the Individual disclosed to the LSO that he had been arrested and charged with aggravated battery against a household member after an argument with his wife that involved physical contact. Ex. 6 at 22. In the attached police report, both the Individual and his wife accused the other of being the initial aggressor, and they provided conflicting statements regarding whether the Individual strangled his wife during the altercation. *Id.* at 23.

During the 2021 Psychologist’s evaluation of the Individual, the Individual provided more detail about the above incident. He stated he had “reacted by defending” himself from his wife’s increasing physicality. Ex. 9 at 54. He also admitted to consuming six beers in the two hours leading up to the altercation and displaying “extremely poor and regrettable judgment.” *Id.* The Individual reported that the charges were eventually dropped, and the case was dismissed that same month. *Id.*

The Individual also reported to the Psychologist that the above incident was preceded by a separate, April 2020 incident where the Individual’s wife called the local police to do a wellness check on the Individual after an argument during which he stated that his wife and kids would be better off without him. *Id.* As a result, he was taken to a hospital for an evaluation. *Id.* He admitted to consuming alcohol at the time of this incident as well. *Id.*

The Individual further stated that he has a history of not knowing “when to shut down” his alcohol consumption. *Id.* at 55. He gave conflicting accounts of his alcohol use, and he described consuming approximately ten beers and several shots a couple of times on weekends in the month immediately preceding the April 2020 incident. *Id.* However, he reported that his more recent alcohol consumption had typically been a couple of beers, two or three times per week and the

weekend. *Id.* He also reported that he was last intoxicated sometime between August and October 2020 after he consumed a half-pint of vodka. *Id.*

After the evaluation, the Individual participated in a Phosphatidylethanol (PEth) test and a Ethyl Glucuronide (EtG) test. *Id.* at 57. Both tests were administered to detect alcohol use. *Id.* The Psychologist reported that the PEth test results were “congruent with significant alcohol consumption” and therefore inconsistent with the Individual’s reported consumption of a couple of beers, two or three times per week. *Id.* at 58. Accordingly, the Psychologist provided the following opinions. First, 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. *Id.* at 59. Second, that the Individual’s alcohol use warranted a diagnosis of Unspecified AUD. *Id.* Third, that the Individual could demonstrate rehabilitation or reformation by remaining abstinent for six months and either (1) attending an Intensive Outpatient Program (IOP) designed to address alcohol use issues and which includes a group component or (2) attending and actively participating in Alcoholics Anonymous (AA) three times a week and working the program’s “12 steps” with a sponsor. *Id.* at 59-60.

The record includes a February 2022 Treatment Plan Review which indicates that the Individual completed an eleven-week IOP that began in August 2021 and ended that November. Ex. A at 2. Afterward, he immediately began a year-long aftercare program. *Id.* at 2-3. According to a letter from the aftercare treatment provider, the program includes weekly group and individual sessions, and the Individual is subjected to random monthly urinalysis. Ex. B at 1. The record includes the results of fifteen EtG tests taken by the Individual between September 2021 and February 2022: all results were negative. Ex. A at 8-11. The record also includes a more recent negative PEth test result dated March 2022. Ex. E at 3.

At the hearing, the Individual testified about the circumstances surrounding the May 2020 arrest and his subsequent recovery efforts. The Individual testified that he and his wife had been dealing with several issues, and he had been using alcohol as a “crutch” to deal with the situation. Tr. at 21. He described a cycle of having arguments and then turning to alcohol consumption. *Id.* at 22. He confirmed that he consumed alcohol before the May incident, and on that date he and his wife had a “heated conversation” that involved “some pushing and shoving and screaming and yelling[.]” *Id.* at 23. As a result, their child ran to a neighbor’s house, and the neighbors called the police. *Id.* at 23-24. The Individual reflected that, at the time, he had not yet addressed the root cause of his relationship troubles, which was “obviously, [his] drinking issue[.]” *Id.* at 24.

In June 2020, the Individual enrolled in a sixteen-week anger management course which taught him “how to deal with situations and coping mechanisms and how not to easily be triggered or let [] emotions get the best of [him].” *Id.* at 24-25. The following year, in March 2021, he attended a marriage counseling course that ended that July. *Id.* at 25-26. He testified that he learned how to deal with marital situations that arose around communication, affection, emotions, and personality differences. *Id.* at 26. He also testified that, all the while, he had continued to consume alcohol because he had believed he could control his consumption. *Id.* at 27.

The Individual testified that, at the time of the June 2021 Psychologist’s evaluation, he had not yet recognized that he had a problem with alcohol consumption. *Id.* He only realized it after he

obtained the Psychologist's report, which he received between late June and early July. *Id.* He testified that the report clearly identified that he had an issue with alcohol that he needed to address, and he made the decision to enroll in the IOP. *Id.* at 28-29. He then stopped consuming alcohol in August 2021 because he wanted to start the IOP with "a clean slate[.]" *Id.* at 29-30.

The Individual testified that the IOP was his first experience with alcohol treatment. *Id.* at 46. During the first weeks of the program, he realized the severity of his situation and decided to make a life change for himself and his family. *Id.* at 31. He completed the IOP in November 2021, and then immediately transitioned to an aftercare program to continue treatment. *Id.* at 33. There, he learned additional coping techniques for daily life situations in a group setting with peer accountability. *Id.* at 34. He also testified that he had been attending some online AA classes and was attempting to find the right AA sponsor for his recovery. *Id.*

In addition, he testified that he had been working with a counselor every other week to dig deeper into the issues that caused him to turn to alcohol. *Id.* at 38. He had also been participating in a two-year abstinence and recovery program through his employer, which included random alcohol testing. *Id.* at 41. He expressed his intention to continue his treatment and AA. *Id.* at 40. He testified that his initial cravings for alcohol were no longer present—even when around others who may be consuming alcohol. *Id.* at 36. He credited his success to his work in treatment setting boundaries around events that are typically associated with alcohol consumption. *Id.* He described telling his friends and neighbors about his abstinence in order to garner their support and understanding. *Id.* at 45. He testified that he and his wife had a better relationship, and she had stopped consuming alcohol to support his recovery. *Id.* at 37. He testified that he had "231 days sober and counting," *id.* at 43, and he intended to continue "to stay safe and stay sober[.]" *Id.* at 37. He described his progress as a "huge accomplishment" for himself and his family. *Id.* at 48.

The Psychologist testified that she initially recommended six months of abstinence because "anyone who is trying to change a pattern of drinking needs to have a period of abstinence." *Id.* at 53. She opined that the Individual's intent to remain abstinent indefinitely is "a very positive, healthy step for him." *Id.* She noted as positive factors that the Individual quickly enrolled in the IOP once he learned of her recommendations; he sought out anger management and marriage counseling on his own initiative, which she viewed as an important piece of his recovery; he communicated with friends and his wife to obtain their support and provide accountability; and he had remained abstinent for more than the recommended six months. *Id.* at 55-57. She also noted that he displayed insight into the cause of his alcohol consumption and continued to increase his understanding. *Id.* at 56. Consequently, she opined that he had demonstrated reformation and rehabilitation by following her recommendations and that his prognosis was very good. *Id.* at 57, 59.

V. ANALYSIS

A. Guideline G Considerations

Conditions that can mitigate security concerns based on alcohol consumption include the following:

- (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[.]

Adjudicative Guidelines at ¶ 23.

The Individual brought forth sufficient evidence to apply ¶ 23(b) and ¶ 23(c) to resolve the Guideline G security concerns. Because I rely upon much of the same evidence in applying both mitigating factors, my following analysis addresses them together. First, there is ample evidence that the Individual acknowledged his pattern of maladaptive alcohol use. His testimony demonstrates that he understood his alcohol use was a problem, and he set out to address it after realizing the severity. He also identified the causal relationship between his pattern of consumption and the two serious precipitating incidents that required law enforcement intervention, and he expressed regret for his behavior.

Second, the Individual put forth evidence of the actions that he has taken to overcome the problem: he stopped consuming alcohol; he enlisted the continuing support of his wife; he successfully completed the IOP, an anger management course, and a marriage counseling course; he is currently participating in individual counseling, an aftercare treatment program, and his employer's two-year abstinence and recovery program; and he continues to maintain his sobriety. Thus, the record establishes that he is currently participating in both counseling and a treatment program. Furthermore, the record establishes that the IOP was the Individual's first alcohol-related treatment, and he has no history of relapse.

Finally, the Individual demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations. First, he demonstrated that he has abstained from alcohol for a period that exceeded the Psychologist's recommendation. Second, the Psychologist opined that the Individual had met all of her treatment recommendations and reformed and rehabilitated his AUD, and I conclude the Individual is making satisfactory progress in his counseling and treatment programs. In reaching my conclusion, I favorably considered the Individual's candor, and I adopt the Psychologist's opinion that the Individual has a very good prognosis. Accordingly, I find 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 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 SSC. Accordingly, I have determined that the Individual's access authorization should be restored.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

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