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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: May 26, 2022) Case No.: PSH-22-0091
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Issued: August 25, 2022

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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

On October 18, 2021, the Individual’s employer, a DOE Contractor, administered a breath alcohol test (BAT) to the Individual that indicated his breath alcohol content was .112 G/210L. Ex. 6 at 1-4. Over 20 years earlier, on August 15, 2001, the Individual had offered his resignation in lieu of termination, after an employer had detected alcohol on his breath. Ex. 11 at 5-7, 29-30. The Individual also has a history of two alcohol-related arrests as a minor on December 2, 1999, and on December 18, 1998. Ex. 10 at 7.

Because of the security concerns raised by the Individual’s positive BAT, and his history of an alcohol-related resignation and two alcohol-related arrests, a local security office (LSO) issued a letter of interrogatory to the Individual on November 2, 2021. Ex. 7 at 1. In his November 9, 2021, response to the LOI, the Individual indicated that he had no excuse for arriving to work under the influence of alcohol and that he had made a “bad decision.” Ex. 7 at 3, 13. The Individual also indicated that he was currently receiving counseling from his Employee Assistance Program (EAP), receiving individual counseling from a private counselor, and being evaluated by

¹ Under the regulations, “[a]ccess authorization means 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 also be referred to in this Decision as a security clearance.

his employer's Occupational Medicine Department (OMD). Ex.7 at 4, 8-10. The Individual stated that he did not believe that he had a problem with alcohol, however. Ex. 7 at 7.

Because the security concerns raised by the Individual's positive BAT, alcohol-related resignation, and two alcohol-related arrests were not resolved by the Individual's LOI response, the LSO requested that he undergo an evaluation by a DOE-contractor Psychologist (Psychologist), who conducted a clinical interview (CI) of the Individual on January 7, 2022. Ex. 8 at 1. In addition to interviewing the Individual, the Psychologist reviewed the Individual's medical records and security file, and contacted a psychologist employed by the OMD (the OMD Psychologist) who indicated that the Individual had been participating in the OMD's alcohol awareness and education group (Group One) led by a licensed Professional Clinical Counselor (LPCC).² Ex. 8 at 6. The Psychologist also contacted the LPCC who indicated that the Individual had completed Group One and was participating in a six-week group recovery program (Group Two) that she was leading. Ex. 8 at 6. The LPCC further reported that the Individual was also attending a 12-week sobriety maintenance group (Group Three) that she was leading. Ex. 8 at 6.

The Psychologist issued a report of her findings (the Report) on January 17, 2021. Ex. 8 at 9. In the Report, she found that the Individual had met the criteria for Alcohol Use Disorder, Severe (AUD) set forth in the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5) and that the Individual was in Early Remission. Ex. 8 at 8. She further opined that the Individual was neither reformed nor rehabilitated. Ex. 8 at 9. The Psychologist recommended that the Individual continue abstaining from alcohol use and receiving Individual and group counseling for 12 months. Ex. 8 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 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 the Individual, his mother, his wife, the LPCC, his strength and fitness trainer (the Trainer), his manager, a coworker, and the Psychologist. *See* Transcript of Hearing, Case No. PSH-22-0091 (hereinafter cited as "Tr."). The Individual submitted nine exhibits marked as Exhibits A through I. The DOE Counsel submitted 12 exhibits marked as Exhibits 1 through 12.

Exhibit A is a summary providing the expected testimony of each of the witnesses that the Individual was proposing to present at the hearing.

Exhibit B consists of a letter from the Individual's employer suspending him because of the positive BAT, and a second letter offering him a new position with his employer, contingent on him regaining his security clearance. Ex. B at 3.

² The Psychologist also administered the Minnesota Multiphasic Personality Inventory-Third Edition (MMPI-3) to the Individual, and had him undergo a Phosphatidylethanol (PEth) laboratory test that detects alcohol consumption during the previous 28 days. Ex. 8 at 2. The Individual's PEth test result was negative, indicating that the Individual had not engaged in moderate to heavy alcohol consumption during the three to four weeks prior to January 7, 2022, the date on which the sample was collected. Ex. 8 at 7.

Exhibit C is a list of the EAP activities the Individual has engaged in from October 21, 2021, to July 20, 2022, and a Certificate of Completion for Group One.

Ex. D is a letter dated June 30, 2022, from a Licensed Mental Health Counselor (LMHC), addressed To Whom It May Concern. The letter indicates that the LMHC has been providing the Individual with individual counseling since October 26, 2021. Ex. D at 1. The LMHC further states:

During the past eight months, [the Individual] has been an active and willing participant in his therapeutic process. He is consistently in communication with administrative staff regarding appointments and is actively engaged in sessions. While [the Individual] has few emotional triggers for alcohol abuse, he experiences many issues relating to physical pain and limitations that have been the focus of our therapeutic interventions. [The Individual] has shown a marked desire to continue developing the mindfulness necessary to be honest with himself about his strengths and weaknesses. He also exhibits a positive attitude in developing strategies and a support network of family and peers to better facilitate his success in sobriety and in life. Though in the past it has been difficult for [the Individual] to ask for help or admit that he needs it, he has made great strides in his willingness to identify resources and accept help when he needs it, or to offer help to others when he sees them struggling. The inherent integrity of this client has been his greatest asset in coming to terms with his situation, with accepting responsibility for the consequences, and for moving forward in positivity. At this time I have no concerns regarding [the Individual's] commitment to sober living and to being a positive member of the workplace team.

Ex. D at 1.

Exhibit E is a character reference from the Trainer, noting that the Individual had worked hard to lose 42 pounds.

Exhibit F is a note, dated July 20, 2022, from the Individual's physician indicating that the Individual "has made some very positive lifestyle changes over the past several months" that have resulted in "a significant amount of weight loss, improvement of his liver function test, cholesterol panel and A1C." Ex. F at 1.

Exhibit G is a series of laboratory test results indicating that the Individual underwent PEth testing on July 12, 2022; June 13, 2022; May 20, 2022; April 19, 2022; March 15, 2022; February 10, 2022; and January 4, 2022. Ex. G at 1-8. With one exception, a positive PEth test taken on November 22, 2021, shortly after the positive BAT ,each of these test results were negative. Ex. G at 9.

Exhibit H is a series of laboratory test results indicating that the Individual underwent Breath Alcohol testing on July 19, 2022; July 12, 2022; July 6, 2022; June 27, 2022; June 8, 2022; June 2, 2022; May 23, 2022; May 4, 2022; April 28, 2022; April 25, 2022; April 12, 2022; April 4, 2022; March 28, 2022; March 16, 2022; March 3, 2022; February 22, 2022; February 18, 2022;

February 9, 2022; February 1, 2022; January 27, 2022; January 18, 2022; January 13, 2022; and January 3, 2022. Ex. H at 1-24. Each of these test results were negative.

Exhibit I is a series of written character references.

II. The Summary of Security Concerns (SSC)

The SSC informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines, citing the Psychologist's finding that the Individual met the DSM-5 criteria for AUD, his history of an alcohol-related resignation, and his two alcohol-related arrests. This information adequately justifies the LSO's invocation of Guideline G. Under Guideline G, "[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 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," "alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder" and "diagnosis by a duly qualified . . . clinical psychologist . . . of alcohol use disorder." Adjudicative Guidelines at ¶ 22(a), (b), 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

In order to mitigate the security concerns raised by his two alcohol-related arrests, his alcohol-related resignation, and his AUD, the Individual presented the testimony of seven witnesses, including himself, at the hearing, in order to show that he was reformed and rehabilitated from his AUD.

The Individual's mother testified at the hearing that, after the positive BAT, the Individual stopped drinking, enrolled in individual and group counseling, and began talking with his father, a recovering alcoholic, about his alcohol issues and recovery. Tr. at 15-16. She believes that the Individual "is determined to succeed in recovery," does not intend to use alcohol in the future, and is intent on focusing on "his job, his marriage, and his daughter." Tr. at 17-18. The Individual's mother believes that he considers himself to be an "alcoholic." Tr. at 20. She testified that her son has lost weight, feels better, and is "more clear-headed." Tr. at 16.

The LPCC testified at the hearing that she first met the Individual when he began attending Group One, which primarily focused on alcohol education and awareness.³ Tr. at 24-25. The LPCC reported that the Individual then began attending Group Three,⁴ which focuses on attaining and maintaining sobriety. Tr. at 25-27. The LPCC reported that the Individual has been an active participant in both groups and has learned how to reach out for help. Tr. at 28, 30. She believes that the Individual now: wants to "remain abstinent long-term," realizes he was "self-medicating," recognizes that he has an alcohol problem, and intends to avoid using alcohol. Tr. at 30, 33.

The Individual's manager testified at the hearing that he has known the Individual since 2015 and has regularly interacted with him at work during the years since then. Tr. at 38-39. The manager has noticed a significant improvement in the Individual's physical fitness since the positive BAT. Tr. at 43. The manager believes that the Individual recognized that he had a problem and that he needed to get help for it. Tr. at 44. He further reported that the Individual reached out to the EAP to get this help. Tr. at 44. The manager believes that the Individual has worked hard to "maintain abstinence from alcohol." Tr. at 44.

The Trainer testified at the hearing that he has seen a significant change in the Individual in the previous few months. Tr. at 55-57. His testimony further indicated that he is part of the Individual's support network.

The Individual's coworker testified at the hearing that he had known the Individual for 20 years. Tr. at 62. The coworker testified that the Individual had lost "quite a bit of weight" and had informed him that he was receiving counseling and having blood and breath tests to monitor him for alcohol use. Tr. at 64. He believes that the Individual's attitude has also changed. Tr. at 65. He reported that the Individual told him that he has not used any alcohol since the positive BAT. Tr. at 65. The coworker also testified that he believes that the Individual is honest and will keep his word. Tr. at 66.

³ The LPCC testified that Group One began on October 21, 2021, and ended on December 16, 2021. Tr. at 24-25.

⁴ The LPCC did not discuss Group Two in her testimony, even though she had earlier reported that the Individual had attended that group during her initial discussion with the Psychologist.

The Individual's wife testified at the hearing that she has known the Individual for 33 years and has been married to him since 2003. Tr. at 69-70. She testified that the positive BAT shocked her because she had not previously had any concerns about the Individual's alcohol use. Tr. at 70. She reported that the Individual exercises, attends counseling with the EAP and with a private counselor, and works harder to communicate with others as a result of the positive BAT. Tr. at 73, 75. She testified that the Individual has not used alcohol since October 17, 2021, and plans to abstain from using alcohol for the rest of his life. Tr. at 79.

The Individual testified, "alcohol had basically taken ahold of me, and . . . I couldn't control it anymore." Tr. at 110. He further testified that his alcohol consumption increased after his Human Reliability Program certificate was suspended for physical fitness issues, and that he was using alcohol to address significant physical pain. Tr. at 97-100. He reported that abstaining from alcohol use has helped him feel better physically. Tr. at 100, 118. He believes that he had been hiding from his problems instead of confronting them and he has learned to reach out for help when he is confronted with problems he cannot solve by himself, instead of being "a tough guy." Tr. at 101-102. He testified that he last used alcohol on October 17, 2021. Tr. at 104, 125. The Individual reported that he has spent the previous ten months in counseling and therapy. Tr. at 131. He testified that at the OMD Psychologist's advice, he contacted the EAP, began working with an individual counselor, and began getting monthly PEth tests. Tr. at 105-107. He reported attending and completing Group One. Tr. at 108. The Individual testified that he has been meeting regularly and frequently with his father, a recovered alcoholic who has been sober for over 20 years. Tr. at 110-111. The Individual believes that his ability to understand that he has a problem and ask his father for help with it has been "huge." Tr. at 111. The Individual believes that he has a problem with alcohol and plans to permanently abstain from its use. Tr. at 123. He testified that he remembers how he felt after the positive BAT, stating that he "never want[s] to go back there." Tr. at 115. According to the Individual, "everything is more manageable, now that I am not drinking anymore." Tr. at 118. He testified that he does not have cravings for alcohol. Tr. at 118.

The Psychologist observed the testimony of the Individual's witnesses before testifying at the hearing. The Psychologist testified that she had diagnosed the Individual with AUD, Severe, in early remission. Tr. at 135. She opined that she had "a lot of respect" for the groups conducted by the LPCC "and their efficacy." Tr. at 136. The Psychologist was positively impressed by the Individual's commitment, and by the steps the Individual was taking to address his AUD, which included meditation, as well as group and individual counseling. Tr. at 137. She further believed that the support the Individual was receiving from his father was very important. Tr. at 137. The Psychologist also opined that the Individual's physical fitness improvements are an important factor in his recovery, since the physical pain he had been enduring was one of his triggers for alcohol consumption. Tr. at 137. The Psychologist noted that the Individual has abstained from alcohol use for ten months, almost enough to qualify as full remission under the DSM-5, and opined that this period of abstinence was sufficient for her to conclude that the Individual's prognosis is "very good to excellent." Tr. at 138-139.

V. Analysis

The evidence in the record has convinced me that the Individual is fully committed to addressing his AUD and maintaining his sobriety, and has been successful in doing so. The record shows that the Individual has fully complied with the Psychologist's treatment recommendations. He has

attended individual and group counseling for ten months and has developed a strong support network which includes his family, especially his father, his fellow attendees of his counseling group, and the staff and fellow attendees of his gym. Especially important is the evidence in the record indicating that the Individual has been able to abstain from alcohol use for the past ten months, including the results of his PEth and breath tests, and his own testimony which I found to be credible.

The Adjudicative Guidelines set forth four factors that may mitigate security concerns under Guideline G, two of which are present in the instant case. Specifically, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G 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 . . . abstinence in accordance with treatment recommendations.” Adjudicative Guidelines at ¶ 23(b). In the present case, the Individual has acknowledged his pattern of maladaptive alcohol use and has taken the appropriate steps to overcome his AUD. Moreover, for the reasons discussed above, he has also demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations.

The Adjudicative Guidelines also provide that an individual may mitigate security concerns under Guideline G if “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(c). In the present case, the Individual has no history of treatment and relapse, and has been participating in group and individual counseling programs. The LPCC and Psychologist have both convincingly testified that he has made satisfactory progress. The Individual’s ability to abstain from using alcohol for ten months is further evidence of his satisfactory progress.

I therefore find that the security concerns raised by the Individual’s AUD diagnosis, his two alcohol-related arrests, and his alcohol-related resignation under Guideline G have been resolved by the evidence in the record showing that he has been reformed and rehabilitated.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G. After considering all the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has mitigated the security concerns raised under Guideline G. 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, 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.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals