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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-22-0094
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Issued: September 21, 2022

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, as 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 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 completing a Questionnaire for National Security Positions (QNSP) in January 2020, the Individual disclosed that he was arrested in approximately 2009² and charged with “Drunk in Public.” Exhibit (Ex.) 9 at 38-39. In completing a Letter of Interrogatory (LOI) in January 2022, the Individual disclosed that, in 2019, his wife called law enforcement due to his intoxication. Ex. 6 at 2. He additionally indicated that, since April 2016, he has become intoxicated “two or three times per month,” consuming “4-6 drinks over the span of two or three hours.” *Id.* at 5.

In February 2022, the Individual underwent a psychological evaluation with a DOE consultant psychologist (Psychologist). Ex. 7. The Psychologist opined that the Individual binges alcohol habitually two to four times per month to the point of impaired judgment. *Id.* at 5. She concluded

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.

² Although the Individual indicated in the QNSP that this arrest occurred in 2009, the Individual’s background investigation indicated that the arrest occurred in 2010. *See* Ex. 3.

that, at the time of the evaluation, the Individual had not demonstrated adequate evidence of rehabilitation. *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.

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 10 numbered exhibits (Ex. 1-10) into the record and presented the testimony of the Psychologist. The Individual introduced 11 lettered exhibits (Ex. A-K) into the record and presented his own testimony.³ 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 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

³ The Individual's exhibits consisted of: (A) Statement of Intent regarding alcohol, (B) a document showing that the 2010 charges had been purged, (C) a Declaration of Support from the Individual's wife, (D) four letters of recommendations from colleagues or previous colleagues, (E) a performance appraisal, (F) the Individual's resume, (G) various awards bestowed upon the Individual, (H) the Individual's graduate and post graduate degrees, (I) home and family photos, (J) a professional photo and driver's license, and (K) a May 2022 PEth test. Exs. A-K.

As previously mentioned, the Notification Letter included the Summary of Security Concerns, which set forth the derogatory information that raised concerns about the Individual's eligibility for access authorization. The Summary of Security Concerns specifically cited 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 Psychologist's February 2022 determination that the Individual engages in habitual binge consumption of alcohol to the point of intoxication, without adequate evidence of rehabilitation. Ex. 1. It additionally cited two alcohol-related incidents involving the Individual: (1) the 2019 incident in which the Individual's wife called law enforcement due to his intoxication, and (2) the March 2010 arrest for "Drunk in Public." *Id.* The LSO also cited the January 2022 LOI, in which the Individual disclosed that, since April 2016, he consumed alcohol to the point of intoxication "two to three times a month," *Id.*

IV. Findings of Fact

In January 2022, the Individual completed an LOI at the request of the LSO. Ex. 6. The Individual reported that, in March 2010, he was arrested and charged with "Drunk in Public." *Id.* at 1. He explained that, after consuming "over eight drinks" at a barbeque earlier in the day, he and his girlfriend engaged in a "loud argument" at the girlfriend's apartment. *Id.* As a result, one of the neighbors contacted law enforcement. *Id.* When law enforcement arrived, the officers recommended that the couple separate and "cool down." *Id.* After a few hours, the couple reconciled, and the Individual returned to the girlfriend's apartment. *Id.* When he arrived, the same law enforcement officers were at the apartment, responding to an unrelated incident, and upon seeing the Individual, arrested him for "Drunk in Public." *Id.* The Individual acknowledged that he was intoxicated at the time of the incident. *Id.*

The Individual further disclosed that, in 2019, he and his wife went to dinner with friends, where he likely consumed "in excess of eight" alcoholic beverages. *Id.* at 2-3. When the couple returned home, the Individual wanted to continue to consume alcohol, but his wife objected, as he was loud, and she feared that he would wake their children. *Id.* at 2. His wife threatened to call law enforcement if he did not go to bed. *Id.* The Individual did not go to bed, and therefore, his wife called the police. *Id.* When law enforcement arrived, the officers gave the Individual the option of going to bed or being arrested. *Id.* The Individual chose to go to bed, and the incident did not progress any further. *Id.* at 2-3.

In the LOI, the Individual indicated that he consumed alcohol "anywhere between 4-5 times per month," and at social engagements, he would consume "anywhere from 4-8 beers over the course of an evening." *Id.* at 6. He noted that this pattern of consumption began in approximately April 2016, and after "4-6 drinks over the span of two or three hours," he would become intoxicated. *Id.* The Individual estimated that he became intoxicated two or three times per month. *Id.*

As stated above, due to unresolved security concerns arising from the Individual's alcohol use, the Individual underwent an evaluation with the Psychologist in February 2022. Ex. 7. The

Psychologist noted that, as part of her evaluation, she reviewed the Individual's medical records, which revealed that the Individual's physician advised him, in 2013 and again in 2016, to "decrease his alcohol intake because he tended to binge drink beer on weekends." *Id.* at 2. According to the Psychologist's report (Report), in 2017, the Individual sought counseling due to stress. During the counseling session, the Individual revealed that "he had consumed six to eight servings of alcohol about three days a week over the [previous] three years." *Id.* at 3. The counselor's notes indicated that she "had the impression that [the Individual] had unhealthy alcohol use and advised him to limit his alcohol consumption to no more than 14 servings per week and no more than four servings per day." *Id.* In a follow-up screening, the Individual reported to her that, in 2019, he consumed "eight drinks once a week." *Id.*

During the psychological evaluation, the Individual reported that he did not believe his alcohol consumption to be problematic and noted that he did not spend "an excessive amount of time or money on alcohol." *Id.* at 4. However, the Individual told the Psychologist that he typically consumed six to seven vodka drinks at a frequency of approximately once per week. *Id.* The Individual indicated that he would not consume more than one glass of wine with dinner during the work week, and his "heavy consumption of alcohol was limited to the weekend." *Id.* The Psychologist noted that the Individual reported that his last alcohol consumption was at a child's birthday party, the Friday prior to the evaluation, where he consumed six or seven alcoholic beverages. *Id.*

As part of the evaluation the Individual underwent a phosphatidylethanol (PEth) test, which came back positive at a level of 39 ng/mL. *Id.* at 5. A medical doctor reviewed the results and found that the level was "congruent with significant alcohol consumption," and, the Psychologist noted that the results were consistent with the Individual's "reported drinking behavior, if not a little lower." *Id.* The Psychologist indicated that "drinking to the point of intoxication remains a concern because it can lead to poor judgment, instability, and lack of reliability." *Id.*

Ultimately, the Psychologist concluded that the Individual "binges alcohol habitually two to four times a month" to the point of impaired judgment. *Id.* She further found that the Individual did not demonstrate adequate evidence of rehabilitation and recommended that the Individual "voluntarily reduce his alcohol consumption and limit his drinking to no more than four drinks on any drinking day." *Id.* at 5-6. She advised that the Individual should demonstrate that he can maintain control of his alcohol consumption by providing monthly PEth tests or random urine alcohol tests that showed findings of low levels of alcohol consumption for a least six, but preferably 12 months. *Id.* at 6.

At the hearing, the Individual testified on his own behalf. The Individual did not dispute the allegations contained in the Summary of Security Concerns but sought to establish that he had mitigated the concerns. *See Tr.* at 12-19. The Individual clarified that he believes that the 2019 incident, where his wife called the police, occurred in 2018, and that since that time, he had "drastically reduced [his] alcohol consumption" to perhaps "six drinks over the course of a day...on the high end," one to three times per month *Id.* at 16, 20. The Individual stated that this was the pattern of consumption he reported to the Psychologist. *Id.* at 20. When asked about the discrepancy between the eight alcoholic beverage limit he reported on the LOI and the six alcoholic beverage limit he reported to the Psychologist, the Individual stated that in completing his LOI, he was "being overly conservative" in his estimation because he "didn't want to be incorrect." *Id.* at 32. He also

stated that he does not count how many alcoholic beverages he consumes on any given occasion. *Id.*

The Individual testified, however, that since being evaluated by the Psychologist, his alcohol consumption is “even less.” *Id.* at 20. The Individual stated that, over the course of the summer of 2022, he would consume “four, maybe five” alcoholic beverages at “a few barbecues and pool parties.” *Id.* He estimated this this level of consumption occurred “twice or three times at most, over the past few months,” and he did not become intoxicated. *Id.* at 20-21. However, later in the hearing, the Individual testified that he consumed a maximum of five drinks, one to two times per month, stating that there were two occasions of consumption in June 2022, one occasion in July 2022, and three occasions in August 2022.⁴ *Id.* at 54.

The Individual stated that he received a copy of the Psychologist’s Report and recommendations in approximately May 2022, but he indicated that he “did not catch” her recommendation that he limit himself to four alcoholic beverages per day. *Id.* at 36-37. He explained that he “may have...misread” her recommendations to say, “don’t drink to intoxication and drink responsibly.” *Id.* at 37-38. In order to control his consumption of alcohol, the Individual testified that he consumes “less, or [he does not] drink as quickly as [he] would have a few years ago.” *Id.* at 39. He further noted that he “almost exclusively” consumes alcohol at events where there are children present, and as such, there is a “natural limiting factor,” and he must be “pretty aware.” *Id.* at 39-40.

The Individual testified that he submitted a May 2022 PEth test into the record, which produced a result of 30 ng/mL. *Id.* at 21; Ex. K. The Individual noted that the laboratory report indicated that such a result “show[ed] that [he] was on the lower end of moderate [alcohol] consumption.”⁵ Tr. at 22. When asked about his alcohol consumption leading up to the test, the Individual was unable to recall, and he testified that he did not “keep track of that.” *Id.* at 52. However, he recalled that his son’s birthday party occurred in April, which would have been an event where he would have consumed “beyond just one or two” alcoholic beverages. *Id.* The Individual estimated that he consumed four or five glasses of wine at the party, perhaps six “at the absolute high end.” *Id.* at 53.

In describing how his decreased alcohol consumption has changed his life, the Individual testified that he has “more money...in the bank” because he is not spending as much on alcohol, and he no longer experiences hangovers on the weekends. *Id.* at 49. Regarding his future intentions toward alcohol, he stated that he does not “have any intent to drink to intoxication whatsoever.” *Id.* at 38. However, he noted that, although he did not have the desire to consume more than the four drinks recommended by the Psychologist, he did not know if he would consume past that limit. *Id.* at 47. The Individual indicated that he recognized that if he were to consume alcohol to excess, he would face negative consequences, and “that mindset” helps him to control his alcohol consumption. *Id.* at 41. He stated that he felt that the four-drink maximum was “definitely achievable.” *Id.* at 49.

The Psychologist testified after listening to the Individual’s testimony. She noted her understanding of the Individual’s testimony as stating that he had continued to engage in binge drinking and had

⁴ The Individual clarified that one of the occasions during which he consumed alcohol in August 2022 consisted of him having one beer at a baseball game. Tr. at 55.

⁵ The laboratory report stated that a result of 20-200 ng/mL indicated “moderate alcohol consumption.” Ex. K.

not demonstrated that he had “rehabilitated or otherwise reformed his use of alcohol.” *Id.* at 59. The Psychologist elaborated, stating that, as defined by the National Institutes of Health, binge drinking for men is the consumption of five or more drinks in one sitting, and based upon the Individual’s testimony, she felt that the Individual had been engaging in binge drinking approximately two times per month. *Id.* She testified that the alcohol consumption the Individual described during the hearing was “more than the moderate drinking that [she] was recommending...or low level of drinking having no more than four drinks at any sitting.” *Id.*

Regarding the Individual’s May 2022 PEth test, the Psychologist testified that she emailed the medical doctor who interpreted the February 2022 PEth test to obtain his opinion on the new results. *Id.* at 70. She stated that the medical doctor indicated that, based on a result of 30 ng/mL, the Individual could still have been engaging “in binge drinking and then waited a week...or even waited two weeks until taking the PEth test.” *Id.* Furthermore, the Psychologist noted that, as stated in the recommendations in her Report, she would have liked to review multiple PEth tests. *Id.* at 71.

The Psychologist additionally expressed concern that the Individual does not count the alcoholic beverages that he consumes per sitting, and as such, she indicated that the Individual cannot be certain of how much alcohol he is consuming. *Id.* The Psychologist explained that the “irony of the impairment in judgment that alcohol creates is that once a person is drinking, their judgment is impaired and so they don’t know how impaired they are.” She stated: “I think it’s probably genuine that he doesn’t know how much he drank and doesn’t know how impaired he is when he consumes six drinks of alcohol.” *Id.* at 65.

The Psychologist stated that, based upon the Individual’s testimony, she “heard several things...that actually ma[de her] think that [the Individual] does meet the diagnostic criteria for an alcohol use disorder,” and she recommended that the Individual abstain from alcohol for at least 12 months. *Id.* at 60. The Psychologist supported this opinion by pointing to a few concerning portions of the Individual’s testimony. *See id.* at 60-65. She explained that she found the Individual’s testimony regarding his history with hangovers “concerning.” *Id.* The Psychologist also noted that the Individual’s description of his finances in relation to his alcohol consumption indicated that “he was spending a lot of money on alcohol.” *Id.* She explained that the Individual testified to engaging in “risky behavior,” such as consuming approximately six alcoholic beverages at a pool party where children are swimming. *Id.* Furthermore, she felt that it was problematic that the Individual chose to “not cut down on his drinking despite being advised to do so,” not only by his health providers, but also by DOE, through the course of applying for his security clearance. *Id.* Finally, the Psychologist noted that, based on the Individual’s reports, she was unclear about the frequency and amount of the Individual’s alcohol consumption as the Individual’s testimony regarding his recent consumption was discrepant. *Id.* at 60-61. She testified that that she felt the Individual was minimizing his alcohol consumption, which “is commonly seen in alcohol use disorder where a person is in denial about how much they’re drinking and how much it’s impacting them.”⁶ *Id.* at 65.

⁶ When asked to explain her opinion regarding minimization in consideration of the February 2022 PEth test, which produced results that “were approximately consistent with [the Individual’s] reported drinking behavior, if not a little lower,” the Psychologist testified that the PEth test is “not a snapshot in time.” Ex. 7 at 5; Tr. at 70. She stated that the PEth test cannot reveal “the maximum amount that a person drank. It ends up being kind of averaged over three weeks.”

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.

Guideline G

Habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with an alcohol use disorder, may disqualify an individual from holding a security clearance. Adjudicative Guidelines at ¶ 22(c). Additionally, alcohol-related incidents away from work could raise a disqualifying security concern. *Id.* at ¶ 22(a). If an individual acknowledges the pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and demonstrates a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, the individual may be able to mitigate the security concern. *Id.* at ¶ 23(b).

In this case, the Psychologist initially concluded in her Report that the Individual was habitually binge consuming alcohol to the point of impaired judgment without showing adequate evidence of rehabilitation. *See* Adjudicative Guidelines at ¶ 22(d). As a result of that opinion that the Individual habitually engaged in binge consumption of alcohol, the Psychologist recommended the Individual undergo monthly PEth tests; however, the Individual underwent only one PEth test. The Psychologist additionally recommended that the Individual refrain from consuming more than four alcoholic beverages in one sitting. However, the Individual testified that, since receiving that recommendation, he has not only exceeded that limit, but he does not keep an accurate count of the number of drinks he consumes.

As noted by the Psychologist, I find the Individual's reports of his recent alcohol consumption to be discrepant. The Individual initially testified that, over the course of the summer of 2022, he consumed four to five drinks on two or three occasions. However, he later stated that he consumed up to five drinks one to two times per month over the course of three months. I cannot find the Individual's testimony to be credible as it is unclear as to whether the Individual himself knows how much alcohol he is consuming. Furthermore, the Individual did not present any witnesses that might be able to corroborate or clarify his testimony.⁷ As such, I cannot find that the Individual has

Tr. at 70. As such, she noted that the results of the May 2022 PEth test could indicate that the Individual was consuming four drinks a day or that he was engaging in binge drinking. *Id.*

⁷ Although I recognize that the Individual submitted four letters of recommendation and a Declaration from his wife, none of the documents provide insight into the frequency or degree of the Individual's alcohol consumption. Exs. C-

demonstrated a clear and established pattern of modified consumption in accordance with treatment recommendations. *Id.* at ¶ 23(b).

In addressing the two incidents where law enforcement was called in response to the Individual's alcohol consumption, I note that several years have passed since the Individual's alcohol consumption has prompted a response from law enforcement. *See id.* at ¶ 23(a). However, being that the frequency and degree of the Individual's alcohol consumption is unclear, I cannot find that the Individual's alcohol consumption to a degree that necessitates the intervention of law enforcement 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. *Id.*

For the foregoing reasons, I cannot find that the Individual has sufficiently mitigated the security concerns raised pursuant to Guideline G.

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

Katie Quintana
Administrative Judge
Office of Hearings and Appeals

D. The only information that can be garnered from these statements is the Individual's wife's assessment that the Individual "has modified his drinking habits, drinking only in a responsible manner." Ex. C.