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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-22-0095
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Issued: October 24, 2022

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**Administrative Judge Decision**

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James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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.”<sup>1</sup> 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 should not be granted access authorization.

**I. BACKGROUND**

The Individual is employed a DOE contractor in a position that requires possession of a security clearance. The DOE Local Security Office (LSO) discovered concerning information regarding the Individual’s alcohol use. The information prompted the LSO to request that the Individual be evaluated by a DOE-consultant Psychiatrist (“Psychiatrist”). 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

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<sup>1</sup> 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. At the hearing, the Individual presented the testimony of two witnesses and testified on his own behalf. The LSO presented the testimony of the Psychiatrist. The Individual submitted nine exhibits, marked Exhibits A through I.<sup>2</sup> The LSO submitted nine exhibits, marked Exhibits 1 through 9.<sup>3</sup>

## 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. Exhibit (Ex.) 1. 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 . . . fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use[;]" 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) and (d). The SSC cited the following information. The Psychiatrist concluded in his January 2022 report that the Individual met the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), criteria for Alcohol Use Disorder (AUD), Mild, without adequate evidence of rehabilitation or reformation, and the Psychiatrist reported that the Individual's Phosphatidylethanol (PEth) test results were congruent with current heavy alcohol consumption. Ex. 1 at 5. The Individual admitted in his November 2021 signed letter of interrogatory (LOI) that he had been consuming four to five alcohol beverages most days. *Id.* In 2008, the Individual was arrested and charged with Simple Assault/Domestic Violence and False Imprisonment, and he admitted to consuming alcohol prior to the arrest. *Id.* And, in 2005, the Individual was arrested and charged with Disorderly Conduct and admitted that he had consumed alcohol prior to this arrest. *Id.* The cited 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 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

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<sup>2</sup> The Individual submitted Ex. I after the hearing date.

<sup>3</sup> The LSO's exhibits were combined and submitted in a single, 236-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.

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**

The record includes the earlier-referenced LOI response the Individual submitted. Ex. 6. Therein, he described the circumstances surrounding his past arrests and more recent alcohol consumption. As for the 2005 incident, the Individual explained that he was arrested during a college holiday outing after not being cooperative with security guards. *Id.* at 26. He explained that he had consumed “too much” alcohol before the incident and did not recall exactly what happened. *Id.* at 25. He stated that he was young and irresponsible and that the event taught him a lesson. *Id.* Regarding the 2008 incident, the Individual explained that it occurred after a holiday dinner when he and his wife got into a heated argument. *Id.* at 24-25. The police were called and ended up arresting and charging the Individual as cited in the SSC. He explained that he had consumed “very little alcohol prior to the arrest” in the form of “a beer or glass of wine” with dinner. *Id.* at 25. The case ended because the prosecutor decided not to pursue the charges. *Id.* Regarding his alcohol consumption in November 2021, the Individual explained that he had not been intoxicated for over a year. *Id.* He also explained that he was presently consuming four to five alcohol beverages most days. *Id.* at 27.

The record also includes the report produced by the Psychiatrist in January 2022. During the evaluation, the Individual stated that after his 2005 arrest, he remained in jail for five days before being released, which concluded the incident. Ex. 7 at 35. He explained that, after the 2008 incident, he was jailed for two days. *Id.* Prior to the two years preceding the evaluation, he described consuming five or more alcoholic beverages a night. *Id.* at 36. He described his alcohol consumption at the time of the evaluation to be four to five alcoholic beverages over approximately seven hours a night, every night. *Id.* at 35. He also reported that he consumed “six or more [alcoholic] drinks on one occasion once a week, but feels he does not get intoxicated or buzzed.” *Id.* at 36. He confirmed that his alcohol consumption caused conflict within his marriage, that he has developed a tolerance, and that he injured himself as a result of his alcohol consumption. *Id.* The Individual underwent a PEth test, and the Psychiatrist opined that the result was positive at a level congruent with heavy alcohol consumption. *Id.* At the conclusion of the evaluation, the Psychiatrist concluded that the Individual met the diagnostic criteria for AUD, Mild, because the Individual had developed a tolerance, he continued to consume alcohol despite negative marital

consequences, and he used alcohol in situations in which was is hazardous to do so. *Id.* at 38. The Psychiatrist also opined that the Individual may have been consuming even more than the large amounts of alcohol he acknowledged. *Id.* The Psychiatrist recommended that that the Individual abstain from alcohol consumption one year, complete an Intensive Outpatient Program (IOP), participate in an aftercare program with the IOP or with an outpatient AUD counselor for at least six months, attend weekly Alcoholics Anonymous (AA) or similar self-help meetings for a year, and undergo random breath alcohol tests and monthly PEth tests to provide medical evidence of abstinence. *Id.*

Prior to the hearing, the Individual submitted a letter from an Employee Assistance Program (EAP) counselor whom the Individual had been meeting with “since spring 2022” regarding his treatment for AUD. Ex G. Therein, the EAP counselor explained, that for the six-month period preceding the hearing, the Individual had “fully participated in his sessions.” *Id.* The EAP counselor also lauded the Individual’s “ability to fully apply suggestions for treatment and show behavior improvements” that include “his ability to quit drinking completely without reported recourse[,] attend AA meetings regularly with insight and appreciation[,] and embed treatment goals throughout his course of treatment with the EAP program.” *Id.*

The Individual’s counselor testified. This counselor has been providing both marriage and alcohol use counseling to the Individual since June 2022. Tr. at 17. The counselor testified that the Individual’s self-reported sobriety date is June 1, 2022. *Id.* at 26. The counselor testified that the Individual’s marital issues “absolutely” contribute to his alcohol use. *Id.* at 25. He testified that the Individual has been engaged in and appears honest and genuine during treatment. *Id.* at 18. He also testified that the Individual denies having a problem with alcohol. *Id.* at 20. He testified that the Individual’s length of treatment is presently undetermined, and they have yet to establish long-term goals. *Id.* at 22. He also testified that he originally recommended that the Individual complete at least twenty-six weeks of counseling.<sup>4</sup> *Id.* at 22, 31. He testified that an IOP would not have benefited the Individual because the Individual’s AUD was not severe. *Id.* at 33. He also testified that the Individual’s AUD is presently in early remission. *Id.* at 23-24. He testified that, going forward, the Individual’s treatment would focus on his marriage and alcohol use because of the latter’s impact on his career. *Id.* at 25. He also testified that it “might be beneficial” for the Individual to participate in group therapy sessions. *Id.* at 33-34. While the counselor did not provide a prognosis, the counselor stated that the Individual is “very capable of remaining abstinent if he so chooses.” *Id.* at 33. When opining on the likelihood that the Individual will remain abstinent, the counselor stated “50/50. I don’t know.” *Id.*

The Individual’s wife testified that the Individual had been abstinent for “about 130 days.”<sup>5</sup> *Id.* at 40. She testified that she has not observed him touch or consume any alcohol during that period. *Id.* at 40. She also testified that he has been attending AA every day and that he stated it has been helpful. *Id.* at 40-41. She observed that he has made healthy changes in lifestyle such as walking more and heathier eating. *Id.* at 42.

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<sup>4</sup> The counselor also noted that alcohol use is “just one piece of” the matters for which he recommended treatment. *Id.* at 22.

<sup>5</sup> This would put the Individual’s sobriety date at May 14, 2022.

The Individual testified that his sobriety date is June 1, 2022. *Id.* at 52. He also stated that he does not have a problem with alcohol, although he acknowledged his diagnosis of AUD.<sup>6</sup> *Id.* at 52-53. He testified that he has been attending EAP counseling about once a week;<sup>7</sup> that he has been seeing his individual counselor;<sup>8</sup> and that he accomplished 110 days of AA while also consuming podcasts, books, and other research on AUD. *Id.* at 54-56, 71. He explained that EAP counseling helped him gain a better understanding of how some of his behavior regarding alcohol use had been problematic. *Id.* at 57. He expressed his intent to continue treatment indefinitely with both the EAP counselor and the individual counselor. *Id.* at 58-59.

The Individual testified that he accomplished his immediate goal to remain abstinent until the hearing. *Id.* at 66. To do so, he had to change everything to “make every single day revolve around going to AA[,]” “learning[,]” “and trying to prove that alcohol is not a problem.” *Id.* at 62. He testified that he successfully overcame early cravings for alcohol. *Id.* at 63. He then clarified that he did not believe he experienced cravings because he never felt an urge that he failed to overcome. *Id.* at 109-10. Instead of consuming alcohol, he would attend an AA meeting or go for a walk. *Id.* at 69. He testified that AA helped him remain abstinent. *Id.* at 67. He also stated that he participates in almost every AA meeting he attends, and he described his active participation. *Id.* at 78-80. He noted, however, that he has had to limit his after-meeting participation because sometimes he would “stay longer than [his] wife wanted.” *Id.* at 79. The Individual also testified that he disagreed with his counselor’s opinion that “alcohol is the driver of all the issues.” *Id.* at 60. As support for his viewpoint, he stated that his marital problems have persisted despite his abstinence. *Id.* However, he testified that he stills takes the advice on “how to resolve the issues.” *Id.* He testified that his ultimate goal is to keep his job and keep providing for his family. *Id.* at 67, 74.

The Psychiatrist also testified at the hearing. The Psychiatrist noted that the Individual’s testimony indicated that he meets the criteria for a diagnosis of AUD, Moderate, given that he admitted to overcoming cravings at the hearing instead of denying them as he did during the evaluation. *Id.* at 88. The Psychiatrist explained that, given the Individual’s diagnosis, the relatively short period of his abstinence and AA attendance did not demonstrate reformation and rehabilitation of the AUD. *Id.* at 89-91. However, the Psychologist testified that the IOP was no longer recommended. *Id.* at 91. The Psychiatrist also expressed concern with the Individual’s ambivalence regarding whether he has an issue with alcohol. *Id.* at 89. The Psychiatrist concluded that the Individual’s “prognosis is probably more on the favorable side, if he continues the treatment that he’s been in. Above 50/50 favorable.” *Id.* at 93.

## V. ANALYSIS

### A. Guideline G Considerations

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<sup>6</sup> Specifically, the Individual stated, “I do agree that I checked some of the boxes that are in the DSM, so technically, I agree with the diagnosis given by the professional counselors.” Tr. at 53.

<sup>7</sup> The Individual testified that he had met with the EAP counselor “probably 10 to 20” times. Tr. at 55.

<sup>8</sup> He testified that he had met with his counselor approximately twenty times. Tr. at 61. The counseling sign-in sheets the Individual submitted reflect that he attended a total of sixteen sessions between April 2022 and September 2022. Ex. D; Ex. F. at 1-2 (indicating that the first several listed sessions were attended by both the wife and Individual).

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

- (a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and
- (d) The individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23.

I find that none of the above factors apply to resolve the Guideline G concerns. Because I rely upon much of the same evidence in applying these mitigating factors, the following analysis addresses them together. The record does not demonstrate that the Individual acknowledges his maladaptive alcohol use because, while he acknowledges that he had been diagnosed as meeting the criteria for AUD, he denies that he had a problem or issue with alcohol. Furthermore, although he has taken steps to address the concerns regarding his alcohol use, including adopting a healthier lifestyle, abstaining, attending EAP counseling, and attending AA, he has not established a pattern of abstinence in accordance with treatment recommendations for the following reasons. He has only been abstinent for approximately four months, which is significantly less than the year recommended by the Psychiatrist. A relatively short period of time has passed since the Individual changed his concerning pattern of alcohol consumption, which had persisted for several years as a part of the Individual's daily routine until June 1. The record regarding the wife's response to his efforts in AA is also concerning given the intertwined nature of his marital relationship and alcohol use. Additionally, he did not complete an IOP, attend aftercare, or complete a treatment program; and, while the Psychiatrist no longer recommended that the Individual complete an IOP, the Psychiatrist continued to recommend additional treatment to demonstrate reformation and rehabilitation of the Individual's AUD. Furthermore, while the Individual's counselor was more positive regarding the Individual's progress, the counselor similarly recommended continued counseling and did not provide a favorable opinion regarding the Individual's likelihood of relapse. Accordingly, I conclude that the Individual has not put forth sufficient evidence to resolve 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 not brought forth sufficient evidence to resolve the security concerns set forth in the SSC. Accordingly, I have determined that the Individual should not be granted access authorization.

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