*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

# United States Department of Energy
# Office of Hearings and Appeals

| | | | |
|---|---|---|---|
| In the Matter of: Personnel Security Hearing | ) | | |
| | ) | | |
| Filing Date: June 28, 2022 | ) | Case No.: | PSH-22-0107 |
| | ) | | |
| | ) | | |

Issued: December 9, 2022

**Administrative Judge Decision**

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (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 February 1, 2022, the Individual submitted an Incident Report (IR) to the Local Security Office (LSO) reporting that he had undergone in-patient treatment for alcohol issues from January 17, 2022, through January 22, 2022. Exhibit (Ex.) 7.

Because of the security concerns raised by the Individual's IR, the LSO issued a letter of interrogatory (LOI) to the Individual on February 15, 2022. Ex. 8 at 1. The Individual responded to the LOI on February 18, 2022 (the Response). Ex. 8 at 5. In the Response, the Individual stated that he stopped using alcohol after undergoing "detox treatment" in January 2022. Ex. 8 at 1. According to the Response: "Before that, I was drinking once every 1-2 months. I would typically drink beer and occasionally whiskey. When I did drink, it was between 1-8 drinks." Ex. 8 at 1. Although he further admitted that he consumed a full pint on the day before his January 17, 2022, hospitalization. Ex. 8 at 1. The Individual admitted that his alcohol consumption increased during the pandemic and that he had used alcohol to cope with his then-spouse's serious medical condition. Ex. 8 at 1. The Individual further admitted: "On Nov 25, 2021, I was admitted to an

[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.

[emergency department] for intoxication and was released after observation without restriction. All treatments completed successfully." Ex. 8 at 3. The Individual stated:

> My experience during Detox made me realize that alcohol can no longer be a part of my life. I am working closely with my case manager at . . . Occ. Med. and personal counselor to achieve this goal. . . . I have agreed to regular random testing (1-2x a week) and to completely abstain from alcohol. I am attending daily [Alcoholics Anonymous (AA)] meetings, working with personal and marriage counselors, and I am enrolling in an intensive outpatient program . . . . I have also informed my friends, co-workers, and family of my intentions of sobriety.

Ex. 8 at 5.

On February 22, 2022, the Individual filed a second IR reporting: "On November 25th, 2021, I was taken to [an] Emergency Department . . . for alcohol intoxication and perceived intention of self-physical harm. I was under observation for approximately 24 hours and released without restrictions." Ex. 6 at 2.

Because the security concerns raised by the Individual's two alcohol-related hospitalizations and his Response, the LSO requested that he undergo an evaluation by a DOE-contractor Psychiatrist (Psychiatrist), who conducted a clinical interview (CI) of the Individual on April 7, 2022.[2] Ex. 9 at 1. During this interview, the Individual stated that he believes "he is an alcoholic or at least has alcoholic related tendencies." Ex. 9 at 5. The Individual also reported that he began attending Alcohol Anonymous (AA) meetings daily after his January hospitalization for detoxification and that he was seeing a counselor on a weekly basis. Ex. 9 at 5. The Individual also expressed an intention to permanently abstain from alcohol use. Ex. 9 at 5.

In addition to interviewing the Individual, the Psychiatrist reviewed the Individual's medical records and security file and contacted the Individual's counselor (the Therapist) and case manager (the Case Manager). The Psychiatrist's report states:

> [The Therapist] and this writer had a phone conversation on April 7, 2022. [The Therapist] . . . was not aware of the Subject's alcohol use but knew he was struggling. He feels the Alcohol Use Disorder "was" severe but the Subject now has this "under control." [The Therapist] feels that the alcohol disorder prognosis is good. [The Therapist] participated in the intervention to get the Subject to go to treatment and the Subject did not oppose the recommendations.

Ex. 9 at 6-7.

The Psychiatrist also spoke with the Case Manager for the Individual's Occupational Medical Program (OM) and reported that:

---

[2] The Psychiatrist provided for the administration of a laboratory test for phosphatidylethanol (Peth) on April 7, 2022. Ex. 9 at 7. That test was negative, indicating, according to the opinion of the Psychiatrist, that the Individual had not been "drinking on a regular, heavy basis within a few weeks of the test, and has not had binge drinking episodes or moderate drinking within about one week of the test." Ex. 9 at 7.

> [The Case Manager] and this writer had a phone conversation on April 11, 2022. She stated the Subject had a Fitness for Duty opened on February 1, 2022, and this remains open. The first face-to-face meeting was February 8, 2022. The recommendation from [the] OM was continued treatment at [an Intensive Outpatient Program (IOP)]; OM understands the Subject is on a waiting list for the IOP . . . but there are no concerns from OM about this as the Subject has been attending daily AA meetings. OM continues to monitor the Subject's condition and he has developed an abstinence program. He is receiving PEth tests through his Primary Care Practitioner (PCP) and paying for these himself. [The Case Manager] is aware of the positive PEth test in February of this year, which the Subject attributed to cookie dough with vanilla, but he had also been consuming Kombucha tea (which contains alcohol) and using probiotics, and there was not a concern about this test result as it was just above the cutoff level.

Ex. 9 at 7.

The Psychiatrist issued a report of his findings (the Report) on April 16, 2022. Ex. 9 at 1. In the Report, he found that the Individual had met the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5) for Alcohol Use Disorder, Severe (AUD) and that the Individual was in Early Remission.[3] Ex. 9 at 7. He further opined that the Individual was neither reformed not rehabilitated. Ex. 9 at 7. The Psychiatrist recommended that the Individual:

> [C]ontinue his current program of regular attendance at Alcoholics Anonymous (AA) and, when an opening occurs in the Intensive Outpatient Program (IOP) . . . he should begin this and complete this program. . . . He should also continue with his current outpatient psychotherapist. Following completion of the IOP he should continue to attend AA and his psychotherapy appointments, and, if recommended by the IOP program, attend their aftercare program. The rehabilitation program should continue for a full year from the date of his admission to the detoxification program . . . that is, to January 17, 2023. During that time, he should also be monitored by . . . OM with regular check-ins and alcohol testing. . . . To show adequate evidence of reform he should maintain abstinence for that time period as well. For his own condition, it is recommended that he continue abstinence and attendance at AA even after this date.

Ex. 9 at 7-8.

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

[3] The Psychiatrist also diagnosed the Individual with Adjustment Disorder with Mixed Anxiety and Depressed Mood, under DSM-5, but did not conclude that this disorder may impair his judgment, reliability, or trustworthiness. Ex. 9 at 8.

C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual, a fellow AA member, the Individual's AA Sponsor (Sponsor), and the Psychiatrist. *See* Transcript of Hearing, Case No. PSH-22-0107 (hereinafter cited as "Tr."). The Individual submitted 14 exhibits marked as Exhibits A through N. The DOE Counsel submitted 11 exhibits marked as Exhibits 1 through 11.

Exhibit A is a Certificate of Completion, dated September 15, 2022, for an IOP.

Exhibit B is an "Outpatient Progress/Compliance Report" from an organization that has been providing alcohol treatment services, including the IOP, to the Individual. It indicates that the Individual has attended 12 individual and 26 group sessions and has completed the IOP. Ex. B at 1. Exhibit B further indicates the Individual has enrolled in aftercare, which will include two individual sessions each month. Ex. B at 1.

Exhibit C is a memorandum from the OM, dated October 3, 2022, indicating that the Individual was no longer being evaluated for fitness for duty and that OM no longer had "any concerns regarding [the Individual's] ability to perform work in a safe and reliable manner." Ex. C at 1.

Exhibit D is a letter dated June 30, 2022, from the Case Manager stating that the Individual "has successfully completed his fitness for duty evaluation." Ex. D at 1.

Exhibit E is a laboratory test result indicating that the Individual underwent PEth testing on March 2, 2022. Ex. E at 1. That test result was slightly positive indicating, according to an interpretive note in the report, that the Individual had been engaging in "moderate alcohol consumption." Ex. E at 1.

Exhibits F, G, H, I, J, K, and L are a series of laboratory test results indicating that the Individual underwent PEth testing on April 4, 2022; May 4, 2022; May 31, 2022; July 1, 2022; August 5, 2022; September 1, 2022, and October 10, 2022. Each of these test results was negative.

Exhibits M and N are spreadsheets prepared by the Individual indicating his detox attendance, his AA attendance, his Individual and couples counseling attendance, his IOP attendance, and meetings with his sponsors, during the period beginning on January 17, 2022, and continuing through November 14, 2022. They both appear to contain the same information in different formats.

## II. The Summary of Security Concerns (SSC)

Attached to the Notification Letter was an SSC, which 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 Psychiatrist's finding that the Individual met the DSM-5 criteria for AUD, and his November 25, 2021, hospitalization for alcohol intoxication.[4] 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

[4] The LSO did not cite the Individual's January 17, 2022, alcohol-related hospitalization.

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," and "diagnosis by a duly qualified . . . clinical Psychiatrist . . . of alcohol use disorder." Adjudicative Guidelines at ¶ 22(a) 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 AUD and alcohol-related hospitalization, the Individual presented three witnesses including himself.

A fellow AA member testified at the hearing on the Individual's behalf. He testified that he has known the Individual since the Individual joined AA ten months ago. Tr. at 13. During that period, he has frequently seen the Individual at AA meetings. Tr. at 13-14. He testified that the Individual participates in AA meetings. Tr. at 15. He considers himself part of the Individual's support network. Tr. at 14-15. He is aware that the Individual has an AA sponsor. Tr. at 15-16. He testified that the Individual seems to enjoy AA and seems to be getting a lot out of it. Tr. at 16-17. He testified that he has observed "a lot of changes" in the Individual, who now "seems a lot more comfortable in his own skin than when he first came in the program." Tr. at 18.

The Sponsor testified on the Individual's behalf at the hearing. He testified that he met the Individual at an AA meeting in June 2022, and he believes he became the Individual's sponsor in

early July 2022.[5] Tr. at 23-24. He meets with the Individual one-on-one every week and sees the Individual three or four times a week at AA meetings. Tr. at 23. He also checks-in with the Individual by telephone daily. Tr. at 24, 32. When they meet, they discuss the Big Book of AA, the AA Twelve-Step program, and the Individual's sobriety. Tr. at 24. The Individual is currently working on Step Three of the Twelve-Step program. Tr. at 32. The Individual chairs an AA meeting once a week. Tr. at 34. The Sponsor is aware that the Individual has attended an IOP and is also receiving individual counseling. Tr. at 29, 31. The Sponsor noted: "I saw him make considerable effort to continue in his personal growth and strengthen his sobriety even as that intensive outpatient program completed." Tr. at 30. According to the Sponsor, the Individual has been sober for a full ten months, without relapsing. Tr. at 31. The Sponsor, however, testified that the Individual understands that sobriety is a lifelong process. Tr. at 30. The Sponsor stated that the Individual "is making fantastic progress . . . . I see him availing himself of all the tools of the AA program, and it's just an absolute pleasure to sponsor him and to know him as a personal friend." Tr. at 33. He also testified that he has observed "remarkable improvement" in the Individual, especially in his ability to handle stress. Tr. at 28. This improvement resulted because the Individual did "a lot of personal work." Tr. at 28.

The Individual testified that he realized that he had a "real problem" with alcohol during the pandemic at the end of 2021, when he began engaging in binge drinking, going on "benders," and using alcohol to escape from the stress associated with his spouse's severe illness. Tr. at 40-41. The November 2021 hospitalization occurred because of a severe bender. Tr. at 42. During the pandemic, he repeatedly attempted to stay sober without treatment but was not successful. Tr. at 42-43. The Individual started attending AA on January 23, 2022, the day after he was released from detox. Tr. at 58. AA helped him realize that he was not alone in his alcoholism, that he is accepted as a person with alcoholism, and that he had to put his sobriety first. Tr. at 58-59. He is currently completing Step Three of AA's Twelve-Step program. Tr. at 66. He chairs an AA meeting every week. Tr. at 70. He plans to continue with AA indefinitely. Tr. at 70. He started attending the IOP in "May or June" and completed it in "August or September" 2022. Tr. at 50. The Individual has also been meeting with his individual counselor weekly and with a counselor from the IOP bi-weekly. Tr. at 51. He also meets with an Aftercare counselor monthly. Tr. at 56. He also gets a lot of support from his Sponsor. Tr. at 57. He has had monthly PEth tests. Tr. at 54. His first PEth test was slightly positive, which he attributed to past alcohol use or baking with vanilla extract. Tr. at 54-55. He testified that he had not used alcohol since January 16, 2022. Tr. at 55-56. The Individual cited his community support from the OM, the IOP, and AA as the reason he has been able to remain sober. Tr. at 67. He now has "a strong community of people [he] can rely on, call any time." Tr. at 68. He described his sobriety as his priority and credits it with his ability to get through some difficult personal situations including a divorce. Tr. at 68. The skills he learned from the IOP also helped him through those difficult times. Tr. at 68. Having actual coping mechanisms, like talking with his support group rather than drinking, also helped. Tr. at 68. He testified that "alcohol has no place in my life," that he no longer feels like drinking, and that he no longer feels cravings for alcohol. Tr. at 70-71. He has a list of 30 people he could call if he needed help with his sobriety. Tr. at 72.

[5] The Sponsor currently serves as a sponsor for two other people and during the past 13 years has sponsored "tens" of other AA members. Tr. at 25.

The Psychiatrist observed the testimony of the Individual's witnesses before testifying at the hearing. The Psychiatrist testified that the Individual's testimony at the hearing was consistent with the information he had provided during the CI. Tr. at 81. At the time of the CI, the Individual was at an early stage of his recovery and his AUD was not in remission since he was a few days short of the three-month specifier for early remission.[6] Tr. at 84. The Psychiatrist testified that the Individual had complied with all the treatment recommendations outlined in his Report. Tr. at 84-85. He concluded that the Individual's IOP attendance and participation in AA had their intended effects. Tr. at 85-86. The Psychiatrist opined that the Individual has good insight and is taking the appropriate actions to address his issues. Tr. at 88. Although he recommended that the Individual attend AA and abstain from alcohol use for a full year, the Psychiatrist noted that the one-year cut-off is based upon the DSM-5's definition of full remission, which he opined is "kind of arbitrary," and further opined that if the Individual continues his present program, he "doesn't think that those two months are going to make much difference." Tr. at 88-89. The Psychiatrist noted that the Individual's positive PEth test in early March 2022 was most likely due to the large quantity of alcohol the individual had consumed leading up to his January 17, 2022, hospitalization. Tr. 90-91. The Psychiatrist opined that the Individual's prognosis is "fair to good" and that "there's adequate evidence of rehabilitation and reform." Tr. at 93.

## V. Analysis

The Individual has shown that he has attended and completed an IOP, obtained Individual and group counseling, and has been an actively engaged participant in AA for the past ten months. The Individual has also provided evidence, in the form of his own credible testimony and laboratory results, showing that he has abstained from using alcohol for the past ten months. These actions convinced the Psychiatrist that the Individual had complied with his treatment recommendations. As a result, both the Psychiatrist and I are convinced that the Individual has shown that he is reformed and rehabilitated from his AUD. I therefore find that he has mitigated the security concerns raised under Guideline G in the SSC.

The Adjudicative Guidelines set forth four factors that may mitigate security concerns under Guideline G, at least 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 address 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

[6] The Psychiatrist's report opined that the Individual was in Early Remission. Ex. 9 at 7.

treatment and relapse,[7] and has been participating in AA, has attended the IOP, and has been receiving individual counseling. The Sponsor and Psychiatrist 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 and his alcohol-related hospitalization 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

[7] The Individual does have a history of relapse, but his relapses occurred prior to his involvement in AA and his attendance and completion of the IOP.