

*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: August 12, 2022) Case No.: PSH-22-0131
)
)
_____)

Issued: December 7, 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 not be granted.

I. Background

On November 18, 1999, police arrested and charged the Individual with Aggravated Driving While Intoxicated (DWI). Exhibit (Ex.) 8 at 39. Almost 20 years later, on November 1, 2018, the Individual began an Intensive Outpatient Program (IOP) for alcohol treatment. Ex. 8 at 68-69. The IOP’s staff diagnosed her with Alcohol Dependence, however the Individual did not complete the IOP and was discharged on December 20, 2018. Ex. 8 at 68-69; Ex. 9 at 9-11.

On February 25, 2022, the LSO issued a Letter of Interrogatory (LOI) to the Individual. In her response² to the LOI, the Individual reported that she no longer used alcohol and that she last consumed alcohol on January 1, 2022. Ex. 9 at 7-8. She also opined that she does not have a problem with alcohol. Ex. 9 at 9.

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.

² The copy of this response that appears in the record as Exhibit 9 does not contain the customary signature block, so I was not able to determine the date of the response.

Because of the security concerns raised by the Individual's DWI and alcohol treatment, the LSO requested that the Individual undergo an evaluation by a DOE-contractor Psychologist (Psychologist), who conducted a clinical interview (CI) of the Individual on May 2, 2022. Ex. 6 at 5. In addition to interviewing the Individual, the Psychologist reviewed the Individual's personnel security file and records from the Individual's IOP, administered the Minnesota Multiphasic Personality Inventory-Third Edition (MMPI-3) to the Individual, and had her undergo a Phosphatidylethanol (PEth) laboratory test to detect alcohol consumption. Ex. 6 at 5-8. Although the Individual had represented that her last use of alcohol had occurred on January 1, 2022, during the CI, her May 2, 2022, PEth test result was positive, indicating that the Individual had likely engaged in moderate to heavy alcohol consumption during the previous three to four weeks. Ex. 6 at 4, 8, 25.

The Psychologist issued a report of her findings (the Report) on May 7, 2022, in which she 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 (AUD), Moderate, and that the Individual was neither reformed nor rehabilitated. Ex. 6 at 9-10. The Psychologist recommended that the Individual enter and successfully complete an IOP for a period of 12 to 16 weeks and continue in weekly aftercare meetings for six months. Ex. 6 at 9. The Psychologist also recommended the Individual abstain from alcohol use and undergo at least six PEth laboratory tests over a 12-month period. Ex. 6 at 10. The Psychologist further recommended that if the Individual decided not to participate in an IOP, she should actively participate in Alcoholics Anonymous (AA) for 12 months, including attending four meetings a week, working with a sponsor, showing evidence of working through the Twelve-Step program, and documenting her attendance. Ex. 6 at 9-10.

After receiving the Report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding her 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, her mother, her boyfriend, the Psychologist, and a DOE-consultant Psychiatrist (Psychiatrist). *See* Transcript of Hearing, Case No. PSH-22-0131 (hereinafter cited as "Tr."). The Individual submitted nine exhibits marked as Exhibits A through H.³ The DOE Counsel submitted 10 exhibits marked as Exhibits 1 through 10.

Exhibit A is a Chain of Custody Form for a laboratory report indicating the Individual submitted to a second PEth test on October 19, 2022. Exhibit A1 is the laboratory report indicating that test result was positive, at a level of 62 ng/mL. Ex. A1 at 2.

Exhibit B is an AA sign-in sheet indicating that the Individual attended at least 51 AA meetings, from July 10, 2022, to October 20, 2022. Ex. B at 1-4.

³ The Individual supplemented Exhibit A on November 1, 2022, with the laboratory report of the results of her October 19, 2022, PEth test, which she marked as Exhibit A. I have marked this Exhibit as Exhibit A1.

Exhibit C is a sworn statement from the Individual's AA sponsor, indicating the Individual is "working the program and staying sober," and that the sponsor has "attended many meetings with [the Individual] and meet[s] with her weekly to discuss AA topics and everyday life." Ex. C at 1.

Exhibit D is a sworn statement from the Individual's longtime friend and fellow AA member, indicating the Individual "shares openly and honestly about her struggle with alcohol" and the Individual "brings a warmth and sincerity to [AA] meetings that moves me to tears and inspires me and those around her." Ex. D at 1.

Exhibit E is a sworn statement from the Individual's husband, indicating that although he and the Individual have been separated for five years, he talks to the Individual every day, and that the Individual has been sober for quite some time. He further stated that she talks to her AA sponsor and goes to meetings almost every day. Ex. E at 1.

Exhibit F is a letter from the Individual's mother, who described herself as an active member of AA for 39 years. The Individual's mother stated that she has known the Individual's sponsor for 35 years. She also indicates the Individual "is making great progress and is definitely ready, honest and willing to discover her true self, change behaviors and stay sober." Ex. F at 1.

Exhibit G is a letter from the Individual's boyfriend, indicating that he has lived with her for two years. He indicated that they have attended "numerous" AA meetings together. The Individual's boyfriend further stated that he "can honestly see how [the Individual] has progressed," and has observed that she "has been sober, for months now and I know she is working the 12-step program with her sponsor." Ex. G at 1.

Exhibit H is a laboratory report indicating that the Individual tested negative for alcohol on September 12, 2022. Ex. H at 1.

II. The Summary of Security Concerns (SSC)

The SSC informed the Individual that information in the possession of the DOE created substantial doubt concerning her 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. 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 is "diagnosis by a duly qualified . . . clinical psychologist . . . of alcohol use disorder." Adjudicative Guidelines at ¶ 22(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

To mitigate the security concerns raised by her AUD, Moderate, the Individual presented the testimony of three witnesses, including herself, at the hearing to show that she was reformed and rehabilitated.

The Individual’s boyfriend testified that he has known the Individual for about 25 years and has lived with her for the past two years. Tr. at 12. He stated that six months ago he became aware the Individual was getting substance abuse treatment. Tr. at 14. He stated that in January 2021, they started attending AA together, and have continued participating through the present. Tr. at 15. He stated that since July 2022, he and the Individual have tried to attend AA meetings on a daily basis. Tr. at 15. He also stated that the Individual has a very good AA sponsor. Tr. at 17. He stated the Individual is actively working on step three or four of the Twelve-Step program. Tr. at 18. He stated he last saw the Individual drink in June or early July of 2022. Tr. at 19. He stated that in addition to the AA program, he thinks the Individual meets with a counselor once or twice a week. Tr. at 21. He further testified that since the Individual has stopped drinking, her whole demeanor has changed, and she is now more focused, responsible, and productive. Tr. at 21. They have substituted alcohol use with healthier activities: taking their dogs to the dog park and going on bike rides. Tr. at 22.

The Individual’s mother testified that she last saw the Individual use alcohol in June 2022. Tr. at 29. She identified herself as a recovering alcoholic and stated that “AA and recovery is our life around here.” Tr. at 29. The Individual’s mother further testified that she has been an active member of AA for 39 years and that “working with a sponsor is very, very important in [AA].” Tr. at 29-30, 32. She stated the Individual was “practically raised in [AA].... So she knows about recovery....” Tr. at 30. She stated the Individual had attended AA previously, but “wasn’t doing the steps or anything” and had not been able to establish an effective working relationship with a sponsor until recently. Tr. at 31-32. She stated that since June or July 2022, the Individual has attended different AA meetings around the city and is now ready for “a lifelong journey” with AA. Tr. at 32-33. She stated that since June or July 2022, she noticed the Individual’s commitment to staying sober and is now convinced that the Individual wants to be a better person. Tr. at 33-34.

The Individual testified that she has been drinking for most of her life and realized she had a problem with alcohol a few years ago. Tr. at 38. She described her drinking as “just kind of continuous, off and on. I mean, I tried to quit, and then I’d start again. Tried to quit, then I’d start again.” Tr. at 40. She stated she has been “going in and out of AA for years now,” and realized that she just had to stop using alcohol. Tr. at 38. She testified that in 2018, she was drinking heavily and felt like she needed to get some help but did not know how to do so. Tr. at 39. She enrolled in the IOP but stopped attending the IOP after a few weeks. Tr. at 39. She stated she was sober while she was in the IOP but felt it “wasn’t doing anything” for her. Tr. at 40. She admitted that “shortly after” she stopped attending the IOP, she started using alcohol again. Tr. at 40.

She stated that at the end of June 2022, she realized she had a drinking problem and decided to stop drinking and attend AA. Tr. at 40-41. She explained that although she has attended AA in the past, she is now taking it more seriously and has a great sponsor that is taking her through the steps. Tr. at 43. She stated her sobriety date is June 27, 2022, and that she is currently on step two of AA’s Twelve-Step program. Tr. at 22, 44-45. She admitted it was a “horrible mistake” to falsely claim that she last used alcohol on January 1, 2022, during her evaluation with the Psychologist. Tr. at 48. When the Individual was asked about her positive PETH test result on October 19, 2022, she stated: “I can’t understand why that would be showing that, at all, ‘cause I haven’t, like I said, had any alcohol since June. . . . I can’t explain it, other than, I can honestly say I haven’t had a drink since June.” Tr. at 57-58.

The Individual testified that she attends AA meetings when she can, “approximately, probably, I’d say, every other day. . . . I try to get at least four or five meetings a week, is what I’m shooting for.” Tr. at 52. She further testified that she is still meeting with a counselor but did not submit any documentation of these meetings because she was not happy with the counselor. Tr. at 52-53. She stated she has another counselor in mind, but that counselor wants her to show that she can remain sober for six months before she begins her therapy with that counselor. Tr. at 53.

She stated that her recovery now is different from the past because she has a sponsor and is working the Twelve-Step program. Tr. at 53. She stated, “I just have really put . . . effort into it this time.” She further stated that she realized the importance of working the Twelve-Step program. Tr. at 53. She stated she will continue to go to AA meetings, working the steps with her sponsor, finding a new counselor, and continuing taking PETH tests. Tr. at 54. She also stated she is not sure if a counselor would help her or not, since her current counselor does not understand her issues, and her mother and sponsor function as her counselors. Tr. at 54-55.

The Psychologist observed the testimony of the Individual’s witnesses before testifying at the hearing. The Psychologist testified that she diagnosed the Individual with AUD, Moderate, with no evidence of rehabilitation or reformation. Tr. at 64. She opined the Individual has not yet shown evidence of rehabilitation or rehabilitation. Tr. at 64. She noted that the Individual had not complied with her treatment recommendation that she complete an IOP or attend AA for 12 months, noting that the Individual had only been fully participating in AA for five months⁴ and had not completed the IOP. Tr. at 64-65. The Psychologist further cited the Individual’s positive

⁴ Exhibit B indicates that the Individual started regularly attending AA meetings on July 10, 2022, indicating that she had been attending AA meetings for less than four months at the time of the hearing. Ex. B at 1.

PEth test result as a basis for her conclusion that the Individual was not reformed or rehabilitated. Tr. at 65-66. However, she opined that the Individual is “on the right path in terms of AA attendance and the sponsor and working the 12 steps.” Tr. at 66. She stated she continues to have concerns about whether the Individual has used alcohol since June 2022 due to the Individual’s “history of lack of candor about drinking”⁵ and her positive PEth test result. Tr. at 67.

The Psychiatrist testified during the hearing and was asked to interpret the results of the Individual’s October 2022, PEth test. Tr. at 72. The Psychiatrist opined that the Individual’s test results indicate that she had recently consumed of two to four drinks a week. Tr. at 75-76. When I asked the Psychiatrist whether any medications the Individual might have been taking could have caused the Individual’s positive PEth test result, he testified that he was not aware of any medications that contain enough alcohol to cause a positive PEth test result. Tr. at 72-74. However, he further testified:

There’s some over-the-counter cough syrups, and even some prescription cough syrups that contain ethanol, and it’s the vehicle in which the medication is dissolved. It’s not unusual for, for example, over-the-counter cough syrup, et cetera, to have alcohol in it, small amounts...but that should not affect the PEth levels...Prescription medications generally do not contain alcohol in them.

Tr. at 73.

The Psychiatrist testified that medication that the Individual was using at the time she took the test does not contain alcohol. Tr. at 76.

V. Analysis

The Individual was arrested for DWI in 1999 and enrolled in an IOP in 2018. However, she did not complete the IOP, and resumed using alcohol shortly after she left the IOP. Less than four months prior to the hearing, the Individual began regularly attending AA meetings, obtained an AA sponsor, and began working AA’s Twelve-Step program. The Individual testified that she has abstained from alcohol use since June 27, 2022. However, she tested positive for alcohol use approximately two weeks prior to the hearing and has a history of both failing to disclose that she had been receiving alcohol treatment and providing false information concerning the date of her last alcohol consumption. Accordingly, I find her assertion that she has discontinued using alcohol to be of suspect credibility. Moreover, even if she has been abstaining from alcohol use since June 27, 2022, she would have only been sober for slightly more than four months at the time of the hearing.

⁵ There were two occasions where the Individual demonstrated a lack of candor. First, as described above, the Individual tested positive for alcohol consumption on the day of the May 2, 2022, CI after stating to the Psychologist that her last use of alcohol occurred on January 1, 2022. Ex. 6 at 4. The second instance was on December 14, 2021, when the Individual submitted a Questionnaire for National Security Positions (QNSP), which asked the Individual if she had ever received counseling or treatment for alcohol use. The Individual indicated that she had not in her response to the QNSP. Ex. 8 at 41-42. The record shows that she had attended the IOP in 2018. In her response to the LOI, the Individual claimed that her omission of this information from her QNSP was unintentional and noted that she had reported this information during her Enhanced Subject Interview conducted as part of her background investigation for her security clearance. Ex. 9 at 12.

The Adjudicative Guidelines set forth four factors that may mitigate security concerns under Guideline G. First, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if they can show “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.” Adjudicative Guidelines at ¶ 23(a). In the present case, the Individual’s problematic alcohol use has been a longstanding issue and is likely to recur without the successful completion of an IOP or long-term participation in AA. Moreover, the four-month sobriety period claimed by the Individual is not sufficient to demonstrate that her AUD is unlikely to recur. Accordingly, I find that the mitigating conditions set forth at ¶ 23(a) are not present in the instant case.

Second, 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 modified consumption or abstinence in accordance with treatment recommendations.” Adjudicative Guidelines at ¶ 23(b). In the present case, the Individual has acknowledged her maladaptive alcohol use, and has begun fully participating in AA to address her AUD. However, a four-month period of abstinence from alcohol use is not sufficient to establish a pattern of abstinence from alcohol in accordance with the Psychologist’s treatment recommendation that she abstain from alcohol use for 12 months. Accordingly, I find that the mitigating conditions set forth at ¶ 23(b) are not present in the instant case.

Third, the Adjudicative Guidelines 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 is not actively enrolled in an IOP. Moreover, the Individual has a prior history of returning to alcohol use after terminating her IOP prior to completion. While the Individual has recently been attending AA for four months, the Individual’s positive PEth test suggests that she is still consuming alcohol and has therefore not made satisfactory progress in that program. Accordingly, I find that the mitigating conditions set forth at ¶ 23(c) are not present in the instant case.

Finally, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if “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(d). As noted above, the Individual has not successfully completed a treatment program. Moreover, even if the Individual had abstained from all alcohol use since June 27, 2022, a four-month period of abstinence would not be sufficient to demonstrate a clear and established pattern of abstinence in accordance with the Psychologist’s recommendation of 12 months of abstaining from alcohol use. Accordingly, I find that the mitigating conditions set forth at ¶ 23(d) are not present in the instant case.

I therefore find that the security concerns raised by the Individual’s AUD diagnosis under Guideline G have not been resolved.

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 not mitigated the security concerns raised under Guideline G. Accordingly, the Individual has not demonstrated that granting her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be granted. 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