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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:	October 4, 2022)	Case No.: PSH-23-0003
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Issued: January 13, 2022

Administrative Judge Decision

Noorassa A. Rahimzadeh, 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."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 restored.

I. Background

A DOE Contractor employs the Individual in a position that requires her to hold an access authorization. In March 2022, the Individual properly reported that she had been charged with Driving While Intoxicated (DWI) after being stopped by law enforcement personnel for a traffic infraction in the early morning hours. Exhibit (Ex.) 6 at 1. As a result of her disclosure, the local security office (LSO) requested that the Individual complete a Letter of Interrogatory (LOI), which the Individual signed and submitted in April 2022. Ex. 7. The LSO subsequently instructed the Individual to undergo a psychological evaluation conducted by a DOE-consultant psychologist (DOE Psychologist) in May 2022. Ex. 8. The DOE Psychologist relied on the information he obtained in the clinical interview with the Individual, as well as his review of the Individual's Personnel Security File and the *Diagnostic Statistical Manual of Mental Disorders, 5th Edition* (DSM-V). Ex. 8 at 1-2. In June 2022, the DOE Psychologist issued a report (the Report) containing his assessments and conclusions, which included a diagnosis of Alcohol Use Disorder (AUD). Ex. 8 at 5. The DOE Psychologist also opined that the Individual "is seen to meet the definition of drinking habitually and binge drinking." Ex. 8 at 5.

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.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified her that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance and that her clearance had been suspended. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual 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 Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on her own behalf and presented the testimony of four witnesses. *See* Transcript of Hearing, Case No. PSH-23-0003 (hereinafter cited as "Tr."). She also submitted one exhibit, marked as Exhibit A. The DOE Counsel presented the testimony of one witness, the DOE Psychologist, and submitted ten exhibits marked as Exhibits 1 through 10.

II. Notification Letter and Associated Concerns

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning her eligibility for a security clearance. That information pertains to Guideline G of the Adjudicative Guidelines. Ex. 1. Under Guideline G, "[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guidelines at ¶ 21. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are "[a]lcohol-related incidents away from work, such as driving while under the influence . . . regardless of frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder[.]" "[h]abitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder[.]" and "[d]iagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder[.]" Adjudicative Guidelines at ¶ 22(a), (c), and (d).

With respect to Guideline G, the LSO alleged that the DOE Psychologist diagnosed the Individual with AUD, Moderate, without adequate evidence of rehabilitation or reformation and determined that the Individual "habitually and binge consumes alcohol to the point of impaired judgment." Ex. 1 at 1. The LSO further alleged that in March 2022, the Individual was arrested and charged with DWI and Fail to Obey Traffic Control Device, that the Individual's breath alcohol content (BAC) registered at .182, and that the Individual indicated that she had consumed approximately three to four 30-ounce beers prior to the arrest. Ex. 1 at 1. Based on the foregoing, the LSO's invocation of Guideline G is justified.

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 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 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.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Findings of Fact and Hearing Testimony

The Individual indicated that on the day of the DWI incident in March 2022, she had celebrated a holiday with some friends and consumed approximately four beers in the span of four hours. Ex. 6 at 1; Ex. 7 at 1; Tr. at 49-50. She confirmed in her testimony that the amount of alcohol she consumed on the day of the incident was “an atypical amount of alcohol for [her] to drink[.]” Tr. at 52. The Individual made the decision to drive herself home and was stopped by law enforcement personnel after driving through a red light. Ex. 7 at 1; Ex. 8 at 2; Ex. 6 at 1. The Individual was placed in handcuffs after her breath alcohol content registered at 0.182, but “[s]he was not taken to any police department for [booking.]” Ex. 7 at 1; Ex. 6 at 1; Tr. at 51. The Individual was released, and a family member retrieved the Individual. Ex. 7 at 1; Ex. 6 at 1.

In her LOI, the Individual indicated that she had complied with the terms of her release. Ex. 7 at 2. Following the incident, the Individual underwent an alcohol evaluation pursuant to “court requirements[.]” and it was recommended that she attend and complete an intervention program over a weekend, which she completed in July 2022.² Ex. 8 at 3; Ex. 2 at 4; Tr. at 54-55, 62, 80.

In the LOI, the Individual indicated that her current pattern of alcohol consumption was limited to consuming approximately two beers over the course of three hours once per week. Ex. 7 at 3. In addition, about once or twice a month on the weekends, the Individual stated in the LOI, she consumed approximately five to six alcoholic beverages consisting of liquor or beer. Ex. 7 at 3. She indicated that this pattern of consumption began in 2017 and remained consistent. Ex. 7 at 3. Although her alcohol consumption decreased over the COVID-19 pandemic, it increased after she

² The Individual testified that the program consisted of classes, speakers, smaller breakout sessions, personal testimony from participants, and a booklet for participants to complete. Tr. at 62-. She further confirmed in her testimony that the course was approximately twenty hours. Tr. at 79-80, 84.

began socializing with her friends again. Ex. 7 at 3. In her LOI, she indicated that the last time she consumed any alcohol was six days prior and consisted of “one glass of wine.” Ex. 7 at 4. She also stated that she becomes intoxicated after consuming four alcoholic beverages over the span of four hours or less, and that prior to the incident, she would become intoxicated “one to two times a month.” Ex. 7 at 4. She denied any issues with alcohol prior to the March 2022 incident and indicated that although the incident “greatly changed [her] relationship with alcohol[,]” she did not feel that her alcohol use was problematic. Ex. 7 at 5. The Individual also stated in the LOI that she had “changed [her] relationship with alcohol and [her] consumption patterns[.]” following the March 2022 incident. Ex. 7 at 5.

At the hearing, the Individual provided further testimony about her reaction to her DWI and her current relationship with alcohol. In the period immediately following the incident, the Individual was deciding how she should move forward with regard to her relationship with alcohol. Tr. at 55-56. She explained that the intervention program helped her think critically about why she was consuming alcohol and whether she actually wanted to drink. Tr. at 53-55, 63-64. The program helped her properly develop a relationship with alcohol. Tr. at 55-56.

The Individual disclosed the March 2022 incident to the DOE Psychologist and reported that although she had estimated drinking about three to four beers on the day of the incident, “she could not recall exactly.” Ex. 8 at 3. She stated that each beer consisted of thirty ounces. Ex. 8 at 3. The Individual told the DOE Psychologist that while she acknowledged that she made a mistake, she did not intend to abstain from alcohol entirely. Ex. 8 at 3. She had discussed the matter with family and friends and decided “to drink a couple of times a month and to do so responsibly.” Ex. 8 at 3. During the psychological evaluation, she indicated that her most recent alcohol consumption consisted of five twelve-ounce beers over the span of four hours. Ex. 8 at 3; Tr. at 53. The Individual also told the DOE Psychologist that she had also recently consumed “high alcohol drinks” while on a vacation, and on a separate occasion, she had attended “a series of breweries with friends” and “consumed three [sixteen-ounce] beers over six hours.” Ex. 8 at 3. The DOE Psychologist observed that the Individual was “describing what is considered binge drinking” and stated that the Individual indicated “she was now rethinking her plan with alcohol and would only drink on special occasions” as “she did not want to binge drink.” Ex. 8 at 4.

A Phosphatidylethanol (PEth) blood test was performed in conjunction with the evaluation. Ex. 8 at 4. A PEth test “gives an estimate of the average amount of ethanol consumed over the previous 28 days.” Ex. 8 at 4. The DOE Psychologist opined that the Individual’s PEth result, 153 ng/mL, “suggests her average alcohol consumption exceeds four drinks per day.” Ex. 8 at 4. The Individual testified that she assumed this extrapolated amount of alcohol consumption was correct and realized she “need[ed] to make a change[.]” Tr. at 60.

In the Report, the DOE Psychologist diagnosed the Individual with AUD³I and stated that she “is seen to meet the definition of drinking habitually and binge drinking.” Ex. 8 at 5; Tr. at 88. The

³ The Individual began seeing an individual therapist in February 2021, prior to the incident. Ex. A. In a December 2022 letter submitted as Exhibit A, the Individual’s therapist indicated that the Individual was assessed for substance abuse upon first receiving therapy. The therapist stated that “[t]here was nothing in the initial assessment indicating presence of past or current Substance Use Disorder.” Ex. A. There was “further discussion and informal assessment

DOE Psychologist did not find adequate evidence of rehabilitation or reformation and stated that the Individual “plac[es] herself in a position of compromised judgment or reliability through substance use on a regular basis.” Ex. 8 at 5. In the Report, the DOE Psychologist noted that the “weekend intervention program” the Individual had yet to complete at the time of the evaluation did not seem sufficient by itself to evidence adequate reformation or rehabilitation. Ex. 8 at 5. The DOE Psychologist recommended that in order to show adequate evidence of rehabilitation or reformation, the Individual should attend “24 substance abuse therapy sessions[.]” with a licensed therapist, “attend monthly relapse prevention maintenance groups for the remaining duration of one year[.]” and remain abstinent from alcohol. Ex. 8 at 5.

The Individual testified that she was surprised by the DOE Psychologist’s Report, and when asked about whether she considered the Psychologist’s recommendations, the Individual explained that she looked into Alcoholics Anonymous and did not feel that it was a good fit for her personal situation. Tr. at 57, 64-65. The Individual testified that she did not feel that she needed to stop consuming alcohol entirely. Tr. at 66. The Individual also testified that reviewing the DOE Psychologist’s Report, specifically the PEth test results, “kind of scared [her]” and encouraged her to change her alcohol consumption patterns. Tr. at 61-62. She went on to state that although she recognized that she needed to make changes, she felt that the changes did not “need to be drastic[.]” as she could “take small steps [every day] to . . . be a better person[.]” Tr. at 57-58, 71-72. She asked her therapist if she offered any group therapy regarding substance use, but the therapist did not offer that service.⁴ Tr. at 65. She felt that continuing her weekly sessions with her therapist, who had known and treated her for over a year, was sufficient, and accordingly, she did not seek services elsewhere. Tr. at 66-67. Additionally, the Individual informed her therapist of the AUD diagnosis she received from the DOE Psychologist. Tr. at 66. She also believes that maintaining a regular exercise routine and participating in regular morning religious services will help her to ensure her life is not planned around drinking. Tr. at 72-74. The Individual also testified that she simply “did not agree with” the DOE Psychologist’s recommendation that she should abstain from alcohol, as she had completed the intervention program and spoke to her own therapist about the matter. Tr. at 66-67. Accordingly, she did not endeavor to remain abstinent. Tr. at 67. At the time of the hearing, the Individual had last consumed alcohol within a week of the hearing. Tr. at 68. The Individual also testified that she consumed a total of four, twelve-ounce cans of beer during Halloween celebrations. Tr. at 68-69, 83, 85.

of [the Individual’s] substance use” after the March 2022 incident. Ex. A. The Individual’s therapist stated in the letter that “[t]here has never been a time in treatment when [the Individual’s] presentation or reported behaviors indicated a diagnosis of Substance Use Disorder or referral for assessment/treatment deemed indicated.” Ex. A. She described the Individual’s alcohol use as social in nature, but stated that since the incident, the Individual had reflected on the matter and began consuming less alcohol. Ex. A.

In his testimony, the DOE Psychologist explained that he did not find the letter from the therapist convincing and felt that the therapist did not have “adequate information to come to an appropriate conclusion about [whether the Individual has an AUD.]” Tr. at 89. The DOE Psychologist also noted that he did not believe the Individual’s therapist was a substance abuse specialist. Tr. at 89. The Individual testified that she spoke to her therapist regarding the March incident to help herself come to terms with the matter. Tr. at 81-82.

⁴ The Individual explained that her therapist had contemplated starting a therapy group for her patients around the time the Individual asked about it, but the therapist did not get enough interest to form the group. Tr. at 82-83.

The Individual had three friends and a supervisor testify on her behalf. The supervisor acknowledged that the Individual had been forthcoming about the March 2022 incident, notifying him the following business day, and described the Individual as “very honest and transparent[.]” Tr. at 14-15. He also testified that he did not have knowledge of the Individual’s alcohol consumption outside of what she had told him about the DWI. Tr. at 15.

Each of her friends testified that they found the Individual to be trustworthy and reliable. Tr. at 25, 36-37, 45. The second witness testified that he never found the Individual’s drinking to be excessive,⁵ while the fourth witness indicated he never had any concerns regarding the matter, and the second and third witnesses stated that they believed the Individual decreased her alcohol consumption at social events after the DWI. Tr. at 23-24, 32-34, 43. The third witness found the DWI somewhat surprising, as she confirmed her belief that the Individual would not “normally drink that much” and that the Individual would have used a ride share service. Tr. at 28-29. The fourth witness did not notice a change in the Individual’s drinking patterns but did state that “there [was not] a lot of drinking [previously], it was minimal[.]” Tr. at 44. She also stated that she does not believe she paid particular attention to the amount of alcohol the Individual was consuming and went on to describe the Individual as “a person of integrity[.]” Tr. at 44-45.

In his testimony, the DOE Psychologist explained that based on his observations during the hearing, he did not believe that the Individual had shown adequate evidence of reformation or rehabilitation, and further, that the Individual still engages in the habitual or binge consumption of alcohol to the point of impaired judgment.⁶ Tr. at 94, 97. The DOE Psychologist testified that without further intervention, like what he recommended in his Report, the Individual had not received proper treatment for her AUD. Tr. at 90-92. While the Psychologist recognized the positive impact the intervention program had on the Individual, he stated that he had wanted the Individual to attend group therapy for substance abuse with a substance abuse counselor because there are confrontation and information sharing elements in group therapy. Tr. at 90-93. He explained that he recommended follow-up treatment because he believed it would help the Individual maintain sobriety over time, and abstinence would help the Individual understand the impact alcohol has had on her life. Tr. at 91-92. The Psychologist also testified that he was still concerned that the Individual does not “see[] alcohol as problematic in her life,” and he sees her prognosis as “very guarded to poor.” Tr. at 93-94.

V. Analysis

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline G include:

⁵ One witness stated that the Individual did not drink to excess “on more occasions that [she thought] would be normal for someone in [their] age group[.]” Tr. at 33. The witness went on to state that she did not “think [that the Individual] had a problem[.]” Tr. at 36.

⁶ When asked which of the DSM-V criteria for AUD the Individual met at the time of the hearing, the DOE Psychologist went through the criteria and found that the Individual only met enough criteria for a mild diagnosis. Tr. at 96-97. This diagnosis represented a decrease in severity from his initial diagnosis but did not change his treatment recommendations. Tr. at 97-98.

- (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.

As an initial matter, while I appreciate that the Individual has an ongoing treatment relationship with her therapist, I do not afford significant weight to her therapist's opinions, as contained in Exhibit A. First, the Individual's therapist was not at the hearing, and therefore, could not be questioned under oath. Secondly, I find the therapist's assertion that the Individual has never presented with behaviors that could suggest a substance use disorder or the need for treatment somewhat suspect. Further, I do not have any specific indication before me that the Individual's therapist is a substance abuse counselor.

Although the Individual has endeavored to change her relationship with alcohol, she has not recognized her maladaptive use of alcohol. Accordingly, although the Individual indicated in her LOI and testimony that her alcohol consumption has changed, she has not endeavored to remain abstinent pursuant to the recommendation made by the DOE Psychologist. Further, although the Individual participated in and completed an intervention program in July 2022, the Individual did not successfully enroll in and complete a treatment program as recommended by the DOE Psychologist, like an intensive outpatient treatment program, including any required aftercare. Further, although the Individual participates in individual therapy, she began seeing her therapist prior to the March 2022 incident for reasons other than alcohol consumption. Although the Individual discussed alcohol consumption with her therapist following the incident, her therapy is not specifically targeted at addressing her alcohol consumption. Lastly, the DOE Psychologist testified that the Individual has not shown adequate evidence of rehabilitation or reformation and that she has a "very guarded to poor prognosis." Tr. at 93-94. Therefore, I cannot conclude that the Individual has mitigated the Guideline G concerns pursuant to the mitigating factors at ¶ 23(b), (c), and (d).

I also cannot conclude that the incident happened so long ago, was infrequent, or happened under such unique circumstances to suggest it is unlikely to recur and does not place the Individual's current trustworthiness, reliability, or judgment in doubt. The Incident occurred less than a year

ago, and it was the result of the Individual's alcohol consumption, a behavior that the Individual has failed to discontinue despite the negative consequences. For example, the Individual testified that she last consumed alcohol just days before the hearing, and had recently consumed four, twelve-ounce alcoholic beverages during Halloween celebrations. This brings her judgment directly into question. The fact that the Individual continued consuming alcohol despite an AUD diagnosis and a series of recommendations from the DOE Psychologist to address the matter also suggests a defect in her judgment. This continuing behavior and the lack of any targeted treatment also indicates that the incident may not have happened under such unusual circumstances that it is unlikely to recur. Therefore, I cannot conclude that the Individual has mitigated the Guideline G concerns pursuant to the mitigating factor at ¶ 23(a).

For the foregoing reasons, I cannot conclude that the Individual has mitigated the Guideline G concerns as presented in the SSC.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all 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, the Individual has not demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals