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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 6, 2022 ) Case No.: PSH-23-0007  
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Issued: February 2, 2023

**Administrative Judge Decision**

Phillip Harmonick, 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's access authorization should not be restored.

**I. BACKGROUND**

The Individual was first granted access authorization in 2008. Exhibit (Ex.) 11 at 39.<sup>2</sup> On March 9, 2022, while possessing access authorization, the Individual disclosed to the local security office (LSO) that he had enrolled in an intensive outpatient program (IOP) for alcohol-related treatment in January 2022 which he claimed to have successfully completed on March 8, 2022. Ex. 6. However, treatment records from the IOP revealed that the Individual was administratively discharged from the IOP prior to completing treatment and that he had "not been complying with treatment and has continued to use [alcohol] the entire time in the program." Ex. 10 at 163-64.

The Individual subsequently met with a DOE-contracted psychologist (DOE Psychologist) for a clinical interview. Ex. 8 at 3. During the clinical interview, the Individual represented that he had

<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.

<sup>2</sup> The internal pagination of numerous exhibits offered by the LSO does not correspond to the number of pages included in the exhibits. For example, numerous pages within Exhibit 11 are marked with multiple page numbers. This Decision cites to pages in the order in which they appear in exhibits without regard for their internal pagination.

consumed five alcoholic drinks since completing the IOP. *Id.* at 4. However, blood alcohol testing conducted at the request of the DOE Psychologist provided evidence that the Individual had significantly underreported his alcohol consumption. *Id.* at 6. The DOE Psychologist issued a psychological assessment (Report) in which she opined that the Individual met sufficient diagnostic criteria for a diagnosis of Alcohol Use Disorder (AUD), Severe, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*, and that he either habitually or binge consumed alcohol to the point of impaired judgment. *Id.* at 8.

The LSO issued the Individual a letter notifying him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. 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 Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted eleven exhibits (Exs. 1–11). The Individual submitted four exhibits (Exs. A–D). The Individual testified on his own behalf and offered the testimony of his workplace supervisor (Supervisor) and his wife. Hearing Transcript (Tr.) at 3, 11, 27, 45. The LSO offered the testimony of the DOE Psychologist. *Id.* at 3, 91.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the basis for its suspension of the Individual’s access authorization. Ex. 1. “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines at ¶ 21. The SSC cited the DOE Psychologist’s opinion that the Individual met sufficient diagnostic criteria for a diagnosis of AUD, Severe, under the *DSM-5* and that he either habitually or binge consumed alcohol to the point of impaired judgment. Ex. 1. The LSO’s allegation that the Individual engaged in habitual or binge consumption of alcohol to the point of impaired judgment and the DOE Psychologist’s opinion that the Individual met sufficient diagnostic criteria for a diagnosis of AUD justify its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(c)–(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 Dep’t of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they

must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

An individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). An individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted so as 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. FINDINGS OF FACT**

On December 28, 2021, the Individual completed a prescreening to enroll in the IOP. Ex. 10 at 7. The Individual indicated in the prescreening that he was seeking treatment because “his drinking ha[d] caused his wife to start talking about divorce.” *Id.* at 8; *see also* Tr. at 30–31 (indicating that the Individual’s wife threatened to divorce him if he did not seek treatment because his demeanor changed after consuming even small amounts of alcohol and he would “belittle” her). As part of his participation in the IOP, the Individual agreed to abstain from alcohol use while undergoing treatment and to undergo alcohol testing upon request. Ex. 10 at 30.

Clinicians with the IOP diagnosed the Individual with AUD, Moderate, under the *DSM-5*. *Id.* at 83. The Individual met with a therapist for individualized treatment and participated in group counseling sessions while in the IOP. *Id.* at 120–62. During his first meeting with a therapist, the Individual reported consuming six to ten drinks per sitting once or twice weekly prior to enrolling in the IOP. *Id.* at 79; *see also* Ex. 7 at 6 (admitting to having consumed alcohol to intoxication twice weekly before enrolling in the IOP). The Individual reported having been “turned off” by the individual counseling sessions in the IOP, which he characterized as brief and overly focused on his marital issues. Tr. at 62–63. The Individual entered treatment with the goal of saving his marriage and investigating whether he had a problem with alcohol, but he did not believe that he was an alcoholic and admitted that he did not take the program “as seriously as [he] should have.” *Id.* at 46, 61–62; *see also id.* at 33 (reflecting the testimony of the Individual’s wife that he initially seemed enthusiastic about his participation in the IOP and shared information about what he was learning, but he stopped doing so after several weeks and would tell her that he “was tired” when she asked him about the program).

While participating in the IOP, the Individual underwent Ethyl Glucuronide (EtG) urine testing on five occasions from January 4, 2022, to March 8, 2022, each of which was positive for traces of alcohol. Ex. 10 at 50–72. The Individual denied having consumed alcohol during the IOP in his individualized therapy sessions until February 22, 2022, when a therapist confronted him with the results of a positive EtG test and he admitted to having consumed “a small bottle of [whiskey]” several days prior to the test. *Id.* at 105, 117, 122–23; *see also* Tr. at 46–47 (admitting during his hearing testimony that he consumed alcohol through the first seven weeks of the IOP, albeit at a lower volume than prior to entering the IOP). The Individual continued to report having abstained

from alcohol throughout the IOP during group therapy sessions even after admitting his alcohol consumption to the therapist. Ex. 10 at 161.

On March 9, 2022, the Individual received notice from his insurer that the IOP was not covered under his health insurance plan and that any further expenses associated with his participation would not be reimbursed. Ex. B. That same day, the Individual disclosed his participation in the IOP to the LSO. Ex. 6. He represented to the LSO that he had successfully completed the IOP on March 8, 2022. *Id.*

On March 14, 2022, the Individual was administratively discharged from the IOP. Ex. 10 at 163. The criteria provided for the Individual's discharge were that he "ha[d] not been complying with treatment and ha[d] continued to use [alcohol] the entire time in the program as evidenced by his UAs [urinalysis]." *Id.* The clinician who completed the Individual's discharge indicated that the Individual's prognosis and motivation for recovery were "poor." *Id.* at 164.

The LSO issued the Individual a letter of interrogatory (LOI) on May 13, 2022, concerning his alcohol consumption and participation in the IOP. Ex. 7. In response to a question on the LOI concerning any diagnosis and prognosis provided through the IOP, the Individual claimed that "documentation from [the IOP] states I do not need further treatment based on their diagnosis." *Id.* at 2; *see also* Tr. at 47 (testifying at the hearing that he believed that the letter from his insurer denying coverage of the IOP indicated that he did not have "any issues or concerns that need[ed] to be addressed . . ."). The Individual also claimed that he "had a couple of missteps having a couple beers," including twice within approximately six weeks prior to completing his response to the LOI, but that he had "been able to maintain [his] sobriety." Ex. 7 at 4.

On July 8, 2022, the Individual met with the DOE Psychologist for the clinical interview. Ex. 8 at 3. The Individual reported to the DOE Psychologist that he had consumed five alcoholic drinks since leaving the IOP, including consuming a twenty-four-ounce beer four days prior to the clinical interview. *Id.* at 4–5. At the request of the DOE Psychologist, the Individual provided a blood sample for a Phosphatidylethanol (PEth) test, the results of which were positive at 197 ng/mL.<sup>3</sup> *Id.* at 6, 26–27. According to the Medical Doctor who interpreted the results of the PEth test, the results were "congruent with significant alcohol consumption" and exceeded the mean PEth level of male subjects who consumed five or more alcoholic drinks at least twice monthly in a study of binge consumers of alcohol. *Id.* at 27.

The DOE Psychologist issued her Report on July 20, 2022. *Id.* at 9. In the Report, she opined that the Individual met sufficient diagnostic criteria for a diagnosis of AUD, Severe, under the *DSM-5* and habitually or binge consumed alcohol to the point of impaired judgment. *Id.* at 8. She recommended that he demonstrate rehabilitation by completing an in-patient alcohol treatment program of at least thirty days, followed by twelve months of aftercare, and undergoing monthly PEth testing for twelve months. *Id.*

The Individual began meeting with a Licensed Professional Clinical Counselor (LPCC) on September 9, 2022, for weekly counseling related to alcohol avoidance and emotional wellbeing.

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<sup>3</sup> A PEth test measures the presence of the PEth biomarker, which is formed from a chemical reaction occurring in blood when a person consumes alcohol. Ex. 8 at 26–27.

Ex. D at 1. According to the Individual, the LPCC focused on helping him to accept his faults, develop self-confidence, and recognize his insecurities. Tr. at 83. The Individual indicated that he had come to recognize communication issues with his wife as a trigger for his problematic alcohol consumption. *Id.* at 84. He also learned to use stress balls and exercise to help him cope with stress without resorting to alcohol, and he has worked on reestablishing short-term and long-term goals to help him look beyond immediate desires to consume alcohol. *Id.* at 73, 87. In a letter dated January 3, 2023, the LPCC opined that the Individual had “made modest progress” and recommended that he continue weekly counseling and monitoring for alcohol use. Ex. D.

The Individual provided blood samples for PEth testing on September 7, 2022, October 10, 2022, and November 15, 2022. Ex. 2 at 5; Ex. A; Ex. C. The first two tests were negative for traces of alcohol consumption. Ex. 2 at 5; Ex. A. The November 2022 test was positive at 11 ng/mL. Ex. C. The Individual admitted to having consumed alcohol in November prior to the positive PEth test. Tr. at 81. The Individual last admitted to having consumed alcohol on December 22, 2022, when he drank three twenty-four-ounce beers. *Id.* at 73–74, 81. The Individual attributed this alcohol use to stress associated with receiving the LSO’s exhibits in connection with the administrative hearing. *Id.* at 74.

The Individual testified at the hearing that he recognized that he had minimized his problematic alcohol consumption in the past, but he believed that he was “in a much better place” in terms of his recovery than when he met with the DOE Psychologist for the clinical interview. *Id.* at 49; *see also id.* at 13–14, 20 (reflecting the testimony of the Supervisor that the Individual provided regular updates regarding his participation in counseling and alcohol testing, and the Supervisor perceived that the Individual had come to “life-changing realizations” concerning the effects alcohol had on him and his marriage). The Individual indicated that he recognized the problematic nature of his relationship with alcohol and that “maybe [it] will always be a problem in [his] life . . . .” *Id.* at 52. He represented that he carries a blood alcohol content monitor with him at all times so that he can demonstrate to his wife that he has not been consuming alcohol if she has suspicions. *Id.* at 54. The Individual expressed the intention not to consume alcohol in the future. *Id.* at 75.

The DOE Psychologist testified that her opinion concerning the Individual’s AUD was unchanged and that she did not believe that the Individual had demonstrated rehabilitation or reformation. *Id.* at 95–97. She opined that the Individual’s prognosis for recovery was “fair.” *Id.* at 96. She indicated that this prognosis was informed by the Individual’s self-described relapse prevention and refusal skills, which she characterized as failing to grasp “elementary” coping methods and inadequate to support his recovery. *Id.* at 96. She noted that the Individual’s most recent alcohol consumption, in which he consumed seventy-two ounces of beer in one sitting, may have constituted a binge drinking episode and also weighed against a positive prognosis for his recovery. *Id.*

## V. ANALYSIS

The LSO’s allegation that the Individual habitually or binge consumed alcohol to the point of impaired judgment and the DOE Psychologist’s opinion that the Individual met sufficient diagnostic criteria under the *DSM-5* for a diagnosis of AUD justify the LSO’s invocation of

Guideline G. Adjudicative Guidelines at ¶ 22(c)–(d). Conditions that could mitigate a security concern under Guideline G include:

- (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; or,
- (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.

*Id.* at ¶ 23.

Prior to entering treatment in the IOP, the Individual engaged in binge drinking on an approximately weekly basis. The Individual has since consumed alcohol against treatment recommendations on numerous occasions despite his stated desire to abstain from alcohol, including engaging in what the DOE Psychologist characterized as a potential binge drinking episode approximately one month prior to the hearing. In light of the frequency of the Individual’s binge drinking prior to entering treatment, his inability to refrain from alcohol consumption despite his intention to do so, and the recency of his latest binge drinking episode, I find that the first mitigating condition under Guideline G is inapplicable in this case. *Id.* at ¶ 23(a).

The Individual has acknowledged his maladaptive alcohol use and has taken some positive steps to overcome this problem. However, the Individual consumed alcohol approximately one month prior to the hearing and did not establish twelve months of abstinence from alcohol as recommended by the DOE Psychologist. Accordingly, the second mitigating condition is inapplicable in this case. *Id.* at ¶ 23(b).

The Individual relapsed numerous times during and after his participation in the IOP. Although the Individual is currently participating in counseling to support his abstinence from alcohol, the treatment is not as intensive as the in-patient treatment recommended by the DOE Psychologist, and the LPCC indicated that the Individual had made only “modest progress” in his treatment. For these reasons, I find that the Individual has not established the applicability of the third mitigating condition. *Id.* at ¶ 23(c). The fourth mitigating condition is inapplicable because the Individual did not successfully complete the IOP or the treatment recommended by the DOE Psychologist and has not abstained from alcohol in accordance with treatment recommendations. *Id.* at ¶ 23(d).

Despite his stated desire to abstain from alcohol, the Individual has been unable to do so for more than a few months without relapsing, and he may have engaged in a binge drinking episode in the month prior to the hearing. In light of the Individual's inability to control his impulses to consume alcohol, his failure to comply with the DOE Psychologist's treatment recommendations, and the DOE Psychologist's unfavorable prognosis for the Individual's recovery, I find that the Individual's reliability and trustworthiness remain compromised by his alcohol misuse and failure to adequately address his AUD. Accordingly, I find that he has not resolved the security concerns asserted by the LSO under Guideline G.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline G of the Adjudicative Guidelines. After considering all the relevant information, 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 Summary of Security Concerns. Accordingly, I have determined 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.

Phillip Harmonick  
Administrative Judge  
Office of Hearings and Appeals