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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)
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Case No.: PSH-23-0008

Issued: February 10, 2023

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the “Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”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 should not be granted access authorization.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires possession of a security clearance. When completing a Questionnaire for National Security Positions (QNSP) in February 2022, the Individual reported that in 2018 he had completed an alcohol treatment program and that alcohol had negatively impacted his life. The information prompted the LSO to request that the Individual be evaluated by a DOE-consultant Psychiatrist (“Psychiatrist”). Afterward, the LSO informed the Individual by letter (“Notification Letter”) that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline G of the Adjudicative Guidelines.

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.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the Individual testified on his own behalf. The LSO presented the testimony of the Psychiatrist. The Individual submitted fourteen exhibits, marked Exhibits A through N.² The LSO submitted seven exhibits, marked Exhibits 1 through 7.³

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 1. Guideline G provides that "[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guidelines at ¶ 21. Conditions that could raise a security concern include "[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist . . .) of alcohol use disorder[.]" *Id.* at ¶ 22(d). The SSC cited the following information. The Psychiatrist concluded in his January 2022 report that the Individual met the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), criteria for Alcohol Use Disorder (AUD), Severe, in sustained remission, and the Psychiatrist concluded that the Individual had not shown adequate evidence for rehabilitation or reformation. Ex. 1 at 1. The cited information justifies the LSO's invocation of Guideline G.

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security 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).

² At the conclusion of the hearing, I granted the Individual's request for leave to file a post-hearing exhibit based on the representation that the Individual was waiting to receive the results of clinical testing undergone prior to the hearing date. Transcript (Tr.) at 81-82. In granting the request, I indicated that the record would remain open until the earlier occurrence of two events: receipt of the post-hearing exhibit or receipt of the completed transcript. *Id.* The transcript was received first; therefore, the post-hearing document submitted by the Individual containing the results of his clinical testing is not part of the record. However, I would reach the same decision even if I considered the post-hearing submission as part of the record.

³ The LSO's exhibits were combined and submitted in a single, 159-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This Decision will cite to the LSO's exhibits by reference to the exhibit and page number within the combined workbook where the information is located as opposed to the page number that may be located on the page itself.

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* at § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

The record includes the report produced by the Psychiatrist in July 2022. Ex. 5. During the evaluation, the Individual informed the Psychiatrist that “a number of years ago” the Individual consumed alcohol to excess when under a great deal of stress. *Id.* at 52. The Individual reported telling his supervisor in 2018 that he felt suicidal, and he was consequently sent to the Employee Assistance Program (EAP) that year. *Id.* He stated that prior to April 2018, he consumed three to four glasses of whiskey on a daily basis. *Id.* He also explained that he had used alcohol to “self-medicate.” *Id.* at 52. He entered an intensive outpatient program in 2019, which consisted of programming five days a week for approximately six hours a day. *Id.* at 52-53. While in the outpatient program, the Individual was diagnosed with AUD, Severe, and Bipolar II Disorder.⁴ *Id.* at 53, 54. After completing the outpatient program, the Individual attended Alcoholics Anonymous (AA) for about four months. *Id.* at 53. After approximately six months of sobriety, the Individual reported resuming alcohol consumption at a lower rate, having one to two drinks per evening most weeknights. *Id.* The Individual told the Psychiatrist that he got “buzzed” approximately two times per month but no longer consumed alcohol to intoxication. *Id.* He also stated his future intent to use alcohol “in moderation.” *Id.* at 54.

The Individual underwent a Phosphatidylethanol⁵ (PEth) test as a part of the evaluation, and the Psychiatrist opined that the result was positive at a level “congruent with significant alcohol consumption.” *Id.* at 56. At the conclusion of the evaluation, the Psychiatrist opined that the Individual met the diagnostic criteria for AUD, Severe, in sustained remission. *Id.* at 58. He further explained that the Individual had not shown adequate evidence of rehabilitation or reformation because the Individual had stopped attending aftercare and resumed his use of alcohol. *Id.* The Psychiatrist recommended, given the “severe specifier” for AUD and attendant high risk of relapse, that the Individual abstain from alcohol consumption for one year, see a counselor specializing in co-occurring disorders starting on a weekly basis and continuing at a rate determined by the

⁴ The Psychiatrist also noted that the Individual was diagnosed with Bipolar II Disorder in May of 2018. Tr. at 52. In his evaluation, the Psychiatrist determined that the Individual’s Bipolar II Disorder is well-treated, and his condition is stable. *Id.* at 57. Therefore, the Psychiatrist found that the Bipolar II Disorder is not a condition that impairs the Individual’s “judgment, reliability, or trustworthiness.” *Id.*

⁵ As described in the report, “Phosphatidylethanol [] are a group of phospholipids formed only in the presence of ethanol. Levels of phosphatidylethanol in blood are used as markers of previous alcohol consumption.” Ex. 5 at 63.

counselor for at least a year, attend self-help meetings weekly for a year, enroll in his employer's EAP, and have random but regular alcohol testing for a year. *Id.*

Prior to the hearing, the Individual submitted a statement of intent in which he explained that he intends to "abstain from the use of alcohol and attend counselling" and noted that "if [he] does choose to drink alcohol in the future, [he] would do so in an appropriate manner." Ex. A. The Individual's wife provided a letter of support dated September 27, 2022, explaining that she believes her husband uses alcohol appropriately and that he has maintained a healthy lifestyle and followed the treatment plans recommended by medical professionals. Ex. B.

The Individual submitted a letter from his counselor who stated that the Individual had been attending regular sessions for drug and alcohol treatment since September 23, 2022. Ex. N at 1. In the letter, the counselor stated that the Individual was in the "maintenance phase" of his recovery and was "very active" in his sessions. *Id.* at 2. Additionally, the Individual provided records to show that he had attended weekly SMART⁶ Online Recovery meetings from September 25, 2022, to December 26, 2022. Ex. J. The Individual also submitted two negative PEth tests from November and December of 2022. Ex. L, N.

In addition to submitting information about his treatment, the Individual presented letters of recommendation from two of his supervisors that expressed their belief that the Individual has the qualities necessary to hold a security clearance. Ex. D.

At the hearing, the Individual testified that he has been sober since September 11, 2022. Tr. at 17. He also stated that he has been attending SMART Recovery meetings once a week and meeting with a therapist through EAP regularly to discuss his recovery and coping mechanisms. *Id.* at 20-21. He explained that he intends to continue with the SMART Recovery meetings for the "foreseeable future" and continue to use his EAP counselor until he runs out of appointments, at which point he plans to begin seeing a therapist specializing in bipolar and alcohol disorders. *Id.* at 22, 28. The Individual testified that while he attends and listens during the SMART Recovery meetings, he does not join the conversations because he is not comfortable with sharing in such a large group setting. *Id.* at 39, 48. The Individual also said that he is seeing a psychiatrist. *Id.* at 26. His current goal in treatment is to learn coping mechanisms to help him feel comfortable around others who are consuming alcohol. *Id.* at 35.

The Individual also testified regarding his signed statement of intent regarding his future use of alcohol. He explained that when he said, "If I choose to drink alcohol, I would do so in a responsible manner," he meant that he planned to adhere to the Psychiatrist's recommendation of a year of sobriety and then "demonstrate a healthy pattern of alcohol consumption." *Id.* at 30-31. He defined "a healthy pattern of alcohol consumption" as no more than two drinks in a night and intermittent use. *Id.* at 31. The Individual later testified that he does not believe he currently has a problem with alcohol. *Id.* at 34.

The Psychiatrist also testified at the hearing. He stated that in order for him to conclude that the Individual had shown adequate evidence of rehabilitation or reformation, the Psychiatrist would

⁶ SMART stands for Self-Management and Recovery Training, and it is a self-help program similar to AA. Ex. 5 at 57.

need to see a longer period of sobriety. *Id.* at 58. Given the severity of the Individual's AUD and his co-occurring mood disorder, the Psychiatrist stated that he did not believe that controlled alcohol consumption would be a good choice for the Individual. *Id.* He opined that the Individual's attendance at SMART Recovery meetings and his use of EAP therapy sessions were adequate rehabilitative processes, but the Individual needed to find a therapist to continue treatment after he runs out of EAP sessions. *Id.* at 59-60. The Psychiatrist stated that the Individual's participation in the one-on-one EAP was good, but he wanted the Individual to participate more actively in the SMART Recovery group and recommended that the Individual look for a smaller more local group if that would make him more comfortable speaking up. *Id.* at 60. When asked about the Individual's prognosis, the Psychiatrist testified that if the Individual continues his treatment for his bipolar disorder and maintains his abstinence from alcohol, the prognosis is good. *Id.* at 62. However, if the Individual were to resume consuming alcohol, his prognosis would become guarded. *Id.* The Psychiatrist also expressed concern by the Individual's testimony that he no longer has an AUD. *Id.* at 63.

V. ANALYSIS

A. Guideline G Considerations

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

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

Adjudicative Guidelines at ¶ 23.

I find that none of the above factors apply to resolve the Guideline G concerns. Because I rely upon much of the same evidence in considering each of these mitigating factors, the following analysis addresses them together. The record does not demonstrate that the Individual acknowledges his maladaptive alcohol use because, while he acknowledges that he had been diagnosed as meeting the criteria for AUD, he denies that he currently has a problem with alcohol.

Furthermore, although he has taken steps to address the concerns regarding his alcohol use, including adopting a healthier lifestyle, abstaining from alcohol use, attending EAP counseling, and attending SMART Recovery meetings, he has not established a pattern of abstinence in accordance with the treatment recommendations. In that regard, he has only been abstinent and engaging in the recommended treatment for approximately four months, which is significantly less than the year recommended by the Psychiatrist. A relatively short period of time has passed since the Individual became abstinent from alcohol in September 2022. The Individual also has a history of treatment and relapse because he previously completed a treatment program and maintained sobriety for a period of six months before he began consuming alcohol again. His recent period of sobriety is shorter than his previous period, which weighs against finding a clear and established pattern of abstinence or that his conduct is unlikely to recur. Furthermore, the Psychiatrist did not conclude that the Individual had established rehabilitation or reformation of his AUD. Accordingly, I conclude that the Individual has not put forth sufficient evidence to resolve the Guideline G security concerns.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline G of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the SSC. Accordingly, I have determined that the Individual should not be granted access authorization.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals