*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: November 8, 2022) Case No.: PSH-23-0018
)
)

Issued: April 20, 2023

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (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

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 December 2021, the Individual reported alcohol-related criminal charges. 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.

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

[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.

Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the Individual presented the testimony of three witnesses and also testified on his own behalf. The LSO presented the testimony of the Psychiatrist. The Individual submitted thirteen exhibits, marked Exhibits A through M.[2] The LSO submitted thirteen exhibits, marked Exhibits 1 through 13.[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 "[a]lcohol-related incidents away from work, such as driving while under the influence, . . . disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder[,]" "[h]abitual . . . consumption of alcohol to the point of impaired judgment[,] . . ." and "[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist . . .) of alcohol use disorder[.]" *Id.* at ¶ 22(a), (c), and (d). The SSC cited the following information. The Psychiatrist concluded in his August 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, and habitually consumes alcohol to the point of impaired judgment. Ex. 1 at 5. Further, the Individual was arrested five times for alcohol-related offenses between 2008 to 2017. *Id.* at 5–6. 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] Exhibits A through H are combined in a 144-page PDF workbook. This Decision will cite to these exhibits by reference to the exhibit and page number within the workbook.

[3] The LSO's exhibits were combined and submitted in a single, 760-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 Individual has a history of five alcohol-related arrests that occurred between 2008 and 2017. Ex. 10 at 119–25. In 2008, the Individual was arrested and charged with Driving While Intoxicated (DWI); he had been "drinking and driving" and crashed his car. Ex. 11 at 174. In 2009, while his first DWI was pending, he was arrested for another DWI in a parking lot where he was resting, inside his vehicle, after an evening of consuming alcohol. *Id.* at 176. The Individual pled guilty to both DWI charges concurrently.[4] *Id.* at 177. As a result, the Individual was required to attend court-ordered alcohol treatment from May 2009 to January 2011. *Id.* It required that he attend individual and group counseling, maintain abstinence, and participate in Alcoholics Anonymous (AA) with an AA sponsor. Ex. 8 at 61. Once the Individual completed the court-ordered program, he stopped attending AA and resumed alcohol consumption shortly thereafter. *Id.* Then, in 2012 he was arrested for charges including Aggravated Battery after a night of consuming alcohol with others and becoming intoxicated after consuming four alcoholic beverages himself. Ex. 12 at 319, 322. According to the Individual, the charges were dropped by the district attorney's office and "dismissed with prejudice" because the alleged victim proved to be unreliable by providing inconsistent statements. Ex. 13 at 699; *see also* Ex. 12 at 323–24. Finally, in late 2017, the Individual was arrested for Public Intoxication in October and again in December. Ex. 10 at 121. He admitted consuming four alcoholic beverages before the October arrest and six before the December arrest. Ex. 7 at 43–44.

Upon learning about the two separate 2017 arrests, which were reported for the first time in the 2021 QNSP, the LSO requested that the Individual undergo a psychological evaluation in August 2022. Ex. 8 at 59. The record contains the Psychiatrist's report of findings ("Report") issued that same month. *Id.* at 70. After reviewing the Individual's Personnel Security File and the information provided during the evaluation, the Psychiatrist diagnosed the Individual with AUD, Severe, and opined that the Individual habitually consumes alcohol to the point of impaired judgment. *Id.* at 69. The Psychiatrist cited the Individual's history of consuming alcohol in larger amounts than intended, unsuccessful efforts to control alcohol use, cravings, occupational compromise as a result of alcohol use, recurrent alcohol use in situations that are physically hazardous, use during a period when experiencing symptoms of depression, and tolerance. *Id.* at 66. The Psychiatrist also considered the results of a Phosphatidylethanol (PEth) test administered to the Individual during

---

[4] As a result of his global plea, several lesser charges that accompanied the two DWIs were dismissed. Ex. 10 at 123–25.

the evaluation, which came back positive at a level consistent with "moderate to heavy ethanol consumption." *Id.* at 65–66.

The Psychiatrist recommended that to demonstrate rehabilitation or reformation of AUD the Individual should refrain from alcohol consumption for twelve months; document his abstinence with PEth tests and Breath Alcohol Concentration tests; successfully complete an intensive outpatient substance abuse program (IOP) and attend AA meetings at least three times per week for one year while working with a sponsor on the AA 12 Steps; and work with an individual therapist experienced in treating substance-related issues and anxiety. *Id.* at 69–70.

At the hearing, the Individual testified regarding the court-ordered alcohol education and treatment he completed in 2011. He testified that both the individual and group counseling occurred at least once a week, and he was subjected to random alcohol breath tests. *Id.* at 93. The treatment program lasted eighteen months instead of the usual nine because he "kept getting held back" due to not wanting to "give in to the program, basically." *Id.* at 95. For example, he did not actually "work the [AA] program"; instead of getting an AA sponsor as required, he referred to the person who signed off on his attendance as his sponsor. *Id.* He testified that he only participated in the program to avoid jail. *Id.* at 94.

The Individual also confirmed that he had underreported his alcohol consumption during the Psychiatrist's evaluation. *Id.* at 97–100. For example, the Individual told the Psychiatrist that he only consumed two alcoholic drinks during his flight before the evaluation. Ex. 8 at 63. However, at the hearing, he testified that he also consumed two to three additional alcoholic beverages at the airport during his layover, and he had at least one more beer at the hotel that same evening. Tr. at 99. He testified that he began abstaining from alcohol a couple of weeks before he received the Report because the evaluation made him realize that alcohol was a problem for him.[5] *Id.* at 101–02. He testified that he last consumed alcohol on September 12, 2022. *Id.* at 102. He testified that he reached out to an IOP provider the day after he received the Report and immediately began re-attending AA. *Id.* at 101. He completed the IOP in approximately four weeks and described learning "coping techniques of how to deal with life stressors[.]" *Id.* at 105, 108–09. The IOP mainly focused on dealing with cravings and setting a maintainable foundation for recovery. *Id.* at 109. After completing the IOP, he began individual counseling. *Id*. It was through the counseling that he recognized that he had used alcohol to deal with stress. *Id.* at 114. The Individual also contacted his employer's Employee Assistance Program (EAP) in order to set up monthly testing for alcohol consumption in accordance with the Psychiatrist's recommendations. *Id.* at 104. He testified that, while he initially had a goal to abstain for only the recommended one year, he changed his viewpoint after being told by an EAP psychiatrist that the recommendation for people in his situation was permanent abstinence and accepting that his prior belief of what was appropriate alcohol use was incorrect.[6] *Id.* at 112, 131–32. The record includes the results of five PEth tests taken by the Individual between November 2022 and February 2023; all results were negative. Ex. A; Ex. J.

---

[5] The Individual testified that after the evaluation, but prior to receiving the Report, he attended a work conference where he "[drank] a lot." *Id.* at 150.

[6] According to the Report, the Individual's "providers at his [court-ordered] counseling program" had also "recommended that he maintain lifelong abstinence." Ex. 10 at 64.

The Individual testified that he has been attending AA since September 28, 2022, at or greater than the recommended frequency of three times a week, and he has actively participated by working the 12 Steps and building relationships with the other participants. Tr. at 115, 116–17. He testified that the hardest AA step was the first step, which was admitting that he is powerless over alcohol. *Id.* at 117. He testified that the greatest benefit of AA was "being able to relate with . . . other people that come in and share and have similar experiences" and realizing that he shared their mentality around alcohol consumption. *Id.* at 118–19. He also described his triggers and how he is able to identify and also overcome them. *Id.* at 120, 129–30. He testified that his present treatment is different from his prior treatment because it is voluntary as opposed to being court-ordered. *Id.* at 124. He testified that he plans to continue attending AA regularly at least three times a week for the foreseeable future. *Id.* at 124. He relies on his family, friends, and fellow AA members for support. *Id.* at 125–26.

The IOP counselor testified that the Individual completed the IOP in approximately four weeks. *Id.* at 44. The IOP counselor testified that the IOP focused on "identifying triggers for use, planning for sobriety, identifying resiliency factors and resources," and "ensuring a recovery plan" to manage symptoms during recovery. *Id.* at 31. The IOP counselor testified that the Individual quickly transitioned from being "a bit quiet" to becoming an "asset to the group in terms of support for other members" who "maintained consistent engagement throughout group." *Id.* at 34–35. The IOP counselor opined that he was confident that the Individual would be able to abstain from alcohol in the future if the Individual continued his AA and individual counseling. *Id.* at 41.

The Individual's AA sponsor testified that the Individual has demonstrated motivation and a desire to keep learning in the program. *Id.* at 53–54. He testified that he and the Individual have been actively working the 12 Steps and that "people who go through the steps honestly," like the Individual, want "to make sure they're getting the most out of every step." *Id.* at 55. The sponsor also testified that the Individual has developed several relationships with other participants. *Id.* at 57–59. He testified that the Individual's progress has made him proud. *Id.* at 67.

The Individual's roommate testified that the Individual is driven and that the Individual has made "significant efforts to meet all the suggestions and . . . counseling suggested to him." *Id.* at 19.

The record includes a letter from the Individual's individual counselor dated February 14, 2023. Ex. C at 144. Therein, the counselor related that the Individual began receiving treatment in November 2022 and has been compliant, engaged, and diligent in his attempts to implement his relapse prevention skills. *Id.* The counselor opined that the Individual's prognosis is "good." *Id.*

The Psychiatrist testified that, at the time of the evaluation, the Individual was exhibiting active symptoms of AUD, including continued difficulty limiting and controlling his alcohol consumption and continuing to consume alcohol despite knowledge of having had worsened mental health symptoms. *Id.* at 156. He also noted that the Individual was likely still exhibiting tolerance at that time "given the value of his PEth test." *Id.* The Psychiatrist explained that he provided the treatment recommendations in his Report because people with a history of moderate to severe alcohol use disorder should be permanently abstinent instead of being abstinent for a period or trying to moderate consumption. *Id.* at 158. However, he testified that a year of

abstinence would be adequate evidence of reformation and rehabilitation and clarified that his "clinical recommendation . . . from a medical perspective is lifelong abstinence." *Id.* at 160. He also testified that he recommended a year of AA because "long-term rates of relapse at about a year are still as high as 75 percent for people that are trying to maintain abstinence." *Id.* at 158–59.

The Psychiatrist noted that since the evaluation the Individual had genuinely committed to participating in AA and self-improvement through therapy, and the Individual demonstrated "significantly enhanced insight as to the problems that alcohol has caused and the fact it's unadvisable for him to return to drinking[.]" *Id.* at 160–161. The Psychiatrist also testified that, as of the hearing date, the Individual had reported six months of sobriety, which meant that the Individual was in early remission according to the DSM-5 and still in the early recovery process. *Id.* at 162. The Psychiatrist explained that "the chances of relapse continue to go up for anyone trying to refrain [from alcohol consumption]. . . . [P]eople that have maintained sobriety for six months, a portion of those will relapse over the next six months, and even further out." *Id.* at 162. The Psychiatrist testified that the Individual had not yet demonstrated adequate evidence of reformation or rehabilitation because of the high chance of relapse within a year and because the Individual had not yet met the DSM-5 definition of full remission. *Id.* at 165–66. He testified that the Individual's prognosis is "favorable or good" if he continues along his treatment path. *Id.* at 166. In reaching this opinion, the Psychiatrist considered the Individual's "own personal circumstances, both prior to his engagement in treatment and since that time." *Id.* at 177.

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 conditions apply to resolve the Guideline G concerns. In short, too little time has passed since the Individual ceased his alcohol consumption and began treatment in accordance with the Psychiatrist's recommendations to remove my concern that the Individual may relapse or reengage in alcohol consumption. Because I rely upon much of the same evidence in considering each of these mitigating conditions, the following analysis addresses them together.

The record is clear that the Individual has a history of relapse. Starting in 2009, he participated in court-ordered counseling and AA for approximately eighteen months and resumed consumption of alcohol shortly thereafter. The record also demonstrates that the Individual has not successfully completed the recommendations of the Psychiatrist because he has only accomplished six months of the recommended twelve months of AA and abstinence. I credit the Individual for ceasing his alcohol consumption weeks before receiving the Report, genuinely pursuing the recommendations once he received the Report, acknowledging his maladaptive use of alcohol, and exceeding the Psychiatrist's recommendations regarding AA by attending more frequently than advised and deeply engaging the AA community. The Individual has also demonstrated a change in his thinking around alcohol use. His recent efforts represent positive steps taken to overcome his problem.

However, there are several factors that cause me to doubt that the Individual has sufficiently mitigated the security concerns. The Individual has a history of alcohol-related arrests that occurred every several years between 2008 and 2017. The fact that he has avoided any such arrests in the past six years, while positive, is not particularly reassuring in light of his arrest history. Furthermore, the record demonstrates that the Individual is taking his treatment seriously this time, but his recovery is still new and in-progress, which, according to the Psychiatrist, puts him at significant risk of relapse given the severity of his AUD diagnosis. Given that severity, as well as the Individual's history of relapse, even after similar treatment in the past, I agree with the Psychiatrist that the Individual's condition is not yet reformed or rehabilitated. Accordingly, I do not find that the Individual has demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations, and I remained concerned that his behavior may recur.

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'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.

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