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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:	November 8, 2022)	Case No.: PSH-23-0024
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Issued: April 7, 2023

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility 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 him to hold an access authorization. In March 2022, the Individual self-reported that he had been arrested and charged with Driving While Intoxicated (DWI). Ex. 7 at 1. After being stopped by law enforcement personnel, a Breathalyzer test was administered and produced "a result of 0.144%." *Id.* As a result of his disclosure, the local security office (LSO) requested that the Individual complete a Letter of Interrogatory (LOI), which the Individual signed and submitted in May 2022. Ex. 8. The LSO subsequently instructed the Individual to undergo a psychological evaluation conducted by a DOE-consultant psychologist (DOE Psychologist) in July 2022. Ex. 9. In July 2022, the DOE Psychologist issued a report (the Report) in which he concluded that the Individual did not meet the diagnostic criteria for Alcohol Use Disorder (AUD), but that the Individual "is viewed as drinking habitually and excessively to the point of experiencing impaired judgment." *Id.* at 4. 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 him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance and that his 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 he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his 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 his own behalf and presented the testimony of three other witnesses. *See* Transcript of Hearing, Case No. PSH-23-0024 (hereinafter cited as "Tr."). He also submitted six exhibits, marked as Exhibit A through F. The DOE Counsel presented the testimony of one witness, the DOE Psychologist, and submitted eleven exhibits marked as Exhibits 1 through 11.

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 his 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[.]" and "[h]abitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder[.]" *Id.* at ¶ 22(a) and (c).

With respect to Guideline G, the LSO alleged that the Individual underwent a psychological evaluation in July 2022, and, in the same month, the DOE Psychologist issued a Report indicating that the Individual consumes alcohol "habitually and excessively to the point of impaired judgment" and that he had not shown adequate evidence of rehabilitation or reformation. Ex. 1 at 1. The LSO also alleged that in March 2022, the Individual was arrested and charged with DWI, that a Breathalyzer test was administered and registered at 0.144% blood alcohol content (BAC), and that the Individual admitted that he had consumed five mixed drinks before his arrest. *Id.* 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

As indicated above, the Individual was stopped by law enforcement personnel while operating a motor vehicle in March 2022 and charged with a DWI when Breathalyzer test results registered a BAC of 0.144%. Ex. 7 at 1. In his LOI, the Individual indicated that prior to his arrest, he had consumed “[a]pproximately [five] regular glass drinks[.]” of a mixed alcoholic beverage. *Id.*; Ex. 8 at 1. As a result, the Individual's driver's license was suspended. Ex. 6 at 1–4; Ex. 7 at 5–6.

In the LOI, the Individual indicated that he consumes alcohol approximately twice per month and that he typically consumes two to five drinks on each occasion. Ex. 8 at 3. He stated that during the week prior to completing the LOI he had consumed “[a]pproximately [four] drinks in [three] hours.” *Id.* The Individual also admitted that he consumes alcohol to intoxication once every three to four months and that he last consumed alcohol to intoxication about one month prior to the completion of the LOI, consuming four drinks over the span of three to four hours. *Id.* The Individual denied any negative impact alcohol may have had on his personal and professional life, his judgment or reliability, or his health. *Id.* at 4.

The Individual informed the DOE Psychologist of the March 2022 incident during the psychological evaluation, stating that on the day in question, he began consuming alcohol in the afternoon, consuming five “regular” glasses of a mixed alcoholic beverage “over seven to eight hours.” Ex. 9 at 2. The DOE Psychologist noted in the Report that the Individual's reported BAC is inconsistent with the amount of alcohol the Individual stated he had consumed. *Id.* The Report goes on to state that the Individual “acknowledged that the drinks were ‘doubles.’” *Id.* The Individual told the DOE Psychologist that he generally consumed alcohol twice a month “for most of the preceding five to six years[.]” that he “consum[ed] two to five drinks, sometimes doubles, during that period[.]” and that prior to the evaluation, he last consumed three beers, on July 4. *Id.*;

Tr. at 64. The Report also indicates that the Individual did not intend to alter his drinking patterns, but he would refrain from operating a motor vehicle, even if he had consumed only one beer. Ex. 9 at 3; Tr. at 70.

A Phosphatidylethanol (PEth) blood test was performed in conjunction with the evaluation. Ex. 9 at 3. PEth is “a direct alcohol biomarker which is found in human blood following alcohol consumption,” and “PEth levels in excess of 20 ng/mL are considered evidence of moderate to heavy [alcohol] consumption.” *Id.* at 3, 9. The PEth test was negative. *Id.* at 3.

Although the DOE Psychologist did not conclude that the Individual met the diagnostic criteria for AUD, he did indicate that the Individual “is viewed as drinking habitually and excessively to the point of experiencing impaired judgment.” *Id.* at 4. As a result of his alcohol consumption, the DOE Psychologist concluded that the Individual “frequently placed himself in a position of compromised judgment or reliability through impairment and intoxication.” *Id.* The DOE Psychologist did not find adequate evidence of rehabilitation or reformation and recommended that the Individual participate in a treatment program specific to substance abuse and offered by a practitioner licensed “to offer substance abuse treatment.” *Id.* The DOE Psychologist also recommended that the treatment consist of weekly group therapy for the duration of twelve weeks, that the Individual participate in recommended aftercare at least once a month for the remainder of twelve months, and that he abstain from alcohol. *Id.* He went on to recommend that the Individual participate in a support group like Alcoholics Anonymous (AA) on a weekly basis and that he submits to random monitoring via a Breathalyzer test, urine tests, blood tests, or some “other acceptable option[.]” *Id.*

During the hearing, the Individual confirmed that he had he had read the DOE Psychologist’s report and stated that he disagreed with the conclusion that he would habitually drink alcohol to excess. Tr. at 61. The Individual testified that while he understood he was charged with a DWI incident, he “[did not] really understand the recommendations” made by the DOE Psychologist. *Id.* at 69. He disagreed with the DOE Psychologist’s assessment because, as he testified, he never told the DOE Psychologist that he was achieving a state of intoxication on a monthly basis. *Id.* at 61. The Individual stated that he would go some months without consuming alcohol, so any recitation of alcohol consumption that he provided in the LOI or to the DOE Psychologist was subject to that exception. *Id.* at 61–64. He did, however, acknowledge that if he was drinking on a monthly basis, he would “drink to intoxication once every three to four months.” *Id.* at 64.

The Individual testified that he did not feel intoxicated on the night of the March 2022 incident, despite a high BAC result. *Id.* at 64–65, 70. He stated that on the night of the incident, two of the five mixed drinks he consumed were doubles, and acknowledged that he could have been intoxicated without feeling the effects of intoxication. *Id.* at 65–66. He stated his confidence in the accuracy of the amount of alcohol he reported having consumed the night of the incident and testified that he last consumed alcohol in August 2022. *Id.* at 66–67. The Individual stated that he was at a party in August 2022 and consumed two or three beers over the span of five to six hours without becoming intoxicated. *Id.* at 67. He stopped drinking after attending the party to “prove that [he does not] have a problem and that [he does not] need alcohol.” *Id.* He has since learned that he does not need to consume alcohol to have fun in social settings. *Id.* He denied any cravings for alcohol and stated that he has declined offers of alcoholic beverages since he began abstaining

in August 2022. *Id.* at 67–68, 74. The Individual also indicated that he counts his wife as part of his support network and that if he ever needs to speak to someone at AA for support, he has a binder containing their contact information at home. *Id.* at 74. He stated that in the future, he intends to “[j]ust not really drink” but indicated that his abstinence has impacted his social life “a little bit[.]” *Id.* at 68, 70–71.

The Individual further testified that he completed a court-ordered alcohol education program in August 2022 and attended a victim impact panel in September 2022. *Id.* at 51–53; Ex. A; Ex. B. From October 2022 to late January 2023, the Individual participated in twelve AA meetings. Ex. F. He stated that he attended AA meetings every Monday evening, and that he began attending those meetings in October 2022. Tr. at 56. He acknowledged that he missed a few meetings due to other obligations and that he stopped attending meetings altogether a couple of weeks prior to the hearing. *Id.* at 56–57. He stopped attending AA meetings because he had been previously told by another AA participant that he felt the Individual did not have a problem with alcohol, as the Individual could stop drinking when he wished. *Id.* at 57–60. The Individual provided further clarification and stated that he was forthcoming with his fellow AA attendee during this conversation, in that he had explained that he had been charged with a DWI and told the attendee about his alcohol consumption patterns. *Id.* at 59–60. Additionally, the Individual did not “feel like [he had] a problem.” *Id.* at 58. The Individual explained that he did not begin the process of completing the “Twelve Steps” because, after examining the steps, he did not feel that the steps were something “[he] had to do.” *Id.* at 58, 60. Despite an initial desire to do so, the Individual did not engage an AA sponsor. *Id.* at 61, 73. Simply, Individual did not feel that alcohol afflicted him in the same manner that it afflicted other AA attendees because he does not need alcohol. *Id.* at 69–70. In later testimony, he said that by participating in AA, he learned how to identify a real alcoholic and that he would not introduce himself as an alcoholic at AA meetings. *Id.* at 73–75.

Regarding the recommendation that he seek treatment with an appropriately trained provider, the Individual indicated that he felt he was being referred to an inpatient rehabilitation facility, which he felt was excessive and that it would consume too much of his time and money, especially in light of the fact that he had not received a diagnosis. *Id.* at 76–77. In his closing statement, the Individual indicated that he feels that AA and treatment with a therapist are tantamount to the same thing, as AA participants discuss their issues in the same way one would discuss the matter with a therapist. *Id.* at 89–90. And further, he indicated that he does not believe that “any doctor can tell [him] . . . that [he is] an alcoholic when [he feels] that [he is] not.” *Id.* at 90.

The Individual also submitted to three alcohol urine tests from October 2022 to January 2023, all of which were negative. *Id.* at 53–54, 56, 72–73; Ex. C, D, and E. He took the tests pursuant to the recommendations made by the DOE Psychologist. Tr. at 54. He indicated that he scheduled twelve urine tests with a company that would administer the tests on a monthly basis, but at random points during the month. *Id.* at 54–56.

The Individual’s former manager, who had known the Individual for approximately ten months and would not socialize with the Individual outside of work, testified that he had never seen the Individual consume alcohol at work, report to work in an intoxicated state, or have alcohol on his breath while at work. *Id.* at 13–15. He stated that the Individual was a “diligent worker” and that he felt the Individual is a reliable person. *Id.* at 15–16. The Individual’s former manager also

stated his belief that the Individual is trustworthy and that “[h]is judgment was always spot on[.]” *Id.* at 16–18.

The Individual’s supervisor at the time of the incident testified that he socialized with the Individual “less than five times” outside of the work environment, and that the Individual consumed one beer on one of those occasions. *Id.* at 22–24, 29–30. He went on to state that the Individual reported the March 2022 incident to him first, and that he has never known the Individual to report to work after consuming alcohol or in an intoxicated state. *Id.* at 24. He also indicated that he has never smelled alcohol on or about the Individual, that he last saw the Individual at work six months ago, and that the Individual previously mentioned something about attending AA meetings to him. *Id.* at 25–26. The supervisor stated that he felt the Individual “never lied [to him]” *Id.* at 26–27. He also confirmed that he believed the Individual to be a reliable person and that before the March 2022 incident, he felt the Individual “made really good decisions.” *Id.* at 28, 30.

The Individual’s spouse of nine years testified that outside of the March 2022 incident, she does not know of “any situations in which alcohol ha[d] created a problem for [the Individual.]” *Id.* at 33–34. She also stated that she could not recall the last time she saw the Individual consume alcohol but knew that he last consumed alcohol in August 2022. *Id.* at 34. She stated that the Individual told her that he intended to consume alcohol prior to attending the August 2022 social event. *Id.* She did not know how much alcohol he consumed on that occasion but stated that he did not come home in an intoxicated state, and that following this event, the Individual told her that he was going to stop drinking and started attending AA meetings. *Id.* at 35.

The Individual’s spouse also testified that the Individual “never really drank much alcohol to begin with,” but that he had reduced his alcohol consumption since the summer of 2022. *Id.* at 36, 42. Further, she indicated that he had stopped seeing his friends in a social capacity because “he [cannot] drink.” *Id.* She indicated that when the Individual was drinking, he was a “social drinker,” consuming about four beers over the span of about six to eight hours, and she stated that he “told [her] that he [did not] believe [that] he ha[d] an alcohol problem.” *Id.* at 36–38. She testified that she would observe the Individual consume alcohol about every three to four months when he was consuming alcohol, and that if the Individual drank something other than beer, he would consume one “Jack and Coke.” *Id.* at 37, 40. However, she later stated that she believed “[there was] a period of time where [the Individual] would drink more often than what . . . [she] saw.”² *Id.* at 40–41. The Individual’s spouse also stated that she had never known the Individual to report to work under the influence of alcohol, she had never heard him express any difficulties with remaining abstinent, and that she believed they continue to keep alcohol in their home but did not know what they kept in the home. *Id.* at 36, 38. She stated her belief that if the Individual resumed consuming alcohol, he would make her aware of the fact. *Id.* at 43. Finally, she denied any issues in her marriage caused by the Individual’s alcohol consumption and stated that she last saw him intoxicated in the summer of 2021. *Id.* at 45, 49.

² Later in the hearing, the Individual’s spouse was confronted with the amount of alcohol the Individual reported he was drinking to the DOE psychologist. *Id.* at 44. She stated that she “[did not] realize” and that his alcohol consumption “[did not] seem as much.” *Id.* at 44–45. She did not believe the Individual was concealing his alcohol consumption and stated that “[s]ometimes [she] just [does not] pay attention.” *Id.* at 45.

At the hearing, the DOE Psychologist testified that after seeing the evidence and listening to the testimony, the Individual had not shown adequate evidence of rehabilitation or reformation. *Id.* 80. He indicated that although the Individual attended court-ordered programs and attended AA meetings, “he did not feel as though he really belonged” in AA, “[h]e did not complete any treatment of any type that was recommended, and he continued to drink following” the psychological evaluation. *Id.* at 80, 87. He also testified that although the Individual had stopped drinking in August 2022, he still did not “have an understanding of real intoxication levels or how big of an impact the alcohol play[ed] in his life.” *Id.* at 80. The DOE Psychologist went on to opine that the Individual was “underestimating his alcohol intake[.]” *Id.* at 81. Further, the Individual was likely not “as candid with his wife about his drinking, as he was in the interrogatories or in the interview with [him].” *Id.* He also stated that the AA meetings were not sufficient to show adequate rehabilitation or reformation because AA is a support environment where treatment does not occur. *Id.* The DOE Psychologist was particularly concerned with the fact that the Individual did not endorse being intoxicated on the day of the incident, despite his BAC results. *Id.* at 83, 86–87. He also stated that in order for the Individual to show adequate evidence of rehabilitation or reformation, his original recommendations from the Report were still appropriate, and, further, the lack of transparency and honesty with himself and those around him could hinder the Individual’s recovery. *Id.* at 83–84.

V. Analysis

The Adjudicative Guidelines provide that conditions that could mitigate security concerns 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; 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 cannot conclude that the Individual has mitigated the Guideline G concerns as stated in the SSC. As an initial matter, while the testimony indicates that the Individual had been abstinent since August 2020 and the negative urine alcohol tests date from October 2022, six months of abstinence

falls short of the recommended twelve months of abstinence. I have no evidence before to indicate that the Individual's problematic alcohol consumption was infrequent or happened under such unusual circumstances to suggest that it is unlikely to recur or does not cast doubt on his current reliability, trustworthiness, or judgment. Accordingly, I cannot conclude that the Individual mitigated the stated concerns pursuant to the mitigating factor at ¶ 23(a).

Additionally, the Individual repeatedly indicated throughout the hearing that he does not believe he has a problem with alcohol. This was a concerning assertion for a couple of reasons. First, the Individual's belief that he was not intoxicated on the night of the incident is somewhat surprising when considering the BAC results from that night. Additionally, the Individual's spouse seemed to have limited knowledge with regard to how much alcohol the Individual was actually consuming. I agree with the DOE Psychologist's assessment that the Individual "[does not] appear to have been as candid with his wife about his drinking, as he was in the interrogatories or in the interview with [the DOE Psychologist]." And further, the DOE Psychologist testified that he could not conclude that the Individual had shown adequate evidence of rehabilitation or reformation, as the Individual had not fully implemented the recommendations he made in the Report. This evidence prevents me from finding that the Individual has acknowledged his maladaptive alcohol use, which is necessary to meet the second mitigating factor. Therefore, I cannot conclude that the Individual mitigated the stated concerns pursuant to the mitigating factor at ¶ 23(b).

Finally, while the Individual participated in AA meetings for approximately four months and completed court-ordered educational programs, these activities do not constitute the treatment contemplated in the DOE Psychologist's Report. While I understand the Individual may have felt sufficient freedom to discuss his experience with alcohol in an open and frank manner at these meetings, as the DOE Psychologist indicated, AA meetings are support meetings and not treatment. As I have no evidence before me indicating that the Individual enrolled in and completed any treatment program, I cannot conclude that he has mitigated the Guideline G concerns as stated in the SSC pursuant to mitigating factors ¶ 23(c) or (d).

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