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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-23-0021
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Issued: May 9, 2023

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled “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 be restored.

I. Background

On April 5, 2022, the Individual woke up with shakes after a night of heavy alcohol consumption. Ex. 8 at 4. He reported this condition to his employer, a DOE contractor, who required that he undergo a fitness for duty evaluation. Ex. 8 at 4. A psychologist employed by his employer’s Occupational Medicine (OM) Department (the OM Psychologist), recommended that he attend an inpatient alcohol treatment program. Ex. 8 at 4–5. From April 14, 2022, to May 15, 2022, the Individual attended an inpatient alcohol treatment program (ITP). Ex. 7 at 1; Ex. 8 at 5.

On June 9, 2022, a Local Security Office (LSO) issued a Letter of Interrogatory (LOI) to the Individual, to which he responded on that same day. Ex. 7 at 1, 9. In this response the Individual reported that he had ceased consuming alcohol, attended the ITP, began attending Alcoholics Anonymous (AA) two to six times a week, and had arranged to begin counseling with a local mental health provider. Ex. 7 at 1. The Individual further reported that he had received alcohol treatment in the past, after he had been arrested for Driving Under the Influence of Alcohol twice in 1982. Ex. 7 at 2–3. The Individual reported that his last use of alcohol had occurred on April

¹ Under the regulations, “[a]ccess authorization means 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). Such authorization will also be referred to in this Decision as a security clearance.

5, 2022. Ex. 7 at 6. The Individual stated: “I have proved to myself that I cannot use alcohol and will continue AA/NA and abstinence of all mind altering substances.” Ex. 7 at 13.

Because of the security concerns raised by the alcohol treatment, the LSO requested that the Individual undergo an evaluation by a DOE-contractor Psychologist (Psychologist), who conducted a clinical interview (CI) of the Individual on June 20, 2022. Ex. 8 at 2. In addition to interviewing the Individual, the Psychologist reviewed the Individual’s personnel security file, administered the Minnesota Multiphasic Personality Inventory-Third Edition (MMPI-3) to the Individual, and had him undergo a Phosphatidylethanol (PEth) laboratory test to detect alcohol consumption. Ex. 8 at 2. The Individual’s PEth test result was negative, indicating that he had not used alcohol recently. Ex. 8 at 5. The Psychologist issued a report of his findings (the Report) on July 24, 2022, in which he found that the Individual had met the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5) for Alcohol Use Disorder (AUD), Severe, in early remission and that the Individual was neither reformed nor rehabilitated since he had only been abstaining from alcohol use for three months. Ex. 8 at 7–8. The Psychologist recommended that the Individual continue participating in AA for at least 18 months, obtain an AA sponsor, abstain from alcohol use for six months, and undergo monthly PEth tests for six months. Ex. 8 at 7–8.

After receiving the Report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him 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 the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual, a fellow AA member, his AA sponsor (the Sponsor), and the Psychologist. *See* Transcript of Hearing, Case No. PSH-23-0021 (hereinafter cited as “Tr.”). The DOE Counsel submitted 10 exhibits marked as Exhibits 1 through 10. The Individual submitted seven exhibits marked as Exhibits A through G.

Exhibit A is the Individual’s response to the Summary of Security Concerns (SSC) in which he takes exception to several of the Psychologist’s statements in the Psychologist’s Report.

Exhibit B is a medical record issued documenting the Individual’s treatment at an urgent care facility on February 7, 2022, for bronchitis. Ex. B at 1.

Exhibit C is a “Duty Disposition Letter” issued by the Human Reliability Program (HRP) indicating that a HRP physician found the Individual to be fit for duty from February 14, 2022, to February 14, 2023. Ex. C at 1.

Exhibit D is a series of sign-in sheets documenting the Individual’s frequent attendance of AA meetings from September 7, 2022, to April 3, 2023.

Exhibit E is a letter dated March 24, 2023, from the Individual’s counselor to Whom It May Concern, in which the Counselor states:

This letter is regarding [the Individual]. [The Individual] has been receiving services . . . since July of 2022. [The Individual] continues to make good progress in individual therapy in identifying underlying issues related to his drinking and planning for long term sobriety. [The Individual] has also been attending AA meetings regularly and continues to work with a sponsor.

Ex. E at 1.

Exhibit F is a letter from an employee of the ITP documenting that the Individual had attended that program from April 15, 2022, to May 15, 2022, when he was “discharged with staff approval.” Ex. F at 1.

Exhibit G is an email, dated April 18, 2023, from the OM Psychologist to the DOE Counsel. In this letter, the OM Psychologist explained that the Individual was not regularly tested for alcohol use by OM due to an error on the part of the OM. Ex. G at 1.

II. The SSC

The SSC informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines, citing the Psychologist’s finding that the Individual met the DSM-5 criteria for AUD, Severe. This information adequately justifies the LSO’s invocation of Guideline G. 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 is “diagnosis by a duly qualified . . . clinical psychologist . . . of alcohol use disorder.” Adjudicative Guidelines at ¶ 22(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 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 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. 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. Hearing

To mitigate the security concerns raised by his AUD, Moderate, the Individual presented the testimony of three witnesses, including himself, at the hearing to show that he was reformed and rehabilitated.

A fellow AA member testified at the hearing that he has known the Individual for seven or eight months, since they met at an AA meeting. Tr. at 15. He and the Individual have started a new AA meeting in an underserved community. Tr. at 15–19. The Individual attends AA meetings three or four times a week. Tr. at 16. The Individual regularly leads AA meetings. Tr. at 19–20. The Individual has been sober for seven months. Tr. at 22. The Individual spoke about a relapse in an AA meeting, but the witness did not remember when that occurred, just that it was “a ways back.” Tr. at 24, 27–28. He and the Individual socialize frequently. Tr. at 26. He has never observed the Individual consuming alcohol. Tr. at 26. The Individual takes his sobriety seriously. Tr. at 26.

The Sponsor testified at the hearing that he met the Individual through AA meetings. Tr. at 33. He has been the Individual’s sponsor for approximately a year. Tr. at 34. The Individual attends AA meetings at his group two to three times a month. Tr. at 34. The Individual attends meetings at other groups as well. Tr. at 35. He and the Individual meet at least once a month in the sponsor-ponsee capacity. Tr. at 36. He also talks to the Individual on the phone and they exchange texts regularly. Tr. at 36. The Sponsor testified that “the Individual is definitely making progress in his sobriety, but he is definitely in early sobriety . . .” Tr. at 36–37. The Sponsor has sponsored a half dozen people over the years. Tr. at 37. He described the Individual as “very participative” and willing to share. Tr. at 37–38. The Individual is very open about his sobriety and the difficulties of early sobriety. Tr. at 38. The Sponsor described the Individual as “one of the more successful candidates in AA.” Tr. at 38. The Individual had one relapse in early September 2022. Tr. at 40. The Individual learned a lot from that relapse. Tr. at 40. Relapse is common in early sobriety. Tr. at 41. The fact that the Individual contacted him immediately after relapsing is an encouraging sign of his interest in maintaining his sobriety. Tr. at 41–42. The Individual is engaged in the Twelve-Step program. Tr. at 42. The Individual has shown growth and improvement in the program. Tr. at 44. He is optimistic about the Individual’s recovery. Tr. at 45. The Individual recently received his seven-month chip. Tr. at 46–47. His relapse occurred before the start of that seven-month period. Tr. at 47.

The Individual testified that he stopped using alcohol in April 2022, when he realized that his excessive alcohol use was making him physically ill and that he was in an unhealthy romantic relationship. Tr. at 51–54. He had to call into work on April 5, 2022, and report that he was not fit for duty due to alcohol induced “jitters.” Tr. at 56. They had him inform OM. Tr. at 56. OM informed him he had to enroll in a 30-day inpatient treatment program. Tr. at 56. He complied with this requirement by enrolling in the ITP. Tr. at 56–57. He did not use alcohol between April 5, 2022, and the ITP. Tr. at 58. He found the ITP to be helpful. Tr. at 62–63. He started attending AA meetings right after he finished the ITP. Tr. at 64. He started a new AA group, in October

2022, because he wanted to be able to attend meetings closer to his home. Tr. at 66–67. He still attends AA meetings in other communities. Tr. at 67. He intends to attend AA meetings for the rest of his life. Tr. at 67. The Individual testified that he gets a lot from AA, not only does it help him with alcohol, but in other areas of his life as well. Tr. at 68. He does not find abstaining from alcohol use to be particularly difficult, because he does not experience cravings. Tr. at 68. He is learning to find peace of mind without alcohol. Tr. at 68. He attends individual counseling monthly at the suggestion of the OM Psychologist. Tr. at 68–70. The Individual testified that he relapsed in September 2022, after he found out his clearance had been suspended, and his sobriety date is now September 11, 2022. Tr. at 71–72, 75–76. He consumed two 16-ounce beers on September 10, 2022. Tr. at 73–74. The next day he called the Sponsor and informed him of his relapse. Tr. at 74. The Individual testified that prior to his relapse, his last use of alcohol occurred on April 5, 2022. Tr. at 75. The Individual plans to permanently abstain from alcohol use. Tr. at 80. OM was supposed to test him for alcohol use monthly but did not do so. Tr. at 82–83. He testified that his AA group meetings, his daughter and son-in-law, and his friends from AA provide him with an effective support network. Tr. at 87-89.

The Psychologist observed the testimony of the other witnesses before testifying at the hearing. He testified that the Individual met the criteria set forth in the DSM-5 for AUD, Severe. Tr. at 97–98. Because of his relapse, the Individual is now considered to be in partial remission or early remission. Tr. at 98-99. He testified that the Individual handled his relapse well, having reached out to the appropriate people. Tr. at 95. The Psychologist noted that it is important that the Individual only relapsed once and did not go on “a really big binge.” Tr. at 95-96. The Psychologist noted that the Individual, by notifying his sponsor immediately of his relapse, took responsibility for his actions and showed he was “trying to do the correct thing.” Tr. at 96. The Psychologist further testified that “the lapse seven months ago should remind all of us that he remains vulnerable to relapsing and to the use of alcohol to deal with dysphoric affects, depression, anger, upsets of various kind.” Tr. at 99. The Psychologist does not have any reason to believe that the Individual has not abstained from alcohol use since September 2022. Tr. at 101. If not for the two beers that he consumed on September 10, 2022, the Individual would be in sustained remission. Tr. at 102. The Psychologist testified that, other than not getting PEth tested, the Individual complied with his treatment recommendations. Tr. at 102. He testified that the Individual’s prognosis is “very good.” Tr. at 102. The Psychologist was impressed by the Individual’s candid testimony. Tr. at 103. He noted that the Individual “is incredibly invested in the AA process . . .” Tr. at 103.

V. Analysis

The Individual has shown himself to be deeply committed to his sobriety and highly motivated to achieve it. He has complied with the Psychologist’s treatment recommendations, although he did not undergo the recommended PEth testing. He has attended and completed the ITP and has become highly engaged in AA. In addition, the Individual has been receiving individual counseling. Most importantly, he has been able to limit himself to consuming two sixteen-ounce beers during the past thirteen months. At the time of the hearing, it had been over seven months since he last consumed alcohol. Both the Psychologist and myself were impressed by the Individual’s candor at the hearing and his willingness to hold himself accountable.

The Adjudicative Guidelines set forth four factors that may mitigate security concerns under Guideline G.

First, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if “[t]he 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.” Adjudicative Guidelines at ¶ 23(b). In the present case, the Individual has acknowledged his AUD, has received treatment at the ITP, and has begun fully participating in AA to address his AUD. His seven-month period of abstinence from alcohol use is sufficient to establish a pattern of abstinence from alcohol in accordance with the Psychologist’s treatment recommendation that he abstain from alcohol use for six months. Accordingly, I find that the mitigating conditions set forth at ¶ 23(b) are present in the instant case.

Second, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if “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(d). As noted above, the Individual has successfully completed the ITP and is highly engaged in AA. The Individual has abstained from all alcohol use since September 11, 2022, a seven-month period of abstinence that demonstrates a clear and established pattern of abstinence in accordance with the Psychologist’s recommendations that he abstain from alcohol for six months. Accordingly, I find that the mitigating conditions set forth at ¶ 23(d) are present in the instant case.

I therefore find that the security concerns raised by the Individual’s AUD diagnosis under Guideline G have been resolved.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G. After considering all the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has mitigated the security concerns raised under Guideline G. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual’s security clearance should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals