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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:	January 10, 2023	)	Case No.: PSH-23-0049
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Issued: May 17, 2023

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**Administrative Judge Decision**

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Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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.”<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 be restored.

**I. Background**

On June 16, 2022, the Individual’s employer administered a routine random breath alcohol test (BAT) to her. Ex. 8 at 3. The Individual’s BAT was positive indicating that her blood alcohol level (BAL) was .056. Ex. 8 at 3. A second BAT was administered to her approximately 16 minutes later, which indicated that her BAL was .051. Ex. 8 at 3.

On August 5, 2022, a Local Security Office (the “LSO”) issued a Letter of Interrogatory (the “LOI”) to the Individual, to which she responded on August 8, 2022. Ex. 9 at 1, 6. In this response the Individual reported that she had consumed approximately four ounces of vodka between 6:00 p.m. and 10:30 p.m. on June 15, 2022. Ex. 9 at 1. The Individual stated that her last consumption of alcohol occurred the night before she submitted her response, on August 7, 2022, when she consumed two ounces of vodka; nevertheless, the Individual also stated that she was abstaining from alcohol use. Ex. 9 at 2–3, 5. The Individual stated: “I feel like I was in the beginning of an unhealthy relationship with alcohol when my incident (Positive BAT, June 16, 2022) occurred.”

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<sup>1</sup> 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.

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Ex. 9 at 5. She reported that her primary care physician had expressed concern about her alcohol consumption when tests indicated abnormalities in her liver enzymes in spring 2022. Ex. 9 at 5. She noted that she had sought “professional help through the Employee Assistance Program” and that she had been attending an Intensive Outpatient Program (IOP), which she hoped to complete in October 2022. Ex. 9 at 5. She reported meeting with a “substance abuse evaluator” (the Counselor) but had not received his report. Ex. 9 at 5.

Because of the security concerns raised by the Individual’s positive BAT and alcohol treatment, the LSO requested that the Individual undergo an evaluation by a DOE-contractor psychologist (the “Psychologist”), who conducted a clinical interview (CI) of the Individual on October 4, 2022. Ex. 10 at 1. In addition to interviewing the Individual, the Psychologist reviewed the Individual’s personnel security file, administered the Minnesota Multiphasic Personality Inventory-Third Edition to her, and had her undergo a Phosphatidylethanol (PEth) laboratory test to detect alcohol consumption. Ex. 10 at 2. The Individual’s PEth test result was negative, indicating that she had not used alcohol recently. Ex. 10 at 5. During the CI, the Individual reported that she last consumed alcohol on August 7, 2022, the day before she began the IOP. Ex. 10 at 4. The Psychologist noted that she had spoken with the Counselor who had conducted the substance abuse evaluation of the Individual and oversaw the IOP. Ex. 10 at 4. The Counselor reported that he had diagnosed the Individual with Alcohol Use Disorder (AUD), Moderate. Ex. 10 at 4. The Counselor indicated that the Individual was “excelling in the program” and that he considered the Individual’s prognosis to be “positive.” Ex. 10 at 4. The Psychologist issued a report of her findings (the “Report”) on October 12, 2022, in which she found that the Individual had met the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (the “DSM-5”) for AUD, Severe, in early remission and that the Individual was neither reformed nor rehabilitated since she had only been abstaining from alcohol use for two months. Ex. 10 at 6. The Psychologist recommended that the Individual should complete the IOP, attend aftercare for nine months, abstain from alcohol use for nine months, and undergo monthly PEth tests for nine months. Ex. 10 at 6–7.

After receiving the Report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual, accompanied by a Summary of Security Concerns (the “SSC”), informing her that she was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding her 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 and the Psychologist. *See* Transcript of Hearing, Case No. PSH-23-0049 (hereinafter cited as “Tr.”). The DOE Counsel submitted 12 exhibits marked as Exhibits 1 through 12. The Individual submitted 16 exhibits marked as Exhibits A through O.<sup>2</sup>

Exhibit A is a Certificate of Completion, dated October 19, 2022, indicating that the Individual had successfully completed the IOP.

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<sup>2</sup> The Individual submitted two distinct and unrelated exhibits both of which she labeled as “Exhibit L.”

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Exhibit B is a document, of uncertain authorship,<sup>3</sup> dated December 14, 2022, indicating that the Individual had been meeting regularly with a therapist to treat her anxiety, stress, and “addiction,” since April 27, 2021; had attended the IOP daily from August 8, 2022, through October 10, 2022; and had attended weekly aftercare meetings from October 17, 2022, through December 21, 2022. Ex. B at 1–2.

Exhibit C is a notarized statement of intent, dated December 22, 2022, signed by the Individual stating that she intends to abstain from alcohol use and attend counseling. Ex. C at 1.

Exhibit D is a laboratory report indicating that a PEth test administered to the Individual on November 10, 2022, was negative.

Exhibit E is a laboratory report indicating that a PEth test administered to the Individual on December 15, 2022, was negative.

Exhibit F consists of a series of character references from the Individual’s pastor, a co-worker, and a friend attesting to her good character. Ex. F at 1–3. In addition, Exhibit F contains a letter from a licensed clinical social worker, who provided several opinions outside of her range of expertise. For example, she offered professional opinions that the Individual does not have AUD and that the Individual’s medical conditions caused her to test positive for alcohol on June 16, 2022. Ex. F at 4.

Exhibit G is an “Award of Excellence” awarded to the Individual by the National Nuclear Security Administration in July 2015.

Exhibit H consists of several of the Individual’s performance evaluations.

Exhibit I is a short auto-biographical statement prepared by the Individual.

Exhibit J is a photograph of the Individual.

Exhibit K consists of photographs of the Individual and her family.

The first Exhibit L submitted by the Individual is her resume.

The second Exhibit L submitted by the Individual is a laboratory report indicating that a PEth test administered to the Individual on February 1, 2023, was negative.

Exhibit M is a laboratory report indicating that a PEth test administered to the Individual on March 24, 2023, was negative.

Exhibit N is an undated email from a coworker attesting to the Individual’s good character.

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<sup>3</sup> The first page of the document appears to be records kept by the Individual’s therapist, and the second, third, and fourth pages of the document appear to be financial records generated by the organization that administered the IOP. Ex. B at 3–4.

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Exhibit O is a document entitled “Ledger Statement.” The document’s author is unknown. The document indicates that the Individual attended, or was charged for, 25 aftercare meetings from October 17, 2022, to April 17, 2023. Ex. O.

## II. The SSC

The SSC informed the Individual that information in the possession of the DOE created substantial doubt concerning her 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, and the Individual’s positive BAT. 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 are “alcohol related incidents at work such as reporting for work or duty in an . . . impaired condition. . . .” and “diagnosis by a duly qualified . . . clinical psychologist . . . of alcohol use disorder.” Adjudicative Guidelines at ¶ 22(b) and (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 set forth in the SSC, the Individual testified at the hearing to show that she was reformed and rehabilitated.

The Individual testified that, at the time of her positive BAT, she was consuming two to four drinks daily. Tr. at 17–18. The Individual testified that she began treatment at the IOP in August 2022 and completed it in October 2022. Tr. at 18, 30. The IOP treatment lasted for eight weeks and met daily from 6:00 p.m. to 8:30 p.m. Tr. at 18. She testified that she began attending aftercare on a weekly basis after she completed the IOP. Tr. at 18. Aftercare is basically group counseling for people suffering from addiction, usually alcohol. Tr. at 19. She continues to attend aftercare and individual counseling. Tr. at 21. The IOP and aftercare helped the Individual recognize that she “was struggling with alcohol and drinking in excess, and that [she] did need help.” Tr. at 20. She is no longer ashamed to say she needs help. Tr. at 20. She testified that she has abstained from using alcohol. Tr. at 21. She admitted that she used to use alcohol to cope with her stress and anxiety “in an unhealthy way.” Tr. at 23–24. Through her treatment, she has learned more effective techniques to address her stress and anxiety. Tr. at 23–25. She now understands that her alcohol use was contributing to her stress and that discontinuing alcohol use has reduced her stress. Tr. at 24. She believes that she has a strong support system, which includes her husband, her mother, her sister, her daughters, and her friends. Tr. at 25. She testified that she has a strategy for relapse prevention. Tr. at 25. She has learned to recognize her triggers and stressors and has strategies for addressing them. Tr. at 30–31. She recognizes that she is at risk for relapse. Tr. at 30. The Individual testified that she does not disagree with the Psychologist’s report and has complied with her recommendations. Tr. at 32–33. She has been attending aftercare for seven months and intends to continue attending aftercare “for the foreseeable future.” Tr. at 33–34. She keeps busy and physically active. Tr. at 35. Her intention is to permanently abstain from alcohol use. Tr. at 36. She does not have the desire to drink anymore. Tr. at 37. When she was asked when her last use of alcohol occurred, the Individual testified, “I believe it was August 16th, was the day before I started the treatment program.”<sup>4</sup> Tr. at 41. She did not get PEth tested in January 2023 because she was out of town. Tr. at 42–43. Since the Individual has stopped using alcohol, several of the people close to her, including her husband, have stopped using alcohol as well. Tr. at 44–45.

The Psychologist observed the testimony of the Individual before testifying at the hearing. She testified that the Individual has shown rehabilitation from her AUD. Tr. at 54–55. The Psychologist testified that while she had originally recommended that the Individual abstain from alcohol use for nine months, the Individual had abstained from alcohol use for just seven months at the time of the hearing.<sup>5</sup> Tr. at 56. Nonetheless, the Psychologist stated she does not just look at the length of time that an individual has been in recovery but also the quality of that recovery. Tr. at 56. She testified that she was “impressed” by the Individual’s efforts. Tr. at 56. The Psychologist noted that the Individual had gained “fundamental knowledge of how to reach abstinence and sustain abstinence.” Tr. at 56. She further noted that the Individual “has provided

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<sup>4</sup> During the CI, the Individual indicated that she last used alcohol on August 7, 2022, which she identified, during the CI, as the day before she started the IOP. Ex. 10 at 3–4. Exhibit B indicates that she started the IOP on August 8, 2022. Ex. B at 2. I do not believe that her inconsistent statement at the hearing was an attempt to deceive on the part of the Individual, since it did not portray her in a more favorable light.

<sup>5</sup> The record indicates that the Individual has abstained from alcohol use for the past nine months.

PEth tests which demonstrate to me that she has maintained abstinence. She's able -- she was able to identify the cornerstones of abstinence in terms of identifying triggers, relapse prevention plan, coping mechanisms and support system." Tr. at 56. The Psychologist was particularly impressed that the Individual had influenced several people close to her to stop using alcohol. Tr. at 57.

## V. Analysis

The Individual has recognized that she needed to discontinue her alcohol use and get the appropriate treatment. She credibly testified that she has abstained from alcohol use since early August or mid-August 2022, about nine months prior to the hearing. Five PEth tests administered to her during that period were each negative.<sup>6</sup> She has attended, and successfully completed, an IOP and is regularly attending the IOP's aftercare program. In addition, this treatment has been supported and complemented by her attending individual counseling sessions with her therapist. Moreover, the Individual has been able to articulate the lessons she learned from her treatment and the insight she has gained into her relationship with alcohol and what she needed to do and will need to keep doing in order to maintain her recovery.

The Adjudicative Guidelines set forth four conditions that may mitigate security concerns under Guideline G, three of which are present in the instant case.

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 her AUD, has successfully completed treatment at the IOP, and has been fully participating in aftercare for seven months to address her AUD. Her nine-month period of abstinence from alcohol use is sufficient to establish a pattern of abstinence from alcohol in accordance with the Psychologist's treatment recommendations. 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 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." Adjudicative Guidelines at ¶ 23(c). In the present case, the Individual has no previous history of treatment or relapse, has completed the initial IOP, and is now attending aftercare. Her treatment progress has been sufficiently satisfactory to convince the DOE Psychologist that she has been rehabilitated from her AUD. Accordingly, I find that the mitigating conditions set forth at ¶ 23(c) are present in the instant case.

Third, 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 . . . abstinence in

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<sup>6</sup> These PEth tests include the PEth test administered to her at the time of the CI, the PEth tests documented by Exhibits D, E, and M, and the PEth test documented by the second Exhibit L.

accordance with treatment recommendations.” Adjudicative Guidelines at ¶ 23(d). As noted above, the Individual has successfully completed the IOP and is engaged in her aftercare support group. The Individual has abstained from all alcohol use since at least August 16, 2022, a nine-month period of abstinence that demonstrates a clear and established pattern of abstinence in accordance with the Psychologist’s recommendations that she abstain from alcohol for nine months and attend the IOP. 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 and the positive BAT 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 her 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