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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: February 2, 2023)	Case No.: PSH-23-0057
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Issued: May 5, 2023

Administrative Judge Decision

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.”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

On December 15, 2022, the Local Security Office (LSO) received a report from the Individual’s manager (the Manager) reporting his concerns about the Individual’s alcohol use, which he believed had caused the Individual’s conduct and work performance to become “erratic and unpredictable.” Exhibit (Ex.) at 11. According to a report prepared by the LSO official to whom this information was reported, the Manager alleged that the Individual had exhibited the following behaviors:

- (1) Missing scheduled meetings without notice or approval
- (2) Unavailable when called by phone or on [the organization’s messaging application], or only available when contacted late in the workday
- (3) Absent without leave (AWOL)

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.

- (4) Slurring his words during calls or meetings
- (5) Appearing incoherent on calls, during meetings, or other discussions
- (6) He has been unfocused, confusing people's names and going off on a tangent on unrelated topics during meetings or calls
- (7) By Friday, 12/10/22, his alcohol use was more obvious. He missed scheduled meetings on Monday, 12/12 and Tuesday 12/13. He also was not responsive to calls until later in the day.
- (8) In October 2022, when scheduled to drive himself and the Manager to a meeting [at a DOE facility] the Manager detected the smell of alcohol on his breath and did not allow the individual to drive
- (9) Performance issues
- (10) When confronted on 12/14/22, [the Individual] broke down crying and admitted that he has a problem with alcohol and had been using alcohol while on the job. When encouraged to contact the DOE Employee Assistance Program [(EAP)], he expressed concern that seeking alcohol treatment would cause him to lose his Q security clearance and [Sensitive Compartmented Information (SCI) clearance]. In response to being told that he needed to get help rather than worry about losing his clearance, [the Individual] indicated he wanted to think about it before contacting the EAP or go seeking treatment.

Ex. 11 at 1.

After receiving this information about the Individual's alcohol use, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that it received derogatory information that created a substantial doubt regarding his eligibility to hold a security clearance and that he was entitled to a hearing before an Administrative Judge to resolve the security concerns. *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, his wife, his Alcoholics Anonymous (AA) Sponsor (the Sponsor), and a fellow graduate of the inpatient alcohol treatment program attended by the Individual (the Fellow Graduate). *See* Transcript of Hearing, Case No. PSH-23-0057 (hereinafter cited as "Tr."). The DOE Counsel submitted eleven exhibits, marked as Exhibits 1 through 11. The Individual submitted the following seven exhibits, marked as Exhibits A through G.

Exhibit A is a letter, dated March 14, 2023, from a therapist at the alcohol treatment center (the Center) attended by the Individual. Ex. A at 1. The letter indicates that the Center is treating the Individual for Alcohol Use Disorder (AUD), Depression, Anxiety, and Grief and Loss. Ex. A at 1. The Individual was admitted to the Center's Partial Hospitalization Program (PHP) on

December 30, 2022, and discharged to their Intensive Outpatient Program (IOP-2)² on January 17, 2023. Ex. A at 1. The letter indicates the Individual has complied with all clinical recommendations and that the Individual is “recommended to continue attending sober support meetings, engage in outpatient therapy with [this] clinical practice, and implement coping skills as needed.” Ex. A at 1. The letter further states that the Center was administering Vivitrol injections to the Individual to treat his AUD. Ex. A at 1.

Exhibit B consists of the results of the Individual’s blood tests, dated December 29, 2022, January 13, 2023, and February 8, 2023. Ex. B at 1–3. None of these tests were alcohol screening tests, but rather standard medical tests routinely administered during medical examinations. The Individual asserts that the improved liver functioning documented by these tests is evidence that he has been abstaining from alcohol use.

Exhibit C consists of photographs of three AA-issued sobriety coins awarded to the Individual for one-month of sobriety, two-months of sobriety, and three-months of sobriety. Ex. C at 1. Exhibit C also contains a photograph of a “Fellowship Membership card” for an AA meeting group. Ex. C at 1.

Exhibit D is a photograph of the Individual’s personal calendar for March 2023. Ex. D at 1. The Individual asserts that this calendar shows that he was regularly attending AA meetings. Tr. at 41–42.

Exhibit E consists of documentation of the Individual’s membership with a Runners Association and the Individual’s registration for a half-marathon on June 4, 2023. Ex. E at 1.

Exhibit F is an email, dated March 27, 2023, from the Manager to the Individual transmitting the Individual’s “Mid year Feedback.” Ex. F at 1. The email states, “You have made great progress since December and I see marked improvements in your performance and a . . . change in your attitude and outlook and I appreciate your efforts and look forward to continuation of these improvements.” Ex. F at 1.

Exhibit G is a copy of the Individual’s Executive Performance Plan dated February 1, 2023. The narrative section of this document states, in pertinent part:

[The Individual] started the performance period struggling with a series of set-backs and challenges completing tasks and achieving milestones. The second quarter [the Individual] has shown marked improvement and focused on a series of specific tasks defined in his detail plan and is starting to go above and beyond the plan to deliver broader results as described in the performance summary below. He is encouraged to continue to work on the detail plan and build on these successes and the consistent reporting of progress to ensure performance improvement is maintained.

Ex. G at 2.

² The Individual’s hearing testimony indicated that he had attended an IOP (IOP-1) prior to his enrollment in the PHP. Because IOP-1 was not effective, the Individual decided to enroll in the PHP. Tr. at 29–30. After he completed the PHP, he began a second IOP (IOP-2). Ex. A at 1.

II. The Summary of Security Concerns (SSC)

The Summary of Security Concerns (SSC) attached to the Notification Letter 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. Under Guideline G, the LSO cites the information provided by the Manager set forth in Exhibit 11. 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 intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder." Adjudicative Guidelines at ¶ 22(b).

The LSO also invoked Guideline E (Personal Conduct) of the Adjudicative Guidelines, citing the same information set forth in Exhibit 11. Under Guideline E, "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." Adjudicative Guidelines at ¶ 15. The LSO specifically cited the paragraph of Adjudicative Guideline E which provides that information "indicating that the individual may not properly safeguard classified or sensitive information," including "any . . . inappropriate behavior[.]" could raise a disqualifying security concern. Adjudicative Guidelines at ¶ 16(d)(2). However, ¶ 16(d)(2) only applies to "adverse information that is not explicitly covered under any other guideline. . . ." Adjudicative Guidelines at ¶ 16(d). The adverse information set forth in Exhibit 11 clearly pertains to the Individual's concerning alcohol use, which is explicitly covered under Guideline G. Accordingly, the LSO's invocation of Guideline E was not necessary, and I will only consider the question of the Individual's eligibility to hold an access authorization under 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).

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 Testimony

The Individual testified that the concerns reported by the Manager about his work performance, conduct, and alcohol involvement were generally accurate. Tr. at 17–21. He realizes now that he is an alcoholic and acknowledges he has AUD. Tr. at 42, 58. He testified that a series of stressors had exacerbated his alcohol issues, including an impending divorce, a change in work assignments, and the deaths of his brother, sister, and father. Tr. at 24–25. He began drinking “Way - - way too much” and reported that he was consuming a 750 ml bottle of whiskey a day. Tr. at 27–28. In October 2022, he was hospitalized for pancreatitis resulting from his alcohol consumption. Tr. at 28–29. After he was released, he attended an Intensive Outpatient Treatment Program (IOP-1), which he testified did not work. Tr. at 29–30. He testified that his “alcoholism” had progressed to its greatest severity in December 2022.³ Tr. at 21–22. At that point, he and his family had decided that he needed to enter the PHP.⁴ Tr. at 22. He began the PHP on December 22, 2022, and completed it on January 16, 2023. Tr. at 31. On January 17, 2023, he transferred from the PHP to the IOP-2, his second IOP, which he completed on February 28, 2023. Tr. at 33. He has been attending aftercare since he completed the IOP-2, where he attends group counseling, receives individual counseling, meets with a nurse, and has been prescribed Vivitrol to treat his cravings for alcohol. Tr. at 35–36. He testified that his treatment has been remarkably effective. Tr. at 38. He has been participating in AA, where he has a sponsor, attends meetings almost every day, and is working the Twelve-step Program.⁵ Tr. at 38. He is currently working on Step Four. Tr. at 47. He meets with the Sponsor weekly, at least. Tr. at 48. He started AA by attending 90 meetings in his first 90 days and recently received his 90-day coin. Tr. at 46, 48–49. He testified that the AA program has helped him greatly, stating: “I typically feel very, very good.” Tr. at 39. He now has less anxiety, sleeps better, has more “mental clarity,” better physical health, a better relationship with his wife, and is doing better at work. Tr. at 39, 43. He testified that his sobriety date is December 23, 2023, and that he intends to permanently abstain from alcohol use. Tr. at 60–61, 66.

The Sponsor testified at the hearing that he has known the Individual for three months and has served as his AA sponsor during that time. Tr. at 70. He interacts with the Individual at least three times a week. Tr. at 71–72. The Individual has been “amazingly receptive” to the AA program and has “been progressing very well with it.” Tr. at 73. The Sponsor characterized the Individual’s level of commitment to his recovery and sobriety as “extraordinary.” Tr. at 74.

³ He testified that he had been using alcohol to cope with anxiety, grief, and loss. Tr. at 37.

⁴ The Individual informed the Manager of his decision to enter the PHP and confided to him that his alcohol use had been impacting his work. Tr. at 22–23.

⁵ The Individual testified that he began attending AA meetings while he was in the PHP. Tr. at 30–32.

The Individual's wife testified at the hearing that she has been married to the Individual for 35 years. Tr. at 82. They had separated in June 2021 but have recently reconciled. Tr. at 82, 102. She testified that the Individual had lost a sister, a brother, and his father in a nine-month period. Tr. at 86. The Individual's heavy drinking had been a relatively new development. Tr. at 96. She testified that the Individual is taking his recovery very seriously and is "one hundred percent" committed to AA. Tr. at 90, 94. She is now attending Al-Anon.⁶ Tr. at 91. The Individual does not use alcohol, and he intends to permanently abstain from alcohol use. Tr. at 101. The last time she observed him using alcohol was December 21, 2022. Tr. at 101.

The Fellow Graduate testified at the hearing that he has known the Individual for approximately four months. Tr. at 107. He further testified that he and the Individual had lived together since they graduated from the PHP. Tr. at 106–107. He goes to AA meetings with the Individual almost every day. Tr. at 108. The Fellow Graduate testified that the Individual has made "amazing" progress in his recovery, going above and beyond his aftercare plan, and that the Individual always places his sobriety first. Tr. at 107, 112. According to the Fellow Graduate's testimony, the Individual intends to permanently abstain from alcohol use. Tr. at 112–113.

V. Analysis

I was impressed with the Individual's commitment to his sobriety and the amount of progress that he has made in a short time. The Individual is taking all of the steps necessary to address his AUD. He has successfully completed the PHP and the IOP-2. He is attending aftercare, where he is receiving individual and group counseling and medication. Moreover, he has become thoroughly engaged in AA, having completed 90 meetings during his first 90 days, obtained a sponsor, and commenced working AA's Twelve-step program. Moreover, the Individual has developed a strong support network, consisting of his wife, the Fellow Graduate, and his AA group. My only remaining concern is with the relative recency of his sobriety. The Individual convincingly testified that he last used alcohol on December 23, 2022, approximately three and a half months prior to the hearing. Three and a half months of sobriety is too short a time period for the Individual to have established a sufficient pattern of abstinence from alcohol to demonstrate that his AUD has been resolved, and that the concerning behavior is unlikely to recur, given its severity and the Individual's unsuccessful treatment at the IOP-1.

The Adjudicative Guidelines set forth four conditions that may mitigate security concerns under Guideline G. First, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if they can show "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." Adjudicative Guidelines at ¶ 23(a). In the present case, as noted above, the Individual has only abstained from alcohol use since December 23, 2022, and a three-and-a-half-month period of abstinence is not a sufficient period of time to demonstrate that his AUD has been resolved and his concerning alcohol-related conduct is unlikely to recur. Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 23(a).

⁶ Al-Anon is an organization whose members provide peer-to-peer support to friends and loved ones of alcoholics.

Second, 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 pattern of maladaptive alcohol use and how his use of alcohol contributed to his erratic behavior at work. The Individual also provided evidence he participated in and completed inpatient and outpatient alcohol-treatment programs, is receiving individual and group counseling through his aftercare program, is enthusiastically participating in AA, and is using medication to treat his AUD. The Individual also testified credibly, with corroborating testimony from his wife, his Sponsor, and the Fellow Graduate, that he has abstained from alcohol use since December 23, 2022. However, a three-and-one-half-month period of abstinence from alcohol use is not a sufficient period of time to demonstrate that he can continue to abstain from alcohol use in accordance with his treatment recommendations. Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 23(b).

Third, 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, as noted above, the Individual provided evidence he is participating in alcohol-treatment programs and has abstained from alcohol use since December 23, 2022. However, the Individual has an unsuccessful treatment history (at IOP-1), and his three-and-one-half-month period of sobriety is not sufficient to establish he is making satisfactory progress in resolving his AUD. Accordingly, I find the Individual has not satisfied the mitigating condition set forth at ¶ 23(c).

Finally, 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). In the present case, as noted above, the Individual has successfully completed two treatment programs and is attending aftercare. However, he has not established a sufficient pattern of abstinence from alcohol to demonstrate a clear and established pattern of abstaining from alcohol use, having only abstained from alcohol use for the past three-and-one-half months. Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 23(d).

I therefore find that the security concerns raised by the Individual’s alcohol-related conduct under Guideline G have not been resolved.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO did not properly invoke Guideline E. I further 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 not mitigated the security concerns raised under Guideline G. Accordingly, the Individual has not 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 not 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