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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 11, 2023) Case No.: PSH-23-0045
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Issued: June 6, 2023

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of 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 be restored.

I. Background

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. In June 2022, the Individual properly reported that he had been charged with Aggravated Driving While Under the Influence of Intoxicating Liquor or Drugs (ADWI) after he was involved in a single car accident. Exhibit (Ex.) 10 at 1; Ex. 9 at 1, 3; Ex. 8 at 2, 7. 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 October 2022. Ex. 11. The LSO subsequently asked the Individual to undergo a psychological evaluation conducted by a DOE-consultant psychologist (DOE Psychologist) in November 2022. Ex. 12. The DOE Psychologist relied on the information he obtained in the clinical interview with the Individual, as well as his review of the Individual’s Personnel Security File and the *Diagnostic Statistical Manual of Mental Disorders, 5th Edition* (DSM-V). Ex. 12 at 3–4. In November 2022, the DOE Psychologist issued a report (the Report) containing his assessments and conclusions, which included the conclusion that the Individual had been a binge consumer of alcohol to an extent that had been found to impair judgment. Ex. 12 at 7.

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 continued eligibility for access authorization, and accordingly, his access authorization 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 his supervisor, his employer's Employee Assistance Program (EAP) counselor, his one-on-one therapist, and his wife. *See* Transcript of Hearing, Case No. PSH-23-0045 (hereinafter cited as "Tr."). He also submitted eight exhibits, marked as Exhibit A–H. The DOE Counsel presented the testimony of one witness, the DOE Psychologist, and submitted fourteen exhibits marked as Exhibits 1–14.

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 DOE Psychologist determined that the Individual "habitually or binge consumes alcohol to the point of impaired judgment," that the Individual "has been a binge consumer of alcohol multiple times a month to an extent considerably past the level found to impair judgement," and that the Individual had not shown adequate evidence of rehabilitation or reformation. Ex. 1 at 1. The LSO further alleged that in June 2022, the Individual was arrested and charged with ADWI and Fail to Maintain Traffic Lane and that the Individual indicated that he had consumed five beers and became intoxicated prior to the arrest. Ex. 1 at 1. 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

The Individual was arrested for ADWI in June 2022.² Ex. 9 at 1. In his LOI, the Individual stated that he had been attempting to plug his phone into his car's auxiliary cord when he swerved off of the road, crashing his vehicle. Ex. 11 at 1; Ex. 9 at 1; Ex. 8 at 3, 7; Ex. 12 at 3. Another person who happened to be passing by called law enforcement. Ex. 11 at 1; Ex. 9 at 1; Ex. 12 at 3. The Individual reported that when law enforcement personnel arrived, he refused a breathalyzer test and did not pass the field sobriety tests that were administered, and as a result, he was subsequently arrested and charged. Ex. 9 at 3; Ex. 10 at 1; Ex. 12 at 3. The Individual stated in the LOI that he had consumed approximately five beers in the span of three and a half hours prior to the accident and arrest. Ex. 11 at 1, 4–5; Ex. 8 at 7.

The Individual also stated in the LOI that he had abstained from consuming alcohol after his June 2022 arrest, he had voluntarily installed an interlock device in his vehicle, as he felt this would likely be a condition associated with the resolution of the criminal matter. Ex. A at 8; Ex. B; Tr. at 81–82; Ex. 11 at 4. He also disclosed in the LOI that prior to abstaining from alcohol, he would consume alcohol to intoxication approximately “four to six times a year[.]” Ex. 11 at 4.

Following the June 2022 incident and the subsequent self-report, the Individual was placed in the Fitness for Duty (FFD) program following an evaluation conducted by his employer's Occupation Medicine (OM). Ex. 11 at 2; Ex. 6 at 1–2; Ex. 7 at 1. Pursuant to the requirements of the program,

² At the time of the hearing, the Individual was on unsupervised probation for the underlying criminal matter. Tr. at 83. He testified that he has been compliant with all of the terms of his probation. *Id.* at 84.

the Individual was required to abstain from alcohol, and was subject to a total of approximately thirty-one breath alcohol tests and eight urine tests from July 2022 to September 2022. Ex. 12 at 3; Tr. at 64, 79–80; Ex. E. All of the aforementioned tests were negative for alcohol. Ex. E. The Individual was compliant with the program, and accordingly, he was released in September 2022. Ex. 12 at 3.

The Individual began attending a six-week alcohol awareness class offered by his employer’s EAP in August 2022, after first meeting with the EAP counselor who conducts the program in late June 2022. Ex. 12 at 3; Tr. at 21–22, 25–26, 63–64; Ex. H. The Individual ultimately progressed to a sobriety maintenance group, another EAP program, in late August 2022. Ex. 12 at 3; Ex. H. At the time of the hearing, the Individual had attended twenty-four sessions of the sobriety maintenance group.³ Ex. H. The EAP counselor stated in her testimony that when she first met with the Individual, “[h]e was willing to do whatever the [FFD] team suggested and recommended that he do[,]” and further, the Individual has since expressed to her his desire to abstain from alcohol. Tr. at 23. She also testified that the Individual “interacts with others in group[,]” and that “[h]e listens, he shares,” and “[he is] attentive.” *Id.* at 24. During the sobriety maintenance group, participants discuss “high risk situations where others are drinking” and what they should do in such situations. *Id.* at 30. The EAP counselor testified that she is aware that the Individual has been in such situations, but that “[he is] very committed to his goals right now[.]” in terms of remaining abstinent. *Id.* The Individual testified that since attending EAP group sessions, he has learned a great deal about himself, “about triggers, situational awareness, anger management, [and] positive thinking.” *Id.* at 64–65. He also learned that social drinking was his trigger. *Id.* at 66.

During the November 2022 clinical interview, the Individual informed the DOE Psychologist of the June 2022 incident and how much alcohol he had consumed that night. Ex. 12 at 3. The Individual told the DOE Psychologist that his alcohol consumption had increased in the year prior to his arrest, and that he would consume approximately “five to six beers on most Saturdays and Sundays” over the span of three to four hours. Ex. 12 at 4; Tr. at 96–97. Based on this information, the DOE Psychologist concluded that the Individual was likely reaching intoxication “multiple times a month.” Ex. 12 at 4; Tr. at 97. At the time of the clinical interview, the Individual did not state with certainty that he intended to continue abstaining from alcohol in the future. Ex. 12 at 4. A Phosphatidylethanol (PEth) blood test was performed in conjunction with the DOE Psychologist’s evaluation. *Id.* at 5. A PEth test “detects any significant alcohol use of the past three to four weeks.” *Id.* The DOE Psychologist opined that the Individual’s PEth test results indicated that the Individual had consumed “little or no alcohol . . . over the last three or four weeks.” *Id.*

In the Report, the DOE Psychologist stated that the Individual “has been a binge consumer of alcohol multiple times a month and to an extent considerably past the .05 g/210L found to impair judgment.” *Id.* at 6. The DOE Psychologist explained that he could not find adequate evidence of rehabilitation because the Individual had only been abstinent from alcohol consumption for a

³ Although this group is designed to require twelve weeks of attendance, individuals are permitted to continue attending if they so desire. Tr. at 27. At the time of the hearing, the Individual had completed the twelve weeks of group and continued to attend weekly sessions. *Id.* at 27, 64. The Individual testified that he continues attending the group because he is surrounded by people in a similar situation and because “[it is] a pleasant atmosphere to be in[.]” *Id.* at 67.

period of four-and-a-half months prior to the evaluation and at the time of the evaluation was unsure whether he would consume alcohol in the future. *Id.* He recommended that to show evidence of rehabilitation, the Individual should commit to permanent abstinence from alcohol consumption and provide nine months of PEth tests evidencing continued abstinence. *Id.* The DOE Psychologist also suggested that the Individual should continue to attend his sobriety maintenance group for at least another nine months in addition to either joining and meaningfully participating in Alcoholics Anonymous (AA) or attending alcohol counseling at least biweekly for a period of nine months. *Id.*

In February 2023, the Individual began attending a twelve-week intensive outpatient treatment program (IOP), consisting of three group meetings and one session of one-on-one therapy every week. Ex. A at 1–2, 7; Tr. at 40, 44, 67–68, 73. The Individual’s one-on-one therapist also facilitates the group that meets twice per week, during which topics related to alcohol consumption are discussed. Tr. at 42–43. The Individual’s therapist testified that during the one-on-one therapy sessions with the Individual, they discuss such matters as cravings for alcohol, triggers, or any other topic the Individual wishes to discuss. *Id.* at 43–44. She also confirmed that the Individual attended every group meeting and one-on-one therapy session required by the IOP, and that he has been “110 percent” compliant with program requirements. *Id.* at 44–45, 47. She described the Individual as “encouraging and uplifting” as well as “vulnerable” and “genuine” during group. *Id.* at 45. The Individual’s therapist also stated that the Individual has remained abstinent from alcohol for as long as she has “known him[,]” and that he has “embraced” his sobriety. *Id.* at 46. The Individual testified that the IOP allowed him to “see the broad spectrum of what people go through” and he described the program as “much more intensive[,]” requiring hours of his participation three days per week.⁴ *Id.* at 69, 74–75.

The Individual also attended a victim impact panel in December 2022 and took and completed a twelve-hour driving-under-the-influence education course in March 2023. Ex. A at 3–6; Tr. at 71–72. The Individual testified that he last consumed alcohol on the night of the ADWI incident, and submitted to a total of six PEth tests from November 2022 to May 2023. Exs. C, D, F, G; Tr. at 62, 78–79, 81. In his testimony, the Individual acknowledged that he realized that his alcohol consumption had become problematic, and that at the time of the hearing, “[he] seem[ed] to be doing well[,]” as he had no desire to drink alcohol. Tr. at 63, 75.

The Individual’s current supervisor testified that he had never been concerned that the Individual could be under the influence of alcohol while on duty. Tr. at 33–34. He also stated that he allows the Individual to end some workdays early to attend rehabilitative groups and classes. *Id.* at 34–35. The Individual’s supervisor indicated that the Individual is known to be dependable, hardworking, and trustworthy in the workplace. *Id.* at 35–36.

⁴ The Individual estimated that between the EAP class, one-on-one therapy, and the IOP, he is attending approximately eight hours of group/treatment every week. *Id.* at 60–70, 89–90. Due to other ongoing obligations, including work, the Individual testified that he will likely reduce the number of hours of group/treatment he attends every week, and further, he expected to complete the IOP the day after the hearing. *Id.* at 70–71, 91.

The Individual's wife testified that she was surprised to learn that the Individual had been arrested and charged with ADWI. *Id.* at 52–53. Although she had observed the Individual consume increasing amounts of alcohol in the year prior to his arrest, she had not found this behavior concerning. *Id.* at 54. The Individual's wife testified that although the couple continues to keep alcohol in the home, as she is an occasional drinker, the Individual has not consumed alcohol and has not expressed having any cravings for alcohol. *Id.* at 55, 58–59. She also stated that since abstaining from alcohol, the Individual appears to be happier, and that he has told her that he finds the classes and groups he attends to be helpful. *Id.* at 55–56. She also stated that the Individual has told her that he intends to remain abstinent from alcohol, and that he was “fine” in social situations where alcohol had been consumed. *Id.* at 56–57. The Individual confirmed in his testimony that he has not craved alcohol, that he has been taught several methods to deal with the urge to consume alcohol, and that he is “fine” telling others that he no longer consumes alcohol. *Id.* at 76–77, 98. He also stated that he has a strong support system in his family, “everybody at work[,]” and the EAP counselor. *Id.* at 77–78. The Individual also testified that he would like to “just abstain from using alcohol, maybe forever.” *Id.* at 85.

Concluding the witness testimony, the DOE Psychologist testified that the Individual had shown adequate evidence of rehabilitation and reformation. *Id.* at 102. In forming his opinion, the DOE Psychologist considered the Individual's commitment to remaining abstinent, the EAP counselor's favorable opinion of the Individual's participation in group, the fact that the Individual continues to attend a sobriety maintenance group, and the fact that the Individual has been able to navigate social situations where alcohol is customarily consumed. *Id.* at 102–03. He concluded that the Individual's prognosis is very good. *Id.* at 103.

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.

Based on the evidence before me, it is clear that following the June 2022 incident, the Individual was proactive about changing his relationship with alcohol. Although he did not unequivocally state to the DOE Psychologist that he intended to remain abstinent from alcohol, the Individual voiced this decision during the hearing, and the record indicates that the Individual had taken significant steps to achieve that end. Although it was not recommended by the DOE Psychologist, the Individual enrolled in and earnestly participated in an IOP that had a one-on-one therapy component. He also completed an EAP alcohol awareness program and continued to attend a sobriety maintenance group. Further, I have no evidence before me that indicates the Individual had previously completed a treatment program followed by a subsequent relapse. The record also indicates that the Individual submitted to consistent urine and breath alcohol tests during the FFD program that spanned from July 2022 to September 2022, and submitted to a total of six PEth tests from November 2022 to May 2022, the results of which corroborated the Individual's assertions and witness testimony that the Individual has been abstinent from alcohol since the incident. Lastly, the DOE Psychologist opined that the Individual had shown adequate evidence of rehabilitation and reformation and that his prognosis was good.

In light of the positive prognosis from the DOE Psychologist, the Individual's abstinence of nearly one year, as evidenced by the test results and witness testimony, his participation in treatment and the support system he has established, the Individual has resolved the security concerns related to his maladaptive alcohol use, and I feel confident he is unlikely to engage in problematic alcohol consumption in the future. For these reasons, I find that the Individual has satisfied the second and third mitigating conditions under Guideline G. *Id.* at ¶ 23(b) and (c).

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 brought forth sufficient evidence to resolve the security concerns set forth in the SSC. 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, I find that the Individual's access authorization should 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