

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
)
Filing Date: December 13, 2022) Case No.: PSH-23-0034
)
)
_____)

Issued: May 23, 2023

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (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

The Individual is employed in a position that requires him to hold an access authorization. On February 16, 2022, the Individual was cited and charged with Criminal Mischief after he was removed from a bar and punched and broke a glass door on the premises. Exhibit (Ex.) 1 at 1. In October 2020, the Individual was arrested and charged with Battery Against a Household Member after he punched his stepfather. *Id.* at 2. In June 2012, police cited and charged him with Wrongful Use of Public Property. *Id.* The Individual admitted to consuming alcohol prior to all three incidents. *Id.* at 1–2. The Individual self-reported both most recent incidents to the LSO. Ex. 13; Ex. 16.

The Local Security Office (LSO) learned of the above information and asked the Individual to undergo a psychological evaluation by a DOE-consultant Psychologist (DOE Psychologist), which occurred in July 2022. Ex. 19. In completing his evaluation of the Individual, the DOE Psychologist conducted a clinical interview, spoke with two of the Individual's healthcare providers, reviewed the Individual's personnel security file, and had the Individual complete the

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.

Minnesota Multiphasic Personality Inventory-Second Edition along with a phosphatidylethanol (PEth) laboratory blood test to detect recent alcohol consumption. *Id.* at 2–3.

On July 13, 2022, the DOE Psychologist issued a report (Report) explaining the results of the Individual’s evaluation. *Id.* In the Report, the DOE Psychologist diagnosed the Individual with Alcohol Use Disorder (AUD), mild, in early remission. *Id.* at 9. The DOE Psychologist based this diagnosis on the Individual’s pattern of binge consumption of alcohol and significant levels of intoxication. *Id.*

The DOE Psychologist recommended that the Individual abstain from alcohol consumption, enroll in an Intensive Outpatient Program (IOP), and actively participate in in-person Alcoholics Anonymous (AA) for at least six months and select a sponsor. *Id.* at 10.

The DOE Psychologist also concluded that the Individual suffers from a Neurocognitive Disorder, which can impair his judgment when he consumes alcohol. *Id.* He opined that the disorder would not impair his judgment, reliability, stability, or trustworthiness if the Individual is alcohol abstinent. *Id.*

Due to the unresolved security concerns related to the Individual’s alcohol consumption, the LSO informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In a Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1.

In November 2022, the Individual requested an administrative 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 current supervisor, his girlfriend, his previous supervisor, and his mother. *See* Transcript of Hearing, Case No. PSH-23-0034 (hereinafter cited as “Tr.”). The Individual submitted 4 exhibits, marked as Exhibits A through D. Counsel for the DOE submitted 23 exhibits, marked as Exhibits 1 through 23, and presented the testimony of the DOE Psychologist.

II. The Summary of Security Concerns

Guideline G states that excessive 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. Conditions that could raise a security concern under Guideline G include “[a]lcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder”; “[h]abitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder”; and a “[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol

use disorder.” *Id.* at ¶ 22(a), (c), and (d). In citing Guideline G, the LSO relied upon the DOE Psychologist’s evaluation and diagnosis of the Individual as suffering from AUD, mild, and Neurocognitive Disorder. Ex. 1 at 1. The LSO also relied upon the Individual’s three alcohol-related charges. *Id.* at 1–2. Based on the conduct noted above, I find the LSO’s security concerns under Guideline G are 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 eligibility for an access authorization. The Part 710 regulations are drafted so as 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

In October 2018, the Individual had a motorcycle accident in which he suffered a traumatic brain injury (TBI), dislocated both shoulders, and broke his leg. Ex. 19 at 3; Tr. at 62. He testified that he does not have any memory of the accident. Tr. at 62. Since the accident, the Individual has had two alcohol-related incidents.² Ex. 1 at 1–2. In October 2020, he had a physical altercation with his stepfather, which included the Individual throwing punches, after consuming eight to nine beers. Ex. 1 at 2; Ex. 17 at 4; Ex. 15 at 7; Tr. at 74, 75. The charges were dismissed, but the Individual was held in custody ten to twelve hours. Ex. 17 at 4. On February 16, 2022, the Individual was cited and charged with Criminal Mischief after he was removed from a bar and damaged property. Ex. 1 at 1; Tr. at 77, 80. He admitted to consuming seven or eight alcoholic drinks prior to the incident. Ex. 17 at 2.

² The Individual’s other arrest occurred in 2012 for misuse of public property at his college. Ex. 1 at 2. The Individual characterized this arrest as a youthful indiscretion that happened while he was attending college. Ex. 17 at 4. He testified that he and his friends were “just being dumb,” which resulted in his arrest. Tr. at 72. He stated that the police officer told them that he was going to just yell at them for trying to touch a low-hanging roof, but since one of the Individual’s friends gave the officer a false name, he decided to ticket him instead. *Id.* at 72. He did consume alcohol prior to the incident. Ex. 1 at 2.

The Individual asserted that he has not consumed alcohol since February 16, 2022, because after the February 2022 incident, he realized he had a problem with his alcohol consumption. Tr. at 80. After his October 2020 altercation with his stepfather, the Individual was mandated to see a counselor for his fitness for duty (FFD) evaluation that occurred because of the arrest. *Id.* at 79. Although he attended counseling for a few months in 2020 and into 2021, he eventually stopped attending due to both the counselor's schedule and his own. *Id.* He had not been attending counseling for approximately six to eight months prior to the February 16, 2022, incident. *Id.* The Individual testified that since the February 2022 incident he has been going to the counselor he saw after the October 2020 incident, and he has been attending AA online since March 2022. *Id.* at 81, 83. He affirmed that his counselor agreed that he should abstain from alcohol and that he should attend AA. *Id.* at 81; Ex. D. He testified that he does not have a sponsor because he tried with two individuals but had a scheduling problem with both. *Id.* at 93. He stated that they both wanted to "rigidly meet on certain days at certain times" and his schedule does not allow that type of meeting. *Id.* at 94. He indicated that he is working the AA steps on his own and is presently working on step three. *Id.* The Individual testified that he has had to change his lifestyle and friends. *Id.* at 90. He stressed that:

I love my job, and that's about as simple as it is for me. You know, I mean, I will admit that the harder part is not being able to hang out with some of my friends, . . . especially [my] former roommate Tyler. I mean, I love the guy, he's like a brother to me, but especially right now, in the early stages of sobriety, I just know I can't hang out with him. He'll want to go to a bar. He'll want to go party, and I know I can't do that. I know that I can't put myself in that position where, you know, there's necessarily going to be peer pressure to drink, and the opportunity, not because, you know, oh, God, there's alcohol and I have to drink it because it's in front of me, but just that environment, I don't think that right now where I'm at in my journey of sobriety, that I could navigate that as properly as I would need to.

Id. at 90–91. Finally, he concluded that his support system is his girlfriend, parents, and work colleagues. *Id.* at 106.

The Individual submitted several negative PEth tests into the record. Ex. A. The first two PEth tests on May 17, 2022, and June 22, 2022, were "required" by the LSO after his February 16, 2022, arrest. Tr. at 86. Then he had a third test on July 7, 2022, after seeing the DOE Psychologist. *Id.* He continued testing in January 2023, February 2023, March 2023, and April 2023, and all of these results were negative. After the hearing, the Individual provided the negative results of a final test taken in April the day before the hearing. Ex. A at 11–12 (comprising January 25, 2023, February 27, 2023, March 10, 2023, and April 5, 2023, tests).³

The Individual provided a letter from his counselor, indicating that he has been attending counseling sessions consistently since March 10, 2022. Ex. D. In addition, the counselor indicated in her letter that the counseling has been affective for the Individual. *Id.* They focus on his ability to recognize his stress tolerance and healthy ways to cope, along with relationship processing and

³ I am accepting and considering the PEth test report from the test taken the day before the hearing, even though it was filed after the hearing date.

time management. *Id.* In addition to the letter from his counselor, the Individual submitted emails he sent to the online AA sessions that he attends asking for attendance reports. Ex. C. The Individual indicated that he received no response from one group that he attends regularly, and the other said attendance reports would have to be requested at the time of the meeting. Tr. at 88.

The Individual's mother testified that he is attending AA and going to counseling. *Id.* at 55. She also confirmed that the Individual has not consumed alcohol since his February 2022 arrest. *Id.* at 54. She asserted that he has expressed to her that he does not intend to consume alcohol again. *Id.* at 56.

The Individual's girlfriend testified that they have been dating for six months. *Id.* at 21. She stated that they see each other almost every day. *Id.* She has never seen him consume alcohol and stated that he was very upfront with her regarding his TBI and alcohol-related arrests. *Id.* at 22. She also confirmed that the Individual does not keep alcohol in his house. *Id.* at 23. The girlfriend stated that she does consume alcohol around the Individual, but usually only one drink. *Id.* In fact, she indicated that she does not consume much alcohol. *Id.* She asserted that if he started consuming alcohol again, she would know because he would act differently. *Id.* at 27. She testified that the Individual only mentioned having a craving for alcohol on one occasion. *Id.* at 26.

The Individual's current and past supervisors both testified. *Id.* at 11, 30. Both witnesses indicated that they do not currently socialize with the Individual and do not know whether he consumes alcohol. *Id.* at 12, 33. His previous supervisor indicated that they had socialized prior to the February 2022 incident, and he did not recall the Individual over-imbibing. *Id.* at 34. Both supervisors indicated that they never received reports about the Individual nor seen the Individual "hungover" or exhibiting inappropriate behavior. *Id.* 14–15, 36.

All four of the Individual's witnesses asserted that he is honest, trustworthy, and reliable. *Id.* at 16, 28, 38, 50. The current supervisor testified that total honesty is necessary for their work. *Id.* at 16. His previous supervisor testified that, in his opinion, by coming forward promptly to the LSO about both his arrests, the Individual displayed honesty. *Id.* at 38.

The hearing testimony concluded with the DOE Psychologist. *Id.* at 96. He confirmed his AUD, mild, diagnosis. *Id.* at 97. He opined that the Individual has demonstrated rehabilitation. *Id.* at 104. He continued that, although it does not strictly satisfy the recommendations he made in his Report, the Individual's current treatment is adequate. *Id.* The DOE Psychologist asserted that he was impressed with the Individual's counselor and that she is a good counselor for him. *Id.*

The DOE Psychologist claimed that the Individual's TBI caused a frontal lobe impairment and resulted in:

a kind of a lessening of a buffer between having an emotional . . . feeling and acting on it. And the frontal lobe puts us into that position of having more of a buffer for that. His memory issues are also, even though memory is a multi-lobe function, it is something that really does involve frontal lobe, as well as primarily, some other areas. So I think he has that and it can make him more impulsive than usual. And

so if you give alcohol -- if he drinks a fair amount of alcohol, you're going to see events like that that happened, sudden eruptions.

Id. at 103.

In addition, the DOE Psychologist understood, with the Individual's time constraints, why the Individual was attending online AA and does not have a sponsor. *Id.* at 100–02. He continued that the Individual's testimony showed an honesty and vulnerability that was not apparent when he evaluated the Individual. *Id.* at 98. The DOE Psychologist stressed that, during the evaluation, the Individual did not “really get that he really had a problem,” which is why he recommended an IOP. *Id.* at 98–99. He was impressed that the Individual did not claim that he had completed all twelve steps but rather acknowledged that he was on step three, especially since step three is difficult. *Id.* at 102. He also found the Individual's girlfriend's testimony persuasive in that she does not consume much alcohol and claimed that she would know if he started consuming alcohol. *Id.* at 105. Finally, he opined that the Individual's support system of his girlfriend, parents, and current work colleagues is excellent. *Id.* at 107.

V. Analysis

Guideline G

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

- (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; or
- (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 found the Individual and his witnesses to be honest and forthright in their testimony. The Individual has acknowledged his problematic alcohol consumption and has brought forth documentation and testimonial evidence establishing that he has taken significant steps to overcome his problem. He is in counseling and attends AA. He asserted that he has been abstinent

since his last alcohol-related arrest in February 2022, and he provided evidence through negative PEth tests and the testimony of his girlfriend and mother to establish that he has not consumed alcohol since February 2022. There is no evidence in the record indicating that he has a history of treatment and relapse. And the DOE Psychologist opined that the Individual's efforts were sufficient to establish rehabilitation. 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).

In light of the positive prognosis from the DOE Psychologist, the Individual's support network to aid his in his recovery, the Individual's abstinence from alcohol for more than a year, as evidenced by the PEth test results and his witnesses' testimony, and the Individual's positive participation in his treatment program as evidenced by the submission of the letter from his counselor and lifestyle changes, he has resolved the security concerns related to his maladaptive pattern of alcohol use, and I feel confident he is unlikely to engage in problematic alcohol consumption in the future. The DOE Psychologist accepted the Individual's treatment plan, which included AA, without a sponsor, and individual counseling, as sufficient due to the Individual's erratic work schedule. Further, he found the Individual to be sincere in his testimony regarding his alcohol use, whereas during the evaluation, the DOE Psychologist found that the Individual understood the severity of his maladaptive alcohol use. For the reasons stated above, I find that the Individual has mitigated the security concerns raised by the LSO under Guideline G.

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 Notification Letter. Accordingly, I find 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.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals