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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: October 18, 2022 ) Case No.: PSH-23-0014  
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Issued: July 6, 2023

**Administrative Judge Decision**

Katie Quintana, Administrative Judge:

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

**I. Background**

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In October 2021, as part of the security clearance application process, the Individual completed a Questionnaire for National Security Positions (QNSP). Exhibit (Ex.) 9. In the section entitled “Employment Activities,” the Individual affirmatively answered a question regarding whether, in the last seven years, he had received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace. *Id.* at 18. He elaborated noting that, in approximately 2019, he was “warned, reprimanded, suspended, or disciplined” when he “showed up hungover to work.” *Id.* Following his disclosures on the QNSP, the Individual underwent a psychological evaluation with a DOE-consultant psychiatrist (DOE Psychiatrist) in June 2022. Ex. 7. After evaluating the Individual, the DOE Psychiatrist concluded that the Individual was habitually consuming alcohol to the point of impaired judgment and had not shown adequate evidence of rehabilitation or reformation. *Id.* at 7.

<sup>1</sup> 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 related to the Individual's alcohol use, the Local Security Office (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 the Summary of Security Concerns (SSC), attached to the Notification Letter, the LSO explained that the derogatory information raised a security concern under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 2.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted ten numbered exhibits (Exs. 1–10) into the record and presented the testimony of a DOE-consultant psychiatrist (DOE Expert).<sup>2</sup> The Individual introduced 11 lettered exhibits (Ex. A–K) into the record and presented the testimony of four witnesses, including himself. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

## **II. Regulatory Standard**

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 (9<sup>th</sup> 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. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

## **III. Notification Letter and Associated Security Concerns**

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<sup>2</sup> The DOE Psychiatrist that conducted the Individual's evaluation was not available to testify during the hearing, so a different DOE-consultant psychiatrist (DOE Expert) testified and provided an opinion as to the Individual's rehabilitation and reformation. Tr. at 80.

The SSC specifically cites Guideline G of the Adjudicative Guidelines. Ex. 1. Guideline G relates to security risks arising from excessive alcohol consumption. “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.

In citing Guideline G, the LSO relied upon the DOE Psychiatrist’s June 2022 determination that the Individual “habitually consumes alcohol to the point of impaired judgment” and had not demonstrated adequate evidence of rehabilitation or reformation. Ex. 1. The LSO noted that the result of the Individual’s Phosphatidylethanol (PEth)<sup>3</sup> test, which he underwent as part of the June 2022 evaluation, was positive at a level of 551 ng/mL, and that the DOE Psychiatrist noted this result was congruent with heavy alcohol consumption. *Id.* Additionally, the LSO cited that, in 2019, the Individual’s employer reprimanded the Individual “for ‘regularly’ reporting drunk or hungover from alcohol.” *Id.* Lastly, the LSO cited that the Individual had admitted, during the psychological evaluation, “that he had reported to work ‘buzzed or hungover’ several times prior” to the 2019 reprimand. *Id.*

#### **IV. Findings of Fact**

##### **A. Psychological Evaluation**

After the Individual’s June 2022 evaluation with the DOE Psychiatrist, the DOE Psychiatrist issued a report (Report), detailing his findings. Ex. 7. According to the Report, the Individual indicated that he starting drinking “a lot” in late 2019. *Id.* at 3. The Individual acknowledged that, in October 2019, while working for a previous employer, he consumed alcohol until late at night and arrived at work “buzzed” and “with the smell of alcohol on his breath and person.” *Id.* at 3–4. According to the Report, an administrator at that employer recommended that the Individual seek counseling for his alcohol use, but as it was not mandatory, the Individual did not attend counseling. *Id.* at 4. The Individual reported to the DOE Psychiatrist that he “consume[ed] alcohol every other week and w[ould] consume two beers on a Friday night over two to three hours and three to four beers on a Saturday night over five to six hours. *Id.* at 6. He also reported that he consumed “two shots of hard liquor and four beers over six hours once a month.” *Id.* The Individual reported to the DOE Psychiatrist that he last consumed alcohol on May 29, 2022, when he consumed two beers and two mimosas over four hours. *Id.* at 4.

As part of the evaluation, the Individual underwent a PEth test, the results of which were positive at a level of 551 ng/mL *Id.* at 6. The DOE Psychiatrist noted that the Individual’s PEth test results showed evidence of “current heavy alcohol consumption at levels that would be higher than his claimed consumption.” *Id.* The DOE Psychiatrist opined that the Individual habitually consumed alcohol to the point of impaired judgment and showed no indication of rehabilitation or reformation. *Id.*

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<sup>3</sup> A PEth test measures the presence of PEth, “a group of phospholipids formed only in the presence of ethanol,” in a person’s blood. Ex. 7 at 8. The test is “a reliable estimate of alcohol consumption” and “provides medical evidence that [a person] has not been drinking significant or heavy amounts of alcohol within days or up to a few weeks of the date of the specimen collection.” *Id.*

The DOE Psychiatrist determined that for the Individual to show evidence of reformation, the Individual should abstain from alcohol for a period of six months. *Id.* To show rehabilitation, he recommended that the Individual begin weekly sessions with a counselor who specialized in alcohol and substance use issues for a minimum of six months. *Id.* Additionally, the DOE Psychiatrist recommended that the Individual should attend Alcoholics Anonymous (AA), or a similar group, on a weekly basis for that six-month period. *Id.* Finally, he recommended that the Individual undergo monthly PEth testing. *Id.* The DOE Psychiatrist noted that the PEth results “would need to initially show reduction in the PEth level until there is none detected and then . . . remain at the none detected level for the remainder of the six-month period.” *Id.*

## **B. Hearing Testimony**

At the hearing, the Individual’s supervisor (Supervisor) testified on his behalf. He stated that he met the Individual in January 2022, and interacts with him daily. Tr. at 26–27. The Supervisor testified that he has never observed the Individual to be intoxicated or noted any other indication the Individual “had an alcohol issue that . . . affected his work performance.” *Id.* at 28–29, 32. The Supervisor described the Individual as a “very skilled” and conscientious worker, who is working to better himself. *Id.* at 27, 30. He also stated that he found the Individual to be trustworthy and reliable. *Id.* at 30–31.

The Individual’s roommate (Roommate) testified that he has known the Individual for 12 years, and in addition to living together, he and the Individual work together. *Id.* at 37. The Roommate stated that, when the Individual received the Report, the Individual felt nervous about his future and was receptive to changing. *Id.* at 47. He stated that the Individual stopped consuming alcohol in August 2022. *Id.* at 39, 41. The Roommate noted that he is also abstinent from alcohol, and although he and the Individual socialize at bars, clubs, sporting events, and other venues where alcohol is present, neither of them consume it. *Id.* at 38–40. The Roommate testified that alcohol is not kept in their home, and he added that he knows that the Individual attends AA meetings once per week. *Id.* at 44. He stated that he felt that the Individual has “grown up a lot,” in the ten months prior to the hearing and felt that the Individual was “doing really well.” *Id.* Finally, he noted that he found the Individual to be reliable and trustworthy. *Id.* at 42.

The Individual’s counselor (Counselor) also testified on his behalf. She stated that she is a licensed professional clinical counselor and certified employee assistance professional, and she facilitates a substance use group class through the Employee Assistance Program (EAP) at the Individual’s worksite. *Id.* at 21; *see* Ex. I. The Counselor stated that the group is a “skills group, a support group, [and] an opportunity for all of [the] participants . . . to be there for each other.” *Id.* at 22. She noted that the only requirement for the group is to maintain abstinence. *Id.*

The Counselor stated that the Individual voluntarily began attending her group class in October 2022, and he successfully completed it after 12 weeks of consistent, engaged, and focused participation. *Id.* at 11–13. She testified that, throughout the sessions, she noticed the Individual to be “honest, open, open-minded, open to learning and growing, listening, sharing, [and] asking questions.” *Id.* at 15. The Counselor noted that the Individual appears to be implementing the skills he has learned in the group as his relationships with his family have “changed and improved” through “more communication,” and he has been engaging in physical activity and sports. *Id.* She

noted that, after completing the sessions and receiving his certificate in February 2023, the Individual continued to attend sessions during March and April of 2023. *Id.* at 12, 14. The Counselor testified that the Individual's prognosis was "excellent," and she opined that, if he "continues to stay connected to his support network," his risk of relapse is low. *Id.* at 16, 20.

The Individual testified that he first saw the Report in mid-August 2022 and began abstaining from alcohol a few days later. *Id.* at 54. He explained that he took this course of action because "getting a clearance and keeping my job are more important to me than drinking alcohol is." *Id.* The Individual stated that, pursuant to the DOE Psychiatrist's recommendations, he has undergone monthly PEth testing, since September 2022, at a cost of over \$300 per test.<sup>4</sup> *Id.* at 55, 78; Ex. C at 13–19. He acknowledged that the results of his first PEth test, in September 2022, were positive for alcohol consumption at a level of 46 ng/mL. *Id.* at 55; Ex. K. The Individual also explained that he took a PEth test in June 2023, but he did not receive the results of the test before the date of the hearing. Tr. at 56. He stated he also underwent urinary Ethyl Glucromonide (EtG) testing on a weekly basis from September 2022 through December 2022; however, he stopped taking the EtG tests in December 2022 as it became too costly for him to pay for both the PEth and EtG tests.<sup>5</sup> *Id.* at 56–57; Ex. C at 1–12.

The Individual explained that he has attended AA meetings on a weekly basis since early September 2022. *Id.* at 57. He noted that when he started the program, he did not consider himself to be an alcoholic, but after attending for a month, he realized he was "powerless" over alcohol.<sup>6</sup> *Id.* at 75. The Individual testified that he has obtained a sponsor, and he contacts his sponsor to ask questions and to seek guidance in using the program. *Id.* at 66. At the time of the hearing, the Individual noted that he was on step three of the AA 12-step program. *Id.* The Individual stated the AA meetings act as "an additional support group" for him, and he explained: "It's also another way for me to . . . go back and give back from what I have learned and I have done myself to continue my sobriety, to maybe . . . help out another alcoholic with theirs." *Id.* at 58.

The Individual testified that he successfully completed the Counselor's EAP group, after which he received a Certificate of Completion. *Id.* at 59–60; Ex. B. He explained that since receiving his certificate, he has continued to attend as he feels that "it benefits" him. Tr. at 60. He elaborated, stating that the group has helped him develop tools to maintain his sobriety. *Id.* He added, "It helps me . . . be the best version of me and grow as an adult. And also I get all kinds of advice . . . like relationship advice, just advice on life. It's just a really good class. I like to attend." *Id.* at 60–61.

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<sup>4</sup> The Individual noted that the testing laboratory lost his December 2022 test sample, and as such, he does not have those results, and he submitted an email chain from the screening service that stated that "the specimen never reached the lab." Tr. at 55–56; Ex. D.

<sup>5</sup> The test results show that all of the EtG tests were negative. Ex. C

<sup>6</sup> The Individual submitted a photograph of nine months of sobriety chips as well as documentation of his attendance at AA meetings from November 2022 to April 2023. Ex. G; Ex. J. He explained that he does not have documentation of his attendance in September 2022 and October 2022 because he did not have "an AA attendance form" to keep track of his attendance. *Id.* at 58.

The Individual testified that the experience of attending AA and the EAP group classes have taught him that his alcohol consumption was his way of coping with “past relationships that have not worked out.” *Id.* at 61. He reflected that his experience of becoming abstinent from alcohol has helped him grow into a more responsible person, who now has better relationships with his family. *Id.* at 63. The Individual explained that, since becoming abstinent from alcohol, he now uses exercises to cope with stress, is more responsible with his spending, and has a clearer mind. *Id.* at 72–74.

After observing the hearing, the DOE Expert testified. He noted that the positive PETH test from September 2022 was consistent with the Individual’s testimony that he began abstaining from alcohol toward the end of August 2022. *Id.* at 80–81. The DOE Expert opined that the Individual had shown adequate evidence of rehabilitation or reformation pursuant to the DOE Psychiatrist’s recommendations. *Id.* at 86. He further elaborated, stating that the Individual had “gone well beyond the requirements that [the DOE Psychiatrist] set down to establish this.” *Id.*

## V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony presented during the hearing. In resolving the question of the Individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual has sufficiently mitigated the security concerns cited by the LSO under Guideline G of the Adjudicative Guidelines. Therefore, I find that the Individual’s access authorization should be granted. The specific findings that I make in support of this decision are discussed below.

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 may raise a security concern and disqualify an individual from holding a security clearance. Adjudicative Guidelines at ¶ 22(b). Additionally, habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether an individual is diagnosed with an alcohol use disorder, may give rise to a security concern and disqualify an individual from holding a security clearance. *Id.* at ¶ 22(c). However, an individual may be able to mitigate such Guideline G security concerns through the following conditions:

- 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 maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified alcohol 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.

*Id.* at ¶ 23.

In this case, the Individual disclosed that his alcohol usage had been problematic with a previous employer, and furthermore, the DOE Psychiatrist determined that the Individual habitually consumed alcohol to the point of impaired judgment. However, upon reading the Report, the Individual decided to make a change in his life. He promptly became abstinent from alcohol, began attending AA meetings, and enrolled in the Counselor's EAP class. *See id.* at ¶ 23(b). After participating in AA, the Individual recognized his maladaptive alcohol use and has remained abstinent for over six months, as evidenced by his negative PEth and EtG test results. *Id.* Furthermore, he has successfully completed a 12-week substance use group class and continues to participate, even after its completion, for his benefit. *See id.* at ¶ 23 (d). The DOE Expert testified that the Individual has not only shown adequate evidence of rehabilitation and reformation, but he has exceeded the recommendations made by the DOE Psychiatrist. *See id.* at ¶ 23(b), (d). As such, I find that the Individual has adequately mitigated the Guideline G security concerns.

## **VI. Conclusion**

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has brought forth sufficient evidence to resolve the security concerns associated with Guidelines G. Accordingly, I have determined that the Individual's access authorization should be granted. This Decision may be appealed in accordance with the procedures set forth in 10 C.F.R. § 710.28.

Katie Quintana  
Administrative Judge  
Office of Hearings and Appeals