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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-23-0047
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Issued: June 28, 2023

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**Administrative Judge Decision**

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Richard A. Cronin, Jr., 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."<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 not be restored.

**I. BACKGROUND**

The Individual is employed by a contractor at a DOE facility and possesses a security clearance. Exhibit (Ex.) 3. On June 15, 2022, after reporting to work, his supervisor smelled the presence of alcohol on the Individual's breath. Ex. 7 at 4. The supervisor then escorted the Individual to the facility's employee health department where they conducted a breath alcohol test (BAT) that indicated that the Individual tested positive at 0.03 percent. Ex. 9 at 7.<sup>2</sup> The Individual was then removed from the workplace and put on administrative leave until June 23, 2022, when he was permitted to return to work with restrictions. Ex. 7 at 3.

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<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.

<sup>2</sup> The DOE facility's policy specified that no employee could work at the facility with a BAT level of over 0.02 percent. Ex. 9 at 7.

In August 2022, the local security office (LSO) issued a letter of interrogatory (LOI) to the Individual asking about his testing positive at work for alcohol and the amount of his alcohol use. Ex. 10 at 5.

The Individual was also required to undergo an examination by a DOE-contractor psychologist (DOE Psychologist). Ex. 11. On October 14, 2022, the DOE Psychologist examined the Individual, and reviewed his reported alcohol consumption. *Id.* at 1. The Individual reported that he would consume four or five beers two or three times a week. *Id.* at 3. The Individual also admitted to occasionally consuming whiskey and that when he consumed whiskey, he did not measure the amount to determine if the drink was a single or double shot. *Id.* at 4. The Individual also admitted to having six or more drinks once or twice a month and that his last consumption of alcohol occurred a week before the examination. *Id.* at 4. A PEth test administered at the time of the examination indicated a positive PEth result of 664 ng/mL, which constituted evidence of moderate to heavy alcohol consumption.<sup>3</sup> Ex. 11 at 6–8. Based on his examination and the PEth test results, the DOE Psychologist found:

[the Individual] is moderately defensive with regards to his alcohol use and he is prone to minimize his consumption and to overlook the fact that his mixed drinks are double that of a standard drink. There were contradictions related to the amounts, frequency, etc. of alcohol consumption that are believed to be more elevated than have been reported.

*Id.* at 8.

As documented in his October 27, 2022, report (Report), the DOE Psychologist opined that the Individual was suffering from Alcohol Use Disorder (Moderate), which had caused the Individual to demonstrate impaired judgment on occasions. Ex. 11 at 8. The DOE Psychologist concluded that the Individual had not demonstrated rehabilitation or reformation from his alcohol misuse problem. *Id.* To demonstrate rehabilitation or reformation, the DOE Psychologist recommended that the Individual commit to and complete an intensive outpatient program (IOP) of at least eight weeks' duration and that on his successful completion of the IOP, the Individual should continue involvement in an aftercare program for 12 months (including random alcohol urine or breath testing) along with twice weekly attendance in a support group such as Alcoholics Anonymous (AA) with the help of a mature sponsor. *Id.* at 9. The DOE Psychologist noted that, regarding the IOP, “[i]t is critical that the program include extensive educational components as well as both individual and group psychotherapy/counseling. Following his successful completion of the IOP, continued involvement in aftercare should occur, along with twice weekly attendance in a support group such as AA or another recognized support program.” *Id.*

The LSO issued the Individual a letter notifying him that it possessed reliable information that created substantial doubt regarding his eligibility to possess an access authorization. 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.

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<sup>3</sup> A Peth test is a blood test that measures Phosphatidylethanol (Peth), a biological marker of alcohol consumption. Ex. 11 at 7.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 5. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted 13 exhibits (Exs. 1–13) and presented the testimony of the DOE Psychologist. Transcript of Hearing (Tr.) at 84. The Individual submitted five exhibits (Exs. A–E). The Individual testified on his own behalf and offered the testimony of a friend who is a co-worker (Co-worker), his ex-spouse (Ex-spouse), another Friend (Friend), and his supervisor (Supervisor). Tr. at 10, 27, 48, 61, 84.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

The LSO cited Guideline G of the Adjudicative Guidelines as the basis for its suspension of the Individual’s access authorization. Ex. 1. “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. The SSC cited the DOE Psychologist’s diagnosis of the Individual as suffering from Alcohol Use Disorder (Moderate) and the Individual’s reporting for work testing positive for alcohol as derogatory information. Given the information described above, the LSO’s invocation of Guideline G was justified. *Id.*

## **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 Dep’t 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).

An 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). An individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a 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. FINDINGS OF FACT**

At the hearing, the Individual testified that after testing positive for alcohol consumption at work he nonetheless continued to consume alcohol. Tr. at 63–64. He did so because at that time he

believed the only concern was that he had reported to work positive for alcohol and did not realize that there was a problem with his overall alcohol consumption. *Id.* at 63. He then received a copy of the DOE Psychologist's Report in late October or November 2022. *Id.* at 62. His last consumption of alcohol occurred on November 1, 2022. *Id.* at 69.

After receiving the Report, he enrolled in and completed an IOP and, after completing that program on January 4, 2023, began to attend the IOP's aftercare program.<sup>4</sup> *Id.* at 62; Ex. A (IOP Certificate of Completion). The Individual also sees an IOP counselor for individual counselling as part of his aftercare program. *Id.* at 66. He generally attends the aftercare program once or twice a week. *Id.* at 67. Additionally, the Individual undergoes PEth testing monthly along with random breath alcohol tests at work. *Id.* The Individual went to a number of AA meetings but "didn't feel like AA was helpful to me, not like in comparison to the counseling" and subsequently quit going to AA. *Id.* at 68; Ex. D (Individual's log sheet documenting attendance at nine AA meetings in March and April 2023). Nonetheless, the Individual knows that he has an alcohol misuse problem but did not fully accept this fact until he was attending the IOP. *Id.* at 81.

While attending the IOP, the Individual learned about the physical and mental effects of alcohol. *Id.* at 63. He also discovered that he had used alcohol "in place of emotions" *Id.* He also learned how he could regulate or differentiate these emotions and how to "step back and kind of analyze it first and make a better decision, instead of just making a haste [sic] reaction." *Id.* During the IOP, the Individual realized that while he was not dependent on alcohol, he had been "complacent" with his level of alcohol use. *Id.* The Individual testified as to how he found the individual counselling in the aftercare program as very useful and that his counselor is:

very, very intelligent and he knows a lot about [alcohol problems]. And he puts it in ways of not just -- not just alcohol, like in everyday life, other situations, he can relate alcohol in, like something else that you're doing, like maybe sports related or something."

*Id.* at 67. The Individual testified that his intention not to use alcohol has not caused any impairment in his social activities, which on the weekends involve his kids' sports activities and associated travel. *Id.* at 71.

The Individual's goal is to "remain sober and not go through this [alcohol-related problem] again, and not jeopardize my family and my kids." *Id.* at 70. He testified, "My world revolves around them, and I've really put them in jeopardy . . . ." *Id.* The Individual testified that he believes he has several resources he could rely on should he be tempted to relapse – counselling, his Ex-spouse, and his aftercare program. *Id.* at 66–67. He testified that his Ex-spouse is his best friend and that he is very motivated to stay abstinent to care for their children. *Id.* at 66.

A report from the Individual's IOP provider noted that the Individual had "demonstrated steady growth over the course of treatment." Ex. B at 1. The IOP provider described the Individual's treatment/discharge plan in which the Individual would follow up with his workplace's psychologist, follow all recommendations specified by this employer, and attend aftercare program meetings once a week for 90 days. Ex. B. As of the date of the IOP provider's report on February

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<sup>4</sup> The Individual's IOP consisted of attendance at 32 separate sessions. Tr. at 63.

13, 2023, the IOP provider stated that the Individual had been fully compliant with the IOP, and the IOP provider opined that if the Individual “continued to adhere to his discharge plan and continues developing the skill sets acquired during treatment, his prognosis should be positive.” *Id.*

The Individual submitted into the record results from five random BAT tests performed at his workplace. Ex. C. The tests were performed in June, July, October, and December 2022 and in March 2023. *Id.* All tests reported negative results for the presence of alcohol. *Id.* Additionally, the Individual submitted the results of three negative PEth tests conducted in January, February, and March 2023. Ex. D.

The Friend, Co-worker, and Supervisor testified that each of them had known the Individual for a number of years, ranging from 6 to 18 years. Tr. at 11, 35, 49. The Co-worker testified that on the weekends he and the Individual spend time together when their kids play several types of sports during the year. *Id.* at 12. The Friend testified that he and the Individual would sometimes discuss topics the Individual had learned in IOP. *Id.* at 38–39. Regarding the Individual’s consumption of alcohol, the Friend and Co-worker had not seen the Individual consume alcohol after November 2022. *Id.* at 14–15, 24, 44. The Co-worker and the Friend testified that the Individual was very motivated to maintain his abstinence because of his dedication to his children and thus to maintain his employment. *Id.* at 17, 39–42. The Co-worker and the Supervisor each affirmed their confidence in the Individual’s trustworthiness, honesty, and reliability. *Id.* at 18–19, 52, 57.

The Ex-spouse testified that she has known the Individual for 12 years and currently sees the Individual every day. *Id.* at 23. They typically discuss their sons, baseball, and any life situations that one would discuss with a friend. *Id.* The Ex-spouse testified that when they went out prior to him giving up alcohol consumption the Individual’s usual practice would be only to consume a beer during dinner. *Id.* at 25. The last time she has observed the Individual consume alcohol was in approximately July or August 2022. *Id.* at 24. She did not have any knowledge of any occasion, other than the incident cited in the SSC, where the Individual would go to work impaired by alcohol. *Id.* 25–26.

The Ex-spouse testified that she is aware of the Individual attending counselling and attending AA meetings regarding his alcohol problem. *Id.* 26. She notices that the Individual feels “really good” after attending the classes and that he began them in December 2022 or January 2023. *Id.* 26–27. She also testified that she believes that the Individual is still the same person “he was before” attending the program classes. *Id.* at 27. She also noted that she believes alcohol was not anything that “consumed him” or “controlled him.” *Id.* at 28. She testified that the Individual has told her that he accepts and takes responsibility for his alcohol misuse. *Id.* at 27–28. She noted that the Individual intends not to consume alcohol because he does not wish for it to ever be an issue for him. *Id.* at 28.

After listening to the testimony of all the witnesses, the DOE Psychologist testified as to his examination of the Individual and summarized his Report’s findings. *Id.* at 87. He described the Individual’s alcohol consumption history which first began at age 13 and became elevated at age 21, after the Individual’s discharge from the military. *Id.* He testified that during his examination the Individual eventually acknowledged that he had developed a tolerance for alcohol and that he would consume four to six beers on Friday and Saturday nights. *Id.* During the examination, the

Individual stated that on a couple of occasions during a month he would consume more than six beers. *Id.* at 88. The Individual also admitted that on occasion he would consume 90-proof whiskey in lieu of beer. *Id.*; see Ex 11 at 3 (Individual reporting in the Interview with the DOE Psychologist that he would consume whiskey “perhaps three times a month.”)

The DOE Psychologist opined that the Individual’s description of his alcohol use as getting “complacent” and his letting his consumption get “out of hand” was accurate. Tr. at 88. However, the DOE Psychologist testified, the fact that the Individual tested positive for alcohol at work and the fact that the Individual admitted drinking four or five beers on Friday and Saturday on the weekend before the examination were factors leading him to conclude that at the examination, the Individual was underestimating his alcohol use in the period before examination. *Id.* Additionally, the fact that the Individual’s PEth result was so elevated indicated that the Individual had consumed a great amount of alcohol just before the test or had a high level of consumption several weeks before the PEth test, and supported his Report’s conclusion concerning the Individual’s level of alcohol consumption and the degree that the Individual underreported his alcohol consumption. *Id.* at 87–88. The DOE Psychologist recommended that “[t]he [Individual’s] aftercare activities should continue for a full year from the earliest point that [the Individual] can validate his abstinence from alcohol. Unless otherwise advised by his individual therapist and the aftercare treatment team, individual therapy, should continue for a full year.” Exhibit 11 at 8-9; see Tr. at 92 (DOE Psychologist’s testimony, stating “[t]welve months [of abstinence] is an ideal standard. . . . I’m not rigid on 12 months, but I think we’re barely into the front end of supporting his abstinence, medically speaking.”).

As for the Individual’s participation in AA, the DOE Psychologist believed it would increase the Individual’s chances of maintaining abstinence. *Id.* at 91. The DOE Psychologist noted the fact that the Individual did not seek out an AA sponsor indicated that the Individual was “trickling away” from his recommendations regarding AA, which caused him concern. *Id.* at 91. The DOE Psychologist also expressed reservations about the type of counselling that the Individual was receiving by stating, “I don’t think he’s seeing an individual therapist, which was one of my recommendations, to have somebody individual, as opposed to -- the groups are more supportive, yes, there’s some counseling that goes on. . . .” *Id.*

Despite the Individual’s submitted PEth tests for January, February and March 2023, the DOE Psychologist noted that the Individual did not have PEth tests for November and December 2022. *Id.* at 88. When asked about whether the Individual had shown adequate evidence of rehabilitation or reformation, the DOE Psychologist opined that the Individual had not met his criteria for rehabilitation. *Id.* at 93. The DOE Psychologist testified that the Individual only had sufficient testing (PEth tests) to confirm his abstinence for 4 months as opposed to the ideal goal of 12 months of abstinence and that the Individual was in an early stage of his rehabilitation. *Id.* at 89–90, 93. Given the information before him, the DOE Psychologist opined that the Individual’s current prognosis was “guarded.” *Id.* at 92. If the Individual had documented evidence of six months abstinence (supported by PEth testing), the DOE Psychologist believed that the Individual would have a “good prognosis.” *Id.* A demonstrated period of abstinence for 12 months would merit a prognosis of a very high probability of successful abstinence. *Id.* at 92.

The DOE Psychologist acknowledged that the Individual testified to being abstinent for six months, but because there was not sufficient evidence to corroborate this testimony, the DOE

Psychologist was not convinced of its credibility. *Id.* at 88–89. In this regard, he noted that the Individual had not been totally forthright with his previous reports regarding his level of alcohol consumption. *Id.* In his opinion, the Individual would need a “lengthy” period of demonstrated abstinence before the DOE Psychologist would feel secure in finding that the Individual was rehabilitated. *Id.*

## V. ANALYSIS

An individual may mitigate security concerns under Guideline G if:

- (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.

The mitigating factor described in ¶ 23(a) is not applicable in the present case. The Individual tested positive for alcohol use when reporting to work in June 2022, less than a year from the hearing date, and he claimed he stopped consuming alcohol in November 2022. Thus, I cannot conclude that so much time has passed from the Individual’s problematic alcohol use that ¶ 23(a) is applicable. Nor can I conclude that the Individual’s prior alcohol misuse was infrequent given the Individual’s admitted recent alcohol misuse history. Neither can I conclude that the Individual’s conduct occurred under such unusual circumstances that it would be unlikely to recur.

Further, I cannot find that the mitigating factor described under ¶ 23(b) is applicable. The Individual has acknowledged his pattern of maladaptive alcohol use and has presented evidence that he completed the IOP and is participating in the associated aftercare program. However, for the reasons outlined below, I cannot conclude from the record before me that the Individual “has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.” Adjudicative Guidelines at ¶ 23(b).

Given the DOE Psychologist’s convincing testimony regarding his remaining concerns, the relatively short period of the Individual’s progress, and his failure to follow the recommendation to attend AA, which would have improved his chance of successful rehabilitation, I cannot find

that find that the Individual has established a “clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.”

I also cannot find that the mitigating factor described by ¶ 23(c) is applicable in the present case. The Individual has completed the IOP and is attending the aftercare segment of the treatment program. There is no evidence before me that the Individual has participated in a formal treatment program and relapsed. However, I do not find that the Individual has demonstrated sufficient progress in his treatment plan such that ¶ 23(c) is applicable. The DOE Psychologist’s convincing testimony has illustrated deficiencies in the Individual’s current treatment plan, specifically the Individual’s need for a more sustained period of abstinence, the Individual’s quitting AA and the DOE Psychologist’s doubts concerning the type of individual counseling the Individual is receiving. Given the record before me I cannot conclude that there is sufficient evidence for me to conclude that the Individual is making satisfactory progress in his current treatment regimen. Consequently, I find that ¶ 23(c) is not applicable.

As to mitigating factor ¶ 23(d), I cannot find that it is applicable in the present case. For the reasons discussed above, I do not find that the Individual has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations. The Individual’s period of abstinence at best is only six months, although the PEth test results only confirm four months of abstinence, and the DOE Psychologist recommended a longer period of sobriety. Further, it is unclear from the IOP provider’s assessment whether the Individual has in fact completed the aftercare program outlined in its plan.

In weighing the evidence before me, I must find that the Individual has not, at this time, offered sufficient evidence from which I can conclude that the Guideline G security concerns have been resolved.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline G of the Adjudicative Guidelines. After considering all the relevant information, 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 not brought forth sufficient evidence to resolve these concerns. Accordingly, I have determined that the Individual’s access authorization should not be restored.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.  
Administrative Judge  
Office of Hearings and Appeals