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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: April 11, 2023) Case No.: PSH-23-0072
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Issued: July 6, 2023

Administrative Judge Decision

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.”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 by a contractor at a DOE facility and is required to possess a security clearance. Exhibit (Ex.) 6 at 1. On July 15, 2022, the subject was arrested for Battery on a Household Member and Destruction of Private Property. Ex. 6. The subject admitted to drinking and got into an argument with his wife. *Id.* During the argument, he grabbed two dresser drawers and threw them to the ground - one of which allegedly knocked over his wife. Ex. 6. The Local Security Office (LSO) then issued the Individual a Letter of Interrogatory inquiring about the Individual’s arrest and his alcohol consumption. Ex. 7. The Individual was later referred for an examination to a DOE-contractor psychologist who found that the Individual had been habitually consuming alcohol to the point of impaired judgment and that there was no evidence that the Individual had demonstrated rehabilitation or reformation from his alcohol misuse problem. Ex. 8 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.

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.

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 11 exhibits (Exs. 1–11) and presented the testimony of another DOE psychologist (DOE Psychologist) who had reviewed the information and report submitted by the original DOE psychologist. Transcript of Hearing (Tr.) at 114. The Individual submitted four exhibits (Exs. A–D). The Individual testified on his own behalf and offered the testimony of his mother, his therapist (Therapist), and his wife (Wife). Tr. at 72, 13, 50.

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 original DOE psychologist’s evaluation and the Individual’s arrest in July 2022 as Guideline G derogatory information. Additionally, the LSO cited a January 2012 arrest for Battery Against a Household Member which allegedly involved alcohol consumption by the Individual. *Id.*; Ex. 10 at 80. 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 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

The Individual's arrest in January 2012 resulted after the Individual, and his then-girlfriend had been consuming alcohol at her residence. Ex. 10 at 80. According to the police report, the Individual and his then girlfriend were discussing the Individual's upcoming business trip when they began to argue. *Id.* During the argument, the Individual became angry with the then-girlfriend. *Id.* According to the account given to the local police by the then-girlfriend, the Individual pushed her, and she pushed back at the Individual. *Id.* After that, both the Individual and the then-girlfriend hit each other with both parties suffering from minor bleeding. *Id.* The then-girlfriend's son then intervened to separate both parties after the Individual pushed his then-girlfriend down by their garage. *Id.* The Individual then left the premises to go to his house. *Id.* The Individual subsequently received a summons in the mail informing him that he had been charged with Battery Against a Household Member. Ex. 10 at 46. The charges were later dropped. *Id.* at 83.

The original DOE psychologist examined the Individual on December 8, 2022. Ex. 8. In his December 18, 2022, report (Report), the original DOE psychologist found that the Individual did not suffer from Alcohol Use Disorder, but that the Individual had "been habitually consuming alcohol to the point of impaired judgment until a few months ago, as evidenced by being intoxicated two to four times a month and the legal issues that involved alcohol." *Id.* As for his recommendation as to what the Individual would have to undertake in order to show adequate evidence of rehabilitation or reformation, the original DOE psychologist recommended that the Individual be monitored by the Individual's workplace's Employee Assistance Program (EAP) for at least six months after receiving the recommendations contained in the Report, participate in weekly Alcoholics Anonymous (AA) meetings or other equivalent self-help group or, alternatively, engage in weekly psychotherapy. *Id.* Finally, the Individual should demonstrate abstinence from alcohol for a 12-month period. *Id.* at 16-17.

At the hearing, the Individual testified that on July 15, 2022, the date of his recent arrest, he had consumed a "couple of beers" at a restaurant and went home. Tr. at 73. At his home he noticed his Wife removing several household items pursuant to her intention to move away from the Individual. *Id.* He also noticed that she had been drinking and was upset. *Id.* After speaking to his Wife in a "somewhat sarcastic" manner, she finished loading her truck but as she left, she backed into a tree. *Id.* The Individual's Wife then backed the truck into their "house or a pile of wood at their home." *Id.* at 74.

The Individual's Wife then returned to their home and began to take more items to their truck. *Id.* While trying to move a dresser, it became stuck in the stairwell. *Id.* In an attempt to help his Wife with the dresser, the dresser slid down the stairwell and was scuffed up. *Id.* The Individual's Wife then started screaming at the Individual and the Individual slammed one of the dresser drawers on the floor. *Id.* He then did this again with another drawer. *Id.* After this incident, the police came to their house and separated them. *Id.* at 75. The Individual declined to answer the local police officer's questions and did not want to implicate his Wife. *Id.* He then told the local police "If you feel like you need to take someone in, take me in." *Id.* The Individual was then arrested and taken into custody and charged with Destruction of Personal Property and "Domestic Violence." *Id.*

These charges were later dismissed due to the prosecution not being prepared to prosecute on the day of the hearing. *Id.* at 76. The Individual's last consumption of alcohol occurred during this incident on July 15, 2022. *Id.* at 89.

While in jail pursuant to his arrest, the Individual had an "epiphany" that he needed to permanently abstain from alcohol consumption. *Id.* at 78-79. When he was released from jail, he reported his arrest to the LSO. Ex. 6. At work, he was referred to the facility's EAP and spoke to the EAP psychologist on four occasions who gave him suggestions regarding treatment such as attending Alcoholics Anonymous (AA), obtaining counselling and submitting to PEth tests to confirm his abstinence.² *Id.* at 86-87, 91. The EAP psychologist advised him to comply with all workplace requirements. *Id.* at 86-87. At that time, the Individual decided to address his alcohol misuse by becoming more active in his church's band and use a faith-based accountability approach. *Id.* at 85-86.

The Individual testified that his approach to treatment changed when in mid-February 2023 he received a copy of the DOE psychologist's Report, and his clearance was suspended. *Id.* at 85, 102. Additionally, the Individual was required to sign a contract concerning certain workplace requirements to remain at work, such as entering into an agreement to remain sober and submitting to random urine analysis test for alcohol. *Id.* at 88. Consequently, on March 6, 2023, he began individual therapy from the Therapist and began to obtain PEth tests to confirm his sobriety. *Id.* at 90. The Individual attends church twice a week and has had "nine or ten" meetings with the Therapist. *Id.* at 99-100.

During his therapy sessions with the Therapist, the Individual confirmed his need for sobriety. *Id.* at 93-94. The Therapist recommended to the Individual that he engage with AA. *Id.* at 94. As a result, the Individual has attended four video AA meetings and introduces himself as an "alcoholic." *Id.* at 94, 110. The Individual believes that AA is a powerful support group and that through AA he saw that others had similar issues as he and they could sympathize with each other. *Id.* at 96. His intention is to remain engaged with AA on a monthly or bi-monthly basis and he hopes to start a specific accountability group at his church to incorporate faith-based elements in being able to help people who have struggled with "alcoholism, drug use, you know, bad behaviors." *Id.* at 97-98.

The Individual testified that, in the summer of 2003, he gave up drinking alcohol for seven years because he wanted to set a better example for his then seven-year-old son. *Id.* at 104, 106; *see* Ex. 8 at 12. He began to consume alcohol again when he took a job 325 miles away from his home and was living with other employees detailed to that location. *Id.* at 104. Because of peer pressure he started drinking alcohol during social events. *Id.* When asked why his current sobriety is different from the time he previously tried to abstain, the Individual testified:

The number one thing is I'm not quitting for anybody else. I'm quitting for me. You know, it's all about -- you know, one big factor is, I'm not just -- as I stated, I'm the president of the land grant. But just taking on the roles that I have in our community, I have become, you know -- what's the word I'm trying to use? I'm like

² A PEth test is a blood test that measures Phosphatidylethanol (Peth), a biological marker of alcohol consumption. Ex. 8 at 15.

a -- I'm in the limelight of our community. People look at me, they look up to me. They expect me to make sober and sound decisions on behalf of the community. I want to do what's best for the community, for my family, and the only way I feel like I can do that is soberly.

Id. at 106. He also believes that his relationship with his Wife is currently good, and it would be threatened if he resumed consuming alcohol. *Id.* at 107. Further, he stays away from or limits his time with people and family members that engage in alcohol consumption. *Id.* 107-08. As such, separation is one of his coping mechanisms to support his sobriety. *Id.* at 108.

The Individual has also submitted into the record— four negative PEth test results, two from March 2023 and one from April and May 2023. Ex A, B, C, D.

The Individual's Wife testified that she has been married to the Individual for five years. *Id.* at 26. She testified as to the events that led to the Individual's arrest on July 15, 2022. The Individual's Wife had decided to move out of their house. *Id.* at 28. She made the decision to leave despite attending several marriage counselling sessions. *Id.* While she was moving her items to their truck, she and the Individual began a heated argument which extended from their house to outside their house. *Id.* The police then appeared and subsequently arrested the Individual. *Id.* at 29-30.

The Individual's Wife testified that they had had marital problems a few months before the arrest and that their marital problems during this time were caused by a lack of communication. *Id.* at 30. She believed that the lack of communication was caused by their alcohol consumption. *Id.* Before the argument that led to the Individual's arrest, she had consumed four or five beers which was "a lot for me." *Id.* at 31. After the Individual's arrest on July 15, 2022, neither she nor the Individual have consumed alcohol. *Id.* at 32. She believes that she would be able to detect if the Individual consumed alcohol by smelling beer on him and observing him return to his prior behaviors when he had been consuming alcohol. *Id.* at 35. When asked how their lives had changed since both gave up alcohol, the Individual's Wife testified;

I would have to say that, you know, the drinking kind of kept us apart in a way. We didn't feel like . . . a cohesive unit when we were drinking. You know, he would be kind of in the back, in the garage working on his truck or, . . . working on woodworking in the garage, and I would kind of be in the house And since then, we're back to the way we were, . . . when we first got married, we were doing things together. So, we're always together And so it just feels like we're, . . . on the same page. And then . . . when we have disagreements, it seems like they just seem to flow. We either stop talking and revisit it later. And before, when we were both drinking, I think it just didn't go as smoothly It was always, like, you're doing this. You're doing that . . . and it never really resolved, even if it was a tiny, little disagreement. . . . [S]o it just felt like -- it feels like -- all I can say is it's peaceful now, you know, instead of . . . being agitated.

Id. at 36-37. In summary, the Individual's Wife testified that her relationship with the Individual was "100 percent better." *Id.* at 44.

The Individual's Wife testified that the Individual has been seeing the Therapist once a week and been engaging in counselling from his church. *Id.* at 37. She confirmed that he attended on-line AA meetings and had been participating in his church's band which plays during services. *Id.* The Individual is no longer going out with his friends with whom he would consume alcohol. *Id.* at 47. She believes that the Individual's intention is to continue to participate in counselling with his Therapist. *Id.* at 39. The Individual's Wife also consults with her own individual counsellor who has encouraged her to maintain her abstinence and to attend Al-Anon, an AA support group for those with relatives who have alcohol problems. *Id.* at 43. They have also both agreed to give up alcohol permanently and do not keep alcohol in the house. *Id.* at 39, 46. She believes that the Individual is honest, trustworthy and reliable. *Id.* at 40.

The Individual's mother testified that she lives across the street from the Individual. *Id.* at 14. She testified that for the past 11 or 12 months the Individual has not consumed alcohol. *Id.* She stated that because of the Individual's busy work schedule she sees her son just a "couple of days" each month. *Id.* at 15. She testified that after the Individual's arrest in July 2022, the Individual made changes in his life, specifically, he no longer consumes alcohol. *Id.* Her understanding is that the Individual is going to counselling and that he has told her that counselling has been helping him. *Id.* at 18. She has observed that the Individual and his Wife now seem much happier and that he now does a lot of reading and home projects. *Id.* at 17. The Individual is now a better man, and he knows that not consuming alcohol is the correct thing for him to do. *Id.* at 21. She also believes that she would be able to tell if the Individual was consuming alcohol by his behavior at family events. *Id.* at 18. She has observed the Individual at several family social events since July 2022 and she has never seen the Individual or his Wife consume alcohol. *Id.* at 18-19. She believes that the Individual is honest, trustworthy and reliable. *Id.* at 20.

The Individual's Therapist testified that she is a licensed psychiatric clinical counselor and a licensed alcohol and drug counselor. *Id.* at 50. The Therapist stated that the Individual was referred to her by the EAP at the Individual's workplace and her first session with the Individual occurred on March 6, 2023. *Id.* The Individual informed her that his last consumption of alcohol occurred on July 15, 2022. *Id.* at 53. The Therapist's approach with the Individual was to examine his relationship with alcohol, how it has affected his life and how he needs to live his life so that there are no repeat incidences of alcohol consumption or legal matters arising from such use. *Id.* at 54. The end goal is to assist the Individual to maintain his sobriety. *Id.*

The Therapist engages in sessions with the Individual on a weekly basis in which they discuss what has been going on in the Individual's life, how he is maintaining sobriety, how he is managing stressors in his life, and his experiences with AA participation. *Id.* The Individual has been very engaged with his therapy once he understood the Therapist's style. *Id.* at 55. The Therapist believes that she and the Individual have a "good alliance." *Id.* She testified that she believes that the Individual has also seen a personal benefit in therapy outside of maintaining sobriety. *Id.* at 58. She also notes that the fact that the Individual's Wife is now abstaining from alcohol is a significant, but not necessary, factor in the Individual's recovery. *Id.* at 63.

The Therapist testified that the Individual has made significant progress from when they started therapy and that while the Individual's motivation was mostly external when they began therapy, it is now in a place where the Individual has been integrating their sessions internally. *Id.* at 56. She believes that the Individual has found a deeper level of meaning and connection with their

sessions. *Id.* She has seen the Individual for nine sessions as of the date of the hearing and the Individual has indicated to her a great desire to continue. *Id.* at 57. She foresees their weekly sessions reducing to sessions every two weeks. *Id.* She believes that they will continue to meet for another six months. *Id.*

While their therapy sessions have been all via telephone because of the nature of the Therapist's practice, she believes that the Individual has been abstinent since July 16, 2022. *Id.* at 59. While the nature of their communication prevents her from smelling alcohol on the Individual, she believes that she could detect alcohol use by the Individual's attitude and mood changes. *Id.*

The Therapist testified that she recommended that the Individual engage with AA as part of their therapy. *Id.* at 60-61. She believes that the Individual has attended four virtual AA meetings as of the date of the hearing. *Id.* at 61. In their sessions, they have discussed the insights he has learned in AA, especially realizing that alcoholism is a disease and the concepts of stress management. *Id.* at 62. She believes that the Individual is "putting that together and figuring that out and diving into some of those concepts." *Id.* She would recommend that the Individual continue attending AA or another equivalent group such as SMART Recovery indefinitely. *Id.* at 63.

The Therapist believes that the Individual's earlier period of abstinence and his subsequent return to alcohol consumption provides significant experience and knowledge as to the consequences of not maintaining abstinence. *Id.* at 64. The Individual's prior legal issues motivated the Individual to maintain abstinence indefinitely. *Id.* She finds that the Individual has internalized his condition and the changes he needs to make. *Id.* at 65-66. Additionally, the Individual's religious faith also supports his abstinence. In sum, the Therapist believes that the Individual's prognosis is "good" and his risk of relapse is close to "low." *Id.* at 64-65.

The DOE Psychologist testified that he did not conduct the examination of the Individual. *Id.* at 115. However, due to the unavailability of the original DOE psychologist to testify, he was asked to testify in his stead. *Id.* In preparation the DOE Psychologist reviewed the Report. *Id.* He testified that he concurred with the original's DOE psychologist's findings and recommendations. *Id.* at 116. The DOE Psychologist agreed with the Report's diagnosis of the Individual as being a habitual binge drinker to the point of impaired judgment and that at the time of the Report, the Individual had not shown adequate evidence of rehabilitation or reformation. *Id.* at 120.

In reviewing the Report's treatment recommendations, the DOE Psychologist found the Individual had substantially complied with the requirement for regular alcohol testing from the date the Individual received the Report in February 2023. *Id.* at 121. As for the other elements of the Report's recommendations regarding treatment, the DOE Psychologist found that the Individual had complied with the requirement that he be abstinent from alcohol; that, after reviewing the Individual's PEth tests and the testimony presented at the hearing, the Individual began his abstinence on July 16, 2022; and that he has essentially complied with the Report's recommendation that the Individual be abstinent for 12 months, even though as of the date of the hearing the Individual has been abstinent for ten and one-half months. *Id.* at 122-23. This is especially true given the fact that the DOE psychologist did not diagnose the Individual as suffering from the more severe diagnosis of alcohol use disorder. *Id.* at 124-25, 128.

As for the Report's recommendation regarding the Individual entering a formal alcohol treatment program, the DOE Psychologist testified that regarding the Report's concern that at the time of the examination the Individual had not entered, at the time of the evaluation, a formal treatment program, he believes that the Individual immediately beginning sobriety was more important. *Id.* at 126-27. Through the testimony at the hearing, the DOE Psychologist found that the Individual did initially use church involvement as part of a treatment program and later entered into individual counselling. *Id.* at 127-28. Further, from the testimony he heard at the hearing, he believes that the Individual has been "participating well" in his counselling sessions. *Id.* at 128-29. Further given that the Individual was suffering from a "mild" alcohol disorder, he did not require inpatient treatment. *Id.* at 128.

When asked about his assessment as to the Individual relapsing, the DOE Psychologist testified:

I would say low. You know, his problem wasn't that severe. He appropriately sought help. I was impressed with his commitment to sobriety and the way he's managed his sobriety. I think his Mother and his Wife were convincing to me that he has been sober and that he really has gotten a wake-up call.

Id. at 129.

V. ANALYSIS

An individual may mitigate security concerns under Guideline G, in relevant part, if:

(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;

.....

Adjudicative Guidelines at ¶ 23.

Regarding the mitigating factor described in ¶ 23(b), the Individual has admitted his problem with alcohol by his convincing testimony regarding his realization while incarcerated during his July 15 arrest that he needed to permanently abstain from alcohol. Further, both the Therapist and the DOE Psychologist testified as to their opinion that the Individual has received a "wake up call" concerning his alcohol misuse. Also, there is significant evidence that the Individual after the arrest undertook actions address to his alcohol issue by meeting with and following EAP guidelines as well as engaging with his church to engage in a spiritual approach regarding his alcohol problem. When the Individual received the Report in February 2022, the evidence and testimony before me indicates that the Individual immediately sought to comply with the treatment recommendation such as engaging with the Therapist, obtaining PEth testing and attending AA meetings. Both the

Individual's Therapist and the DOE Psychologist testified to their opinion that the Individual has maintained a period of abstinence since July 16, 2022, and they have given him a positive assessment regarding relapse. As such, I find that the Individual has maintained a clear and established pattern of abstinence from alcohol in accordance with treatment recommendations. Consequently, I find that the mitigating factor described in ¶ 23(b) is applicable to the Individual.

As for the mitigating factor described under ¶ 23(c), I find that it is also applicable in the present case. Much of the information listed above is applicable here. There is convincing evidence from the Individual and his Therapist that they are engaging in a treatment program which includes abstinence, individual counselling and AA attendance. The record also indicates that the Individual is making satisfactory progress as evidenced by the DOE Psychologist's and Therapist's positive assessments that the Individual's risk of relapse is "low." Further, there is no evidence before me that indicates that the Individual has engaged in any other treatment program and relapsed.

Given the evidence before me, I find that the Individual have resolved the Guideline G security concerns raised by the derogatory information listed in the SSC.³

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 brought forth sufficient evidence to resolve these concerns. Accordingly, I have determined 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.

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

³ As recorded in my findings of fact, the Individual was involved in an alleged incident involving an arrest for Battery against a Household Member in 2012. This incident occurred almost 11 years ago and may have been caused by alcohol consumption by the Individual. Neither this incident nor the Individual's July 15, 2022, arrest for Battery against a Household Member has been cited by the LSO as raising a concern due to Guideline J – Criminal Conduct. To the extent 2012 arrest is relevant, I find that the Individual's current abstinence and treatment program would mitigate any concern raised by this incident.