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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: June 6, 2023) Case No.: PSH-23-0091
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Issued: July 31, 2023

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 not be granted.

I. Background

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. The Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in August 2022. Exhibit (Ex.) 9. In the QNSP, the Individual disclosed the fact that in November 2019, he had been arrested and charged with Driving While Intoxicated (DWI) and Unlawful Carry of a Weapon (UCW). *Id.* at 39–40. As part of the review of his eligibility for access authorization, the Individual was required to undergo an Enhanced Subject Interview (ESI) in late August 2022, which was conducted by an investigator. *Id.* at 78. As questions remained concerning the Individual’s eligibility for access authorization, the Local Security Office (LSO) asked the Individual to complete a Letter of Interrogatory (LOI), which the Individual signed and submitted in December 2022. Ex. 6.

The LSO subsequently asked the Individual to undergo a psychological evaluation conducted by a DOE-consultant psychologist (DOE Psychologist) in February 2023. Ex. 7. The DOE Psychologist conducted a clinical interview with the Individual and reviewed the Individual’s

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.

Personnel Security File. *Id.* at 1–2. As part of the evaluation, the Individual also submitted to a laboratory phosphatidylethanol (PEth) test, which “reflects the average amount of alcohol consumed over the previous [twenty-eight to thirty] days.” *Id.* at 3–4. In February 2023, the DOE Psychologist issued a report (the Report) containing his assessments and conclusions, which included the conclusion that the Individual “[met] the definition of drinking habitually and binge drinking.” *Id.* at 4. The DOE Psychologist also opined that the Individual “is seen as placing himself in a position of compromised judgment or reliability through substance use on a regular basis.” *Id.*

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility for 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 Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf. *See* Transcript of Hearing, Case No. PSH-23-0091 (hereinafter cited as “Tr.”). He also submitted one exhibit, marked as Exhibit A. The DOE Counsel presented the testimony of one witness, the DOE Psychologist, and submitted ten exhibits marked as Exhibits 1–10.

II. Notification Letter and Associated Concerns

Under Guideline G, “[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines at ¶ 21. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are “[a]lcohol-related incidents away from work, such as . . . driving while under the influence . . . regardless of frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder[,]” and “[h]abitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder[.]” *Id.* at ¶22(a), (c).

The LSO alleged that the DOE Psychologist opined in his Report that the Individual “[met] the definition of drinking habitually and binge drinking[.]” and that the Individual “is seen as placing himself in a position of compromised judgment or reliability through substance use on a regular basis.” Ex. 1 at 1. The LSO also alleged that the Report indicated that the “[PEth] test results . . . were positive at a level of 150 ng/mL, which constitutes evidence of moderate to heavy alcohol consumption.” *Id.* The LSO further alleged that in November 2019, the Individual was charged and arrested with DWI and UCW, he admitted to having consumed approximately “three to five beers and four to five shots of liquor” prior to the incident, and his “breath-alcohol tests yielded results of .148 and .157.” *Id.* The LSO’s invocation of Guideline G is justified.

III. Regulatory Standards

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his 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. 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 and Hearing Testimony

The Individual stated in his response to the LOI and to the investigator that on the day of the incident in November 2019, the Individual and his friends proceeded to a public location where they consumed alcohol. Ex. 6 at 1; Ex. 10 at 84. They returned to where they were staying in the early morning hours, at which point the Individual decided he was hungry and left the location to purchase some food. Ex. 6 at 1. The Individual stated that he “[does not] remember much after that[]” but that he “came back to [his] senses when [he was] pulled over[]” by law enforcement personnel. *Id.* The Individual underwent field sobriety tests and upon his arrest, he informed law enforcement personnel that he had a firearm under the driver's side seat, resulting in the UCW charge.² *Id.*; Ex. 10 at 83. Law enforcement personnel also conducted breathalyzer tests, the results of which were .148 and .157. Ex. 6 at 1. The Individual admitted in his response to the LOI that “[a]n excessive amount of alcohol was consumed[]” on the night in question, and estimated that he had consumed approximately three to five beers in addition to four to five shots of liquor over three to four hours. *Id.*; Ex. 10 at 84. The criminal matters were resolved in 2021: the UCW matter was dismissed, and the Individual successfully completed the terms of his probation in the DWI matter. Ex. 6 at 1–2; Tr. at 29; Ex. 10 at 83–85.

The Individual stated in his response to the LOI and to the DOE Psychologist that his current pattern of alcohol consumption consisted of “a beer or two” at a “maximum of once a week.” Ex. 6 at 2; Ex. 7 at 2. The Individual also stated that he drinks “at the end of the week” or on the weekend and that he has been consuming alcohol at this rate since the completion of his probation. Ex. 6 at 2–3. He also stated in the LOI that the last time he had consumed alcohol was two weeks

² The Individual stated he received his license to carry a firearm in another state. Ex. 6 at 1.

prior to the completion of the LOI, and that he was last intoxicated on the day of the November 2019 incident. *Id.* at 3–4.

The Individual denied any treatment for alcohol and indicated that he does not feel his alcohol consumption is problematic. *Id.* at 4–5, 7. He did indicate that he completed a court-ordered substance abuse evaluation in October 2020, but it was determined that he did not need counseling services. *Id.* at 6.

As indicated in the Report, the DOE Psychologist was made aware of the events of the November 2019 incident and the subsequent arrest and charges. Ex. 7 at 2. The Report noted that the Individual indicated that he was not aware of the fact that he had to remain abstinent from alcohol the first couple of months of his probation, and informed “his probation officer that he would drink a beer while home alone on occasion.” *Id.* At this point, the Individual was informed that he was not to drink alcohol, and he told the DOE Psychologist that he complied with that requirement for the remainder of his probation. *Id.*; Tr. at 48–49. Per the Report, the Individual was subject to random testing and had an interlock device placed in vehicle.³ Ex. 7 at 2. Lastly, the Individual was required to attend a victim impact panel and complete an educational program. *Id.*

Regarding his recent alcohol consumption, the Individual told the DOE Psychologist that “he had friends come in from out of town and they frequented multiple breweries[.]” the prior week. *Id.* at 3; Tr. at 15–16. On that occasion, the Individual admitted consuming “four beers over the course of six hours.” Ex. 7 at 3. As part of the evaluation, the Individual submitted to a PEth test, which “was positive at a level of 150 ng/mL, indicating “significant alcohol consumption” or alcohol consumption at a rate of two to four drinks several days a week. *Id.* at 3–4; Tr. at 15. The DOE Psychologist opined that the Individual “greatly underestimates his monthly alcohol consumption.”⁴ Tr. at 15; Ex. 7 at 4.

The DOE Psychologist concluded in the Report that the Individual does not meet the criteria for AUD but stated that “[h]is self-report of alcohol consumption is inconsistent with his lab results” and that the Individual “is seen as placing himself in a position of compromised judgment or reliability through substance use on a regular basis.” Ex. 7 at 4. The DOE Psychologist did not find adequate evidence of rehabilitation or reformation and recommended that the Individual “complete [sixteen] substance abuse group therapy sessions” conducted by a licensed therapist on a weekly basis. *Id.* at 5. The DOE Psychologist further recommended that the Individual “attend monthly relapse prevention or maintenance groups for the remaining duration of one year” and

³ The Individual testified that while he was on probation, he was subject to approximately twelve urine tests, which tested for alcohol and other illicit substances. Tr. at 47–48. He did not recall for certain if any of the tests indicated that he was positive for alcohol. *Id.* at 48–49. He began drinking alcohol again “a month or two after” he completed his probation. *Id.* at 49. He testified that “for the first two or three months[.]” he was consuming approximately four or five drinks on the weekends, but he then reduced his consumption to two to three drinks a week. *Id.* at 49–50.

⁴ When asked about his underreporting, the Individual stated that he had “thought about . . . the more recent alcohol use” in which he engaged, and “just reported those immediately.” Tr. at 16. Upon leaving the psychological evaluation, he remembered other incidents of consumption, but “knew it was too late just to run inside and tell [the DOE Psychologist]” that he “forgot to report” other incidents of use. *Id.* at 17. He did state that he consumed an unusual amount of alcohol in the month he was evaluated. *Id.*

that he participate in a weekly support group, like Alcoholics Anonymous (AA), and refrain from consuming alcohol. *Id.*; Tr. at 65.

At the hearing, the Individual testified that he was upset upon first reading the Report and disagreed with the assessment, but that after he had given the matter some thought, he realized that “[there is] no reason to be mad[.]” Tr. at 18–19, 44. Accordingly, the Individual decided to stop consuming alcohol, and he testified that he remained abstinent from alcohol from approximately mid-May to mid-June *Id.* at 19–22, 24. The Individual consumed alcohol again in June, as he was celebrating various occasions. *Id.* at 22, 24–26, 45. He felt that “as long as [he] was drinking responsibly and not being crazy” that “it was okay for [him] to have a few drinks.” *Id.* at 45, 56–57. The Individual submitted to one PEth test in mid-July, which was positive for alcohol with a result of 86 ng/mL. Ex. A; Tr. at 23–24. He testified that between mid-June to mid-July, he consumed a total of approximately ten to eleven alcoholic beverages spread out over the course of several days. *Id.* at 24–25. The Individual testified that he began abstaining from alcohol again in late June and had remained abstinent until he took the PEth test in mid-July. *Id.* at 27. The Individual also stated that he has been abstinent from alcohol since taking the PEth test in July. *Id.* He stated that he does not feel any temptation to drink alcohol, and his friends are understanding of his desire to remain abstinent. *Id.* at 38–39, 55–56. He considers these friends as being part of his support system. *Id.* at 50–51. However, when asked if he feels he has “a problem with alcohol[.]” the Individual indicated that “[i]n [his] opinion, [he did] not.” *Id.* at 39. He also stated that he does not believe his past alcohol consumption was problematic, as he felt that he was just “having too much fun with it[.]” *Id.*

The Individual testified that following his receipt of the Report, he began looking for a group therapy program. *Id.* at 28, 44–45. He stated that the majority of the programs were inpatient treatment, and his schedule was not conducive to inpatient treatment. *Id.* He did, however, learn that his employer’s Employee Assistance Program (EAP) offered one-on-one treatment, so he made an appointment that had not yet come to pass at the time of the hearing. *Id.* at 28–32, 45–46. The Individual testified that he had an initial consultation with a therapist prior to making the appointment. *Id.* at 34, 46, 53. When asked about whether he attended any AA groups, the Individual indicated that he plans to attend AA after he completes therapy. *Id.* at 30, 34, 45.

The Individual indicated that he has made some “personal changes[.]” including “going to the gym a lot more often” and participating in weekend activities that are unrelated to alcohol consumption, like sports. *Id.* at 35–36, 38. Although his girlfriend had previously kept her alcohol consumption “to [a] minimum[.]” she also stopped consuming alcohol in support of his efforts. *Id.* at 36–37, 51. At the hearing, he admitted that he had “a few beers in the fridge” and a bottle of wine and liquor, but they had gone untouched for some time. *Id.* He testified that with regard to future alcohol consumption, he would like to “follow with what [he is] doing,” as he is currently experiencing the benefits. *Id.* at 40. He stated that he may occasionally partake in alcohol consumption on special occasions, but that he would not indulge in the amounts he did prior to the psychological evaluation in January 2023. *Id.* at 41. In later testimony, the Individual indicated that he does not “plan on” consuming alcohol “for the time being[.]” as he does not know what to expect from substance abuse counseling. *Id.* at 51–53.

Regarding his most recent PEth test in July 2023, the Individual stated that he felt the results were “unusually high[,]” and insisted that he had not consumed an alcoholic beverage since late June. *Id.* at 42.

In his testimony, the DOE Psychologist opined that the Individual “may have more tolerance” and “may not feel the effects of alcohol because of the amount of alcohol he consumes.” *Id.* at 61. The DOE Psychologist went on to state that the most recent PEth test result “is confirmatory for [him] in that respect,” especially because the Individual testified that he was attempting to reduce his alcohol consumption. *Id.* He indicated that because the Individual has not participated in any treatment and because “it [does not] appear as though [the Individual’s] drinking has decreased significantly[,]” he has not shown adequate evidence of rehabilitation or reformation. *Id.* at 62–63. The DOE Psychologist observed that if the Individual “was serious about not drinking” he would “be trying not to drink and [would not] be putting himself into situations that facilitate drinking, like celebrating holidays or birthdays or events at drinking establishments.” *Id.* at 64.

V. Analysis

Guideline G

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline G include:

- (a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or judgment;
- (b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and
- (d) The individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23.

While the Individual has come to terms with the recommendations made in the Report, he has not implemented the recommendations, and I question how committed he is to the requisite changes to evidence rehabilitation and reformation. The Individual’s problematic alcohol consumption resulted in previous criminal charges, and despite this, he continues to consume alcohol. The Individual indicated in his testimony that he has experienced benefits from his reduced alcohol

consumption. Presumably, he would have experienced those benefits during his probation when he had stopped consuming alcohol. And yet, he resumed his problematic alcohol consumption. Concerningly, despite the fact that the Individual was previously criminally charged as a result of his alcohol consumption and reviewed the Report, he does not believe his consumption is problematic. At the time of the hearing, I did not have a definitive commitment to abstinence from the Individual. I only received vague assertions that he may consider it at some point in the future. Additionally, while the Individual testified that he has made an appointment with a mental health professional to obtain treatment, I cannot conclude that he has mitigated any of the stated concerns based on this act alone, especially when the Individual continues to consume alcohol. Importantly, the DOE Psychologist indicated that the Individual had not shown adequate evidence of rehabilitation or reformation.

As the Individual continues to consume alcohol against treatment recommendations, I cannot conclude that so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that is unlikely to recur and does not cast doubt on the Individual's current reliability, trustworthiness, or judgment. The Individual has failed to mitigate the stated concerns pursuant to mitigating factor (a).

Because the Individual has not recognized that his alcohol consumption is maladaptive and has not abstained from alcohol consumption as recommended, he has failed to mitigate the stated concerns pursuant to factor (b).

As the Individual is not currently participating in treatment or counseling, nor has he completed treatment or counseling, the mitigating factors at (c) and (d) are not applicable.

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 not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should not be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals