

**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-23-0097
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Issued: August 23, 2023

Administrative Judge Decision

Janet R. H. Fishman, 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 be restored.

I. Background

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. In January 2023, the Individual tested positive on a random breath alcohol test (BAT) at work. Exhibit (Ex.) 1; Ex. 7 at 25. The Local Security Office (LSO) subsequently issued a Letter of Interrogatory (February 2023 LOI) to the Individual, which sought additional information related to the Individual’s positive BAT. Ex. 8. The Individual responded to the LOI in February 2023. *Id.* at 8.

In the February 2023 LOI, the Individual reported that the night before the failed BAT, he consumed five to seven heavy mixed drinks, stopping around 10 p.m. Ex. 8 at 36. However, he admitted that he also woke up three times during the night and took a shot. *Id.* He also reported his last consumption of alcohol was on January 24, 2023, in the early morning hours prior to the BAT. *Id.* at 41. He also reported that he did not feel like he had a problem with alcohol. *Id.* at 44. He continued that his alcohol consumption increased because of feelings of anxiety, which as of the time of the LOI was being treated by his Personal Care Physician (PCP). *Id.*

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.

In March 2023, the Individual underwent an evaluation by a DOE-consultant Psychiatrist (DOE Psychiatrist). Ex. 9. As part of the evaluation, the DOE Psychiatrist conducted a clinical interview of the Individual, reviewed the Individual's personnel security file, and had the Individual undergo a Phosphatidylethanol (PEth) laboratory test to detect alcohol consumption in the previous weeks. *Id.* at 54, 58.

On March 19, 2023, the DOE Psychiatrist issued a report (Report) explaining the results of the Individual's evaluation. *Id.* In the Report, the DOE Psychiatrist wrote that at the time of his January 2023 positive BAT, the Individual reported that he "drank about 5 to 7 strong mixed drinks of vodka and coke, although in our interview he said there was 'no telling how much' vodka he put into each mixed drink." *Id.* at 55. The DOE Psychiatrist reported that during his clinical interview with the Individual, the Individual stated that:

he became anxious during the night and beginning around midnight he would wake up and take a shot "or more" of vodka to get back to sleep. He estimated this happened about three times until he drank a final shot around 3:40 AM when he got up to get ready for work.

Id. During the interview, the Individual also stated that his alcohol consumption increased in January 2021, when he moved to his current state of residence. *Id.* at 54. At that time, he was living alone in a camper, his family not yet having joined him in the new state. *Id.* The Individual reported to the DOE Psychiatrist that his primary problem was feeling depressed, lonely, and anxious. *Id.* The Report noted that after the Individual's failed BAT, the Individual underwent a fitness for duty (FFD) evaluation. *Id.* at 56. At the FFD evaluation, the Individual agreed to weekly urine tests and monthly blood tests for alcohol consumption. *Id.* The Individual also consulted his PCP, who prescribed a sleeping medication. *Id.* The DOE Psychiatrist related that the Individual agreed to attend a six-week alcohol education course, and he had completed five weeks as of the date of the Report. *Id.* The Report noted that the Individual was not attending Alcoholics Anonymous (AA) or a similar treatment program and that the Individual was not experiencing any cravings for alcohol. *Id.* The DOE Psychiatrist reported that the Individual's PEth test was negative. *Id.* at 58.

The DOE Psychiatrist opined that the Individual had an Alcohol Use Disorder, Moderate (AUD), and he "does habitually or binge consume alcohol to the point of impaired judgment." *Id.* at 61. The DOE Psychiatrist also opined that the Individual did not demonstrate adequate evidence of rehabilitation. *Id.* The DOE Psychiatrist recommended that the Individual maintain sobriety for one year and enter treatment, such as AA or Self-Management and Recovery Training (SMART), attending a minimum of one session a week, or alternatively engage in individual counseling. *Id.* at 61-62.

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

In June 2023, the Individual requested an administrative hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of two witnesses: the Individual's wife and an Employee Assistance Program Counselor (EAP Counselor). *See* Transcript of Hearing, Case No. PSH-22-0097 (Tr.). The Individual submitted three exhibits, marked as Exhibits A through C. DOE Counsel submitted 11 exhibits, marked as Exhibits 1 through 11, and presented the testimony of the DOE Psychiatrist.

II. The Summary of Security Concerns

Guideline G states that excessive alcohol consumption often leads to the exercise of questionable judgment, or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. Adjudicative Guidelines at ¶ 21. Conditions that could raise a security concern under Guideline G include: “[h]abitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder” and a “[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical DOE Psychiatrist, psychiatrist, or licensed clinical social worker) of alcohol use disorder.” *Id.* at ¶ 22(c) and (d). In citing Guideline G, the LSO cited the Individual's January 2023 failed BAT, the opinion of the DOE Psychiatrist that the Individual has AUD, and that the Individual's pattern of alcohol consumption is habitual and binge consumption to the point of impaired judgment. Ex. 1 at 1. Based on the Individual's failed BAT and the DOE Psychologist's Report, I find the LSO's security concerns under Guideline G are justified.

III. Regulatory Standards

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

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Findings of Fact and Hearing Testimony

As stated above, the Individual failed a random BAT in January 2023. Ex. 7. He admitted that he consumed five to seven heavy alcoholic drinks the night prior to the positive test. Ex. 8 at 36. In addition, in the early morning, prior to reporting to work, he consumed at least three shots of vodka. *Id.* After failing the BAT, the Individual was evaluated for FFD. Ex. 2. During the FFD evaluation, the Individual agreed to weekly urine tests and monthly PEth tests. *Id.* All of these tests came back negative for alcohol use.² Tr. at 40, Ex. A. He completed the six-week alcohol education course through EAP and enrolled in the twelve-week continuing sobriety EAP course. Tr. at 34; Ex. B. He has been meeting with a therapist once a week since June 2023. Tr. at 34. In addition, the Individual attended a few SMART and BetterHelp³ classes in order to aid his recovery. Ex. 2; Tr. at 33. Further, by June of 2023, the Individual acknowledged that he now agrees with the DOE Psychiatrist's diagnosis of AUD. Ex. 2; Tr. at 30.

The Individual's wife testified that prior to the January 2023 incident, she had noticed that her husband was struggling, and she voiced concerns to the Individual about his alcohol use. Tr. at 64. She said that she believed that the Individual was using alcohol as a coping method to deal with a period of transition for their family. *Id.* The wife explained that she knows her husband has not been drinking since the January 2023 incident because, in addition to seeing the results of the urine and blood tests, she has not observed the behaviors he would engage in while he consumed alcohol. *Id.* at 65. She further testified that her husband participates in regular therapy and goes to a weekly alcohol class. *Id.* at 66. The wife said that the Individual shares with her the information that he has learned in his classes and has also taken the initiative to help her and their children get into therapy as needed. *Id.* at 69–70. She stated that she believes all of the classes and therapy that the Individual has undergone since January 2023 have helped to improve his communication skills and his relationship with everyone in their family. *Id.* at 67. The wife also testified that she and her husband do not keep alcohol in their house. *Id.* at 74.

The Individual's EAP Counselor testified that the Individual had completed the six-week educational and group treatment program on alcohol that she facilitates. Tr. at 13–14. She further stated that he is currently participating in a weekly course she runs that provides education, skills, and support related to alcohol misuse and/or dependence. *Id.* The EAP Counselor said that the Individual has an "excellent" prognosis to remain abstinent from future alcohol use because he has expressed that he does not want to go back to drinking and he has the resources and support necessary to accomplish that goal. *Id.* at 14, 17. She also explained that in the time that she has known him, she believes that the Individual has learned how to reach out, communicate, and ask

² The Individual provided documentation from medical professionals that he had been undergoing regular PEth and urine tests as part of his FFD evaluation and that all of those tests came back negative for alcohol use. Ex. A at 1. The documentation showed that in addition to the PEth test administered as part of his clinical evaluation, he had negative PEth tests on February 7, 2023, March 23, 2023, and May 15, 2023. *Id.* at 2. The document also showed negative urine tests on February 7, 2023, February 21, 2023, February 27, 2023, March 8, 2023, March 15, 2023, March 28, 2023, May 1, 2023, and June 13, 2023. *Id.* The Individual asserted at the hearing that he had taken several more tests, and he believed that a page of the documentation from his FFD evaluation was missing. Tr. at 40.

³ BetterHelp is "the largest therapy platform in the world and it's 100% online." FAQ - Get Answers To Common Questions About Therapy, BetterHelp (August 23, 2023), <https://www.betterhelp.com/faq/>.

for help when he needs it. *Id.* at 22. She asserted that she has “watched [the Individual] transform and heal and gain insight, understanding, accepting help, reaching out, connecting, offering what I would call positive change-oriented feedback and himself and his journey.” *Id.* at 22. She continued that he is not afraid to openly share in a group of 15 men about going to see a therapist and a counselor. *Id.*

The Individual’s therapist provided a letter detailing the Individual’s progress in therapy. Ex. C. The therapist explained that the Individual “has been abstinent from alcohol use and has been exhibiting greater and appropriate coping strategies, and it seems that his coping is at a [sic] appropriate level since I began to see him, and even has improved.” *Id.*

The Individual testified that he now knows his use of alcohol in the past was excessive and dangerous. Tr. at 30. He explained that since the January 2023 incident, he has realized that he was using alcohol as a coping mechanism to deal with loneliness and sadness when he should have instead been communicating with his family and others about how to feel better when he was struggling. *Id.* at 29. He said he has completed group counseling with EAP, where he was able to talk to other people with similar problems and share coping mechanisms and triggers. *Id.* at 34–35. He also testified about his sessions with his personal therapist, where the Individual has the opportunity to talk about family problems and get advice from a trusted professional. *Id.* at 42. The Individual professed that he intends to continue counseling indefinitely. *Id.* at 39–40. Additionally, the Individual stated that he felt comfortable reaching out to the EAP Psychologist who initially treated him if he needed more support than he could get from the EAP group and his personal therapist. *Id.* at 32. The last day that the Individual consumed alcohol, the Individual testified, was the morning of the random BAT test. *Id.* at 45. He further stated that this is the first time he has gone any significant amount of time being completely abstinent from alcohol. *Id.* at 36–37.

The DOE Psychiatrist testified that after his initial evaluation of the Individual, he diagnosed the Individual with an AUD. Tr. at 54. He stated that after hearing all of the testimony in the hearing, it was his view that the Individual’s AUD was in remission. *Id.* at 78. He further testified that the treatment the Individual had undergone was adequate, and by all accounts the Individual had been an active and enthusiastic participant in that treatment.⁴ *Id.* at 79. The Psychiatrist explained that while he typically would not say a person is reformed or rehabilitated without a full year of treatment, it was his view that the Individual had made exceptional change in the six months since the January 2023 incident, and, therefore, there was adequate evidence that the Individual is reformed and rehabilitated from his AUD. *Id.* The Psychiatrist went on to opine that the Individual has a low risk of relapse and that his prognosis was good.. *Id.* at 83–84.

V. Analysis

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

⁴ The Psychiatrist also testified that this was the Individual’s first “serious effort” to be abstinent from alcohol. Tr. at 58.

(a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

(b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

(c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; or

(d) The individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23.

Regarding factor (b), the Individual testified that he recognizes his alcohol consumption was a problem, and he has sought out treatment for his alcohol use disorder. The Individual's wife testified that his behavior has changed since he ceased consuming alcohol and attends weekly alcohol classes and regular counseling. After his positive BAT, the Individual immediately stopped consuming alcohol and began undergoing weekly urine tests for alcohol and monthly PEth tests, the results of which were all negative. He went to his PCP for treatment of his anxiety, began seeing a therapist, took a six-week alcohol education course through his EAP, and continued with aftercare. Therefore, the Individual has mitigated the security concerns under factor 23(b).

Regarding factor (c), the Individual is participating in weekly counseling sessions, and his therapist has reported that the Individual has been exhibiting "greater and appropriate coping strategies" since beginning therapy. The Individual had never participated in treatment before and has no history of relapse. The EAP Counselor testified that the Individual has transformed, healed, and gained insight and understanding. He is accepting of help and reaching out. She sees a positive change in his demeanor. Therefore, the Individual has mitigated the security concerns under factor 23(c).

Regarding factor (d), the Individual successfully completed group counseling at the EAP. Further, he has demonstrated a clear and established pattern of abstinence as evidenced by his negative urine and PEth tests. His EAP Counselor and Therapist both believe that the Individual's prognosis going forward is excellent. The DOE Psychiatrist testified that the Individual had made exceptional change in the six months since the January 2023 incident and has a good prognosis. Therefore, he has also mitigated the security concerns under factor 23(d).

As a final note, I will point out that the Individual's problem with alcohol usage began when he was isolated from his family and suffering from anxiety due to his family's unhappiness in moving from their home state. The Individual and his wife both testified that their relationship and their relationship with their children is better. The family is in counseling and is adjusting to their new

living location. The Individual is being treated for anxiety and the family members are no longer unhappy. The Individual is handling the pressures of living in a new community away from his extended family, which led to his overconsumption of alcohol.

For the reasons stated above, I find that the Individual has mitigated the security concerns raised by the LSO under Guideline G.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, I find the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

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