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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 22, 2023) Case No.: PSH-23-0099
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Issued: October 23, 2023

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, as set forth at 10 C.F.R. Part 710, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”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 DOE contractor in a position that requires him to hold a security clearance. In early October 2022, the Individual was arrested and charged with Criminal Negligence and Operating a Vehicle While Under the Influence of Alcohol or Drugs. Exhibit (Ex.) 7. The Individual subsequently completed a Letter of Interrogatory (LOI) and admitted that, prior to the arrest, he had consumed three beers and three shots of liquor. Ex. 9 at 20. In March 2023, the Individual was evaluated by a DOE consultant psychologist (DOE Psychologist) who diagnosed the Individual with Alcohol Use Disorder, Mild, in early remission and opined that the Individual had not shown adequate evidence of rehabilitation. Ex. 10 at 13.

Due to unresolved security concerns related to the Individual’s alcohol consumption, the Local Security Office (LSO) informed the Individual in a Notification Letter that it possessed reliable

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.

information that created substantial doubt regarding his eligibility to hold a security clearance. In the Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. *Id.* The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted twelve numbered exhibits (Ex. 1–12) into the record and presented the testimony of the DOE Psychologist. The Individual submitted ten exhibits (Ex. A–J) into the record, and he presented the testimony of four witnesses, including his own testimony. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (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 to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included the SSC, which sets forth the derogatory information that raised concerns about the Individual’s eligibility for access authorization. The SSC specifically cites Guideline G of the Adjudicative Guidelines. Ex. 1. Guideline G relates to security risks arising from excessive alcohol consumption. “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines at ¶ 21. In citing Guideline G, the LSO relied upon the DOE Psychologist’s March 2023 determination that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*,

Text Revision (DSM-5-TR) criteria for Alcohol Use Disorder, Mild, in early remission. Ex. 1 at 7. It additionally cited the DOE Psychologist's determination that the Individual had not demonstrated adequate evidence of rehabilitation or reformation. *Id.* The LSO also cited the Individual's October 2022 arrest and charge for Criminal Negligence and Operating a Vehicle While Under the Influence of Alcohol or Drugs with a breath alcohol concentration (BAC) of .19 g/210L. *Id.* It additionally cited the Individual's admission in the LOI that he had consumed three beers and three shots of liquor prior to the arrest. *Id.* Lastly, the LSO cited an April 2012 incident wherein the Individual was arrested and charged with Careless Driving and Driving Under the Influence. *Id.*

IV. Findings of Fact

In December 2022, the Individual completed an LOI inquiring about the circumstances of his October 2022 arrest. Ex. 9. The Individual indicated that, prior to the arrest, he had consumed three beers and three shots in a three-hour period. *Id.* at 17. He indicated that, immediately prior to the arrest, he met his mother at a gas station, and he and his mother began arguing as she knew that the Individual had been drinking and driving with his child in the car. *Id.* His mother then called the police, which led to his arrest. *Id.* The Individual stated that his parents "both had an issues with addiction," so his mother "always wished [he] would not drink at all." *Id.* at 23.

The Individual stated that, following the arrest, he began undergoing random "drug/alcohol screenings," attending counseling, and participating in an alcohol education class at the site where he was employed. *Id.* at 19. He further stated that he had voluntarily undergone phosphatidylethanol (PEth) testing. *Id.* The Individual indicated that, since his arrest, he was abstaining from alcohol and intended to continue with his counseling sessions. *Id.* at 20–21.

In March 2023, the Individual underwent a psychological evaluation with the DOE Psychologist, after which the DOE Psychologist issued a report of his findings (Report). Ex. 10. According to the Report, the Individual had a child outside of his primary relationship, and the interactions with his child's mother were causing "major stress and many arguments with his [partner] with whom he lives." *Id.* at 10. The Individual told the DOE Psychologist that it was not uncommon for him to drink during the day throughout this period in his life, especially after interacting with this child's mother. *Id.* The DOE Psychologist reported that, on the morning of the October 2022 arrest, he had an argument with his partner about the child, and in response to the stress, he drove to a family member's home and consumed three beers and three "chugs" from a bottle of liquor. *Id.* According to the Report, soon after he had consumed the alcohol, he began driving his child back to the child's mother's residence and stopped by a gas station to purchase alcohol. *Id.* However, the Individual reported that his mother arrived at the gas station and confronted him about driving after consuming alcohol. *Id.* He told the DOE Psychologist that he decided to drive away from the gas station, and his mother called law enforcement. *Id.* Soon after, the Individual was arrested with a BAC of .19 g/210L.

According to the Report, the charges against the Individual were ultimately dismissed as the District Attorney "had laboratory proof of [the Individual's] abstinence," and the Individual had been attending counseling. *Id.* at 11. The DOE Psychologist noted that, the day after the arrest, the Individual began seeing a court appointed counselor. According to the Report, the Individual

attended counseling once per week; however, at the beginning of February 2023, he transitioned to once-monthly sessions. *Id.* The DOE Psychologist reported that the Individual was participating in court ordered alcohol and drug urine screenings four to five times per week and, additionally, attended a six-week alcohol education class at his employment site. *Id.* The Individual told the DOE Psychologist that he had undergone voluntary PEth testing in November 2022, December 2022, and January 2023, all of which were negative for the presence of alcohol. *Id.*; see Ex. F–H. The Individual stated that he had been abstinent from alcohol since the day following his October 2022 arrest. Ex. 10 at 11. He additionally stated that he planned “to continue to be alcohol abstinent for the foreseeable future.” *Id.* at 12.

Ultimately, the DOE Psychologist diagnosed the Individual with Alcohol Use Disorder, Mild, in early remission, without adequate evidence of rehabilitation or reformation. *Id.* at 13. In order to establish adequate evidence of rehabilitation or reformation, the DOE Psychologist recommended that the Individual continue working with his counselor “until both believe he has reached maximum benefit.” *Id.* He recommended that the “counseling should focus on developing other behaviors to deal with his stress in addition to supporting his abstinence.” *Id.* He additionally recommended that the Individual should engage in couple’s counseling with his partner. *Id.* The DOE Psychologist lastly recommended that the Individual remain abstinent from alcohol for a period of 12 months and undergo PEth testing “only about every three months.” *Id.*

V. Hearing Testimony

At the hearing, the chief of the Individual’s organization (Chief) testified on his behalf. Tr. at 11–19. The Chief stated that he had known the Individual for four to five years on a professional basis. *Id.* at 11–12. He testified that, depending on his schedule, he would see the Individual anywhere from once a month to a couple times a week for varying periods of time. *Id.* at 12–13. He testified that he has never had concerns regarding the Individual’s alcohol consumption. *Id.* at 13–14. Specifically, he stated:

[E]very day that I’ve seen him at work, he’s very professional, very alert. . . I’ve worked with people in my past that were abusers of alcohol, they would show signs of being tired and kind of worn out. And [the Individual] is always alert, very professional and looks like he’s ready to go to work every time I see him.

Id. at 14.

The Chief stated that the Individual had discussed with him the circumstances leading to the suspension of his clearance and “taken accountability for the actions.” *Id.* at 13. The Chief elaborated, stating that the Individual had admitted fault and recognized that he made a mistake on the day of the arrest. *Id.* He testified that he receives updates from both the Individual and a security manager regarding the Individual’s rehabilitative efforts, and he felt that the Individual’s progress had been positive. *Id.* at 14–15. The Chief noted that he appreciates that the Individual has taken accountability for his actions and is “working progressively to make sure that it doesn’t happen again.” *Id.* at 15.

One of the Individual's supervisors (Supervisor) also testified on his behalf. *Id.* at 23–30. The Supervisor testified that he has known the Individual for approximately three years on a professional basis. *Id.* at 24. He stated that he works with the Individual for 72 hours per week, and he has never had a concern with the Individual's alcohol consumption. *Id.* at 25. The Supervisor testified that the Individual has a "very good" reputation at work as "he shows up well prepared, he's always on his game . . . [and] he's got . . . a ton of positive energy." *Id.* at 26. He further testified that he believes the Individual to be a trustworthy and reliable person as "he's never once dropped the ball at work." *Id.* at 27–28. Regarding stress management, the Supervisor testified that the Individual works in "very high stress situations" and he "kind of shine[s]." *Id.* at 30. He elaborated, stating that the Individual manages his job stress "so well that people kind of look to [him] to . . . help them deal with their stress." *Id.*

The Individual's counselor (Counselor) also testified on his behalf. *Id.* at 34–49. The Counselor stated that he provided therapy to the Individual from October of 2022 to February of 2023. *Id.* at 34. He stated that he began meeting with the Individual within days of the Individual's 2022 arrest, and he estimated that they met for approximately 12 sessions. *Id.* at 34, 45. The Counselor testified that the Individual sought counseling of his own accord,² and he sought to "get a handle on alcohol use and mental health issues." *Id.* at 35. He explained that, when he first met the Individual, the Individual "presented in a place of change . . . actually wanting to address the behavior, wanting to address the issues that were occurring, and [he] recognized that alcohol use was an issue for him and was actively working to try to find a way to cease that." *Id.* at 35–36. He testified that, to his knowledge, the Individual had been abstinent from alcohol since October 2022, but he did not know the exact date. *Id.* at 39.

The Counselor testified that he did not diagnose the Individual with an alcohol use disorder, but he and the Individual did create three goals for the therapy sessions: (1) to "address past issues and process those . . . using a trauma-informed perspective," (2) to "increase interpersonal effectiveness and communication," and (3) to "develop coping skills to communicate emotions." *Id.* at 36. The Counselor explained that, although the goals did not specifically address the Individual's alcohol use, the plan was created to address the Individual's mental health and assess if alcohol remained an issue once the goals were achieved. *Id.* at 36–37. Specifically, he testified that it was his assessment that if the Individual was able to communicate effectively to the people in his personal life and process strong emotions, he would be able to manage personal stress without using alcohol as a coping mechanism. *Id.* at 40. He stated that, by exploring the Individual's pattern of alcohol use in response to stress throughout various points in his life, the Individual would be aided in understanding the way he had previously been using alcohol and how to cease using it to cope with stress. *Id.*

The Counselor testified that, throughout the therapy sessions, he and the Individual discussed "where triggers were present and where relapse behavior could occur." *Id.* at 42. He stated that the Individual was open to practicing and utilizing skills and "coming back and talking about how those skills worked." *Id.* The Counselor noted that the Individual "participated fully" in the counseling sessions and was "incredibly collaborative." *Id.* at 37. The Counselor added that the

² The Counselor indicated that the therapy sessions later became court ordered as a result of the October 2022 arrest. Tr. at 35.

Individual engaged in “stellar communication” and was “showing up and being present in the process.” *Id.* As such, the Counselor stated that the Individual was able to achieve his goals and understand his past pattern of alcohol use and how to avoid maladaptive use around December 2022. *Id.* at 40. The Counselor indicated, however, that he and the Individual continued working together until February 2023 to ensure that the Individual had support, “was able to stay on his path,” and was able to continue to practice and utilize the skills that he learned. *Id.* at 41. He stated that, although he does not have any follow-up sessions scheduled with the Individual, the Individual will “reach out occasionally to check in and let me know how he’s doing.” *Id.* at 43.

The Individual testified that he last consumed alcohol in October 2022 on the date he was arrested.³ *Id.* at 50. Regarding his rehabilitation efforts, the Individual stated that he completed a six-week class through the Employee Assistance Program (EAP) addressing alcohol awareness and education.⁴ *Id.* at 54. He explained that, through the class, he learned the steps of accepting that “there [was] an issue and . . . how to deal with and resolve it.” *Id.* at 55. The Individual also stated that he was evaluated by a substance abuse professional (SAP) who recommended that he undergo counseling, which she indicated he completed through his sessions with the Counselor.⁵ *Id.* at 67.

The Individual testified that he underwent therapy with the Counselor. *Id.* at 50–51, 55. He explained that his therapy was focused on what was occurring in his life that was causing him to improperly use alcohol “and, in turn, . . . being able to address those and being able to better deal with those,” he was able to continue to remain abstinent from alcohol. *Id.* at 56. The Individual elaborated, explaining that the underlying issues that led to his improper use of alcohol was the inability to effectively communicate his feelings to his partner⁶ regarding the mother of his child. *Id.* at 56. This, he explained, caused him to “bottl[e] things up” and use alcohol as a “numbing” device “to just kind of ignore the issues and emotions.” *Id.* He stated that, with therapy, he was “able to deal with [the emotions] and actually address them.” *Id.* The Individual stated that therapy ultimately helped him to “realize that the alcohol was . . . just making it worse.” *Id.* at 57.

The Individual explained that, following therapy, he feels more comfortable expressing his feelings and managing issues that may arise regarding his partner and the mother of his child. *Id.* at 57–58. He stated that now “if something arises . . . we talk about it and deal with it right there, as opposed to me . . . running and hiding from it, drinking and ignoring and, . . . letting it build up.” *Id.* at 58. The Individual stated that he did not seek couple’s counseling, as recommended by the DOE Psychologist, because at the time he underwent the psychological evaluation, he and his partner were “already on the right track[,] . . . making improvements without [the Individual]

³ The Individual submitted the results of three PEth tests – from November 2022, December 2022, and January 2023 – all of which were negative for the presence of alcohol. Ex. F–H. The Individual testified that he would have liked to have presented more laboratory test results to corroborate his continued abstinence, but it became difficult to pay for the tests when his clearance was suspended, and he was without income. Tr. at 52.

⁴ The Individual submitted his December 2022 certificate of completion in support of his testimony. Ex. A.

⁵ The Individual submitted the SAP’s January 2023 report, which stated that she recommended that the Individual complete at least 12 individual counseling sessions. Ex. D. The report further noted that the Individual was “100% compliant.” *Id.*

drinking.” *Id.* He testified that being able to share his viewpoint is “something that [he has] really come to like, and as well, [his] partner, . . . likes it and respects it.” *Id.* at 59. The Individual stated that his partner appreciates that he is “willing to put in the effort” to communicate “to get to a mutual agreement.” *Id.*

The Individual testified that when he initially became abstinent “the thought [of alcohol] was there,” but he made the decision to continue to abstain. *Id.* at 60. He stated that “it’s a great feeling to have the strength to be able to decline” alcohol, and he feels that his abstinence has “boosted [his] confidence and [his] attitude.” *Id.* at 61. He stated that he feels that he has a support system of people who will help him to continue to abstain, including his mother, his partner, and the Counselor. *Id.* at 61. The Individual indicated that he intended to remain abstinent from alcohol, but he reflected that alcohol “wasn’t always an issue for [him]. It became an issue when [he] was using it the wrong way and . . . using it to deal with stress and avoid problems.” *Id.* at 64.

The Individual testified that, because of his arrest, he was required to do random “check-ins” with a probation office. *Id.* at 51. He explained that he would call the office every day, and he would be informed as to whether he needed to appear to undergo a random urinalysis. *Id.* at 66. The Individual indicated that he continued with his daily calls and random urinalysis until May 2023 when his probation officer informed him that he no longer needed to call daily and could begin checking in once per week. *Id.* at 77–78. The Individual’s probation officer also submitted a statement, dated August 2023, on his behalf. Ex. E. She stated that he had complied with all of the requirements and conditions of his probation and never tested positive for alcohol. *Id.* She further stated, the Individual “seems to have learned from this incident and has taken positive steps to ensure he does not place himself in a similar position in the future. He appears to be taking sobriety seriously and understands the ramifications and repercussions of deviating from his current path.” *Id.*

The DOE Psychologist testified after hearing all of the testimony presented at the hearing. Tr. at 86–100. The DOE Psychologist opined that, after hearing the testimony and reviewing the Individual’s exhibits, she believed the Individual had demonstrated adequate rehabilitation and reformation from the Alcohol Use Disorder, Mild. *Id.* at 88. The DOE Psychologist stated that he came to this opinion as the Individual “has not consumed alcohol” for approximately one year, and the DOE Psychologist found him to be “an honest and trustworthy person.” *Id.* at 88–89.

However, the DOE Psychologist was troubled the Individual had not continued counseling past February 2023, as the DOE Psychologist was “under the assumption that [the therapy] was going to continue,” and he did not feel that the Individual had undergone “that many sessions” with the Counselor. *Id.* at 89, 93. He additionally expressed doubts that the Individual had sufficiently resolved the relationship tensions that initially led the Individual to misuse alcohol as “it’s hard for a person to make those kind[s] of changes.” *Id.* at 89, 91. The DOE Psychologist nonetheless affirmed that he felt that the Individual had shown adequate evidence of rehabilitation or reformation. *Id.* at 90.

VI. Analysis

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

Conditions that may mitigate a Guideline G security concern 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 maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified alcohol consumption or abstinence in accordance with treatment recommendations;
- c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and
- d) The individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23.

At the hearing, the Individual testified that he had been abstinent from alcohol for nearly one year. Although I recognize that there is no laboratory evidence of his sobriety after the January 2023 PEth test, the Individual was still subject to random urinalysis from his probation officer through May 2023. Through her statement, she not only indicated that the Individual always tested negative for alcohol, but she expressed her opinion that the Individual remained abstinent and was serious about his sobriety from alcohol. Furthermore, I found the Individual to be credible and sincere in his description of his realizations that he did not need alcohol to cope with stress; alcohol served only to exacerbate the problems in his life; and he found confidence and strength in his sobriety. As such, I am assured that the Individual has been abstinent from alcohol for nearly one year.

Additionally, the Individual acknowledged that his prior alcohol use was problematic and examined, through therapy, what factors in his life were causing his maladaptive alcohol use. I found the testimony the Individual gave regarding his work with the Counselor to be both compelling and purposeful. He was able to convincingly explain how, prior to therapy, he was unable to effectively communicate with his partner regarding his parenting relationship with the

mother of his child, which caused him to cope through the use of alcohol in unhealthy ways. Further, he was able to explain how, with therapy, he was able to better address and communicate his emotions, which eliminated his need to use alcohol as a coping mechanism. Furthermore, the Counselor testified that the Individual voluntarily sought out therapy before it became court ordered and meaningfully participated in his treatment.

Although, I recognize that the DOE Psychologist expressed concerns about the length and degree of the Individual's counseling, the DOE Psychologist nonetheless opined that the Individual had demonstrated adequate evidence of rehabilitation or reformation from the alcohol use disorder. In light of the DOE Psychologist's opinion, and given that nearly a year has passed since the Individual consumed alcohol; he addressed the causes of his maladaptive alcohol use; and he was fully compliant and cooperative in the treatment of not only his alcohol concerns, but also the interpersonal struggles that led to his misuse of alcohol, I find that the Individual has sufficiently mitigated the Guideline G security concerns pursuant to mitigating factors (a) and (b). *Id.* at ¶ 23(a)–(b).⁷

VII. Conclusion

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has brought forth sufficient evidence to resolve the security concerns associated with Guideline G. 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 in 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals

⁷ As the Individual is not currently participating in counseling or a treatment program, I will not consider mitigating factor (c). Adjudicative Guidelines at ¶ 23(c). Similarly, as the Individual has not completed an alcohol treatment program, I do not consider factor (d). *Id.* at ¶ 23(d).