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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: August 15, 2023) Case No.: PSH-23-0125
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Issued: November 17, 2023

Administrative Judge Decision

Richard A. Cronin, Jr., 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 and to be enrolled into the DOE’s Human Reliability Program (HRP). In October 2012, the Individual was arrested and charged with Public Intoxication. Exhibit (Ex.) 1. In December 2022, the Individual was arrested and charged with Driving While Intoxicated (DWI) and Unlawful Possession of a Firearm. At the time of his arrest, he admitted to having consumed “six to seven shots of tequila.” *Id.* One day after the arrest, the Individual was temporarily removed from the HRP. Ex. 3 at 40. The Local Security Office (LSO) subsequently provided the Individual with a Letter of Interrogatory (LOI), which the Individual completed in March 2023. Ex. 9. In April 2023, the Individual underwent a psychological evaluation by a DOE consultant psychologist (Psychologist). Ex. 10. After evaluating the Individual, the Psychologist concluded the Individual met the criteria for a diagnosis of Alcohol Use Disorder (AUD), Mild, and found the Individual had not shown adequate evidence of rehabilitation or reformation. *Id.* at 67.

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.

Due to unresolved security concerns related to the Individual's alcohol use, 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 the Summary of Security Concerns (SSC), attached to the Notification Letter, the LSO explained that the derogatory information raised a security concern under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 2.

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 13 numbered exhibits (Exs. 1–13) into the record and presented testimony of the Psychologist. The Individual testified on his own behalf and introduced 16 lettered exhibits, marked as Exhibits A–P, into the record.² 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

² The Individual's 16 exhibits are as follows: Ex. A: Probation Receipt; Ex. B: Victim Impact Certificate; Ex. C: PEth test results dated from April 2023 to September 2023; Exs. D–H: Letters from the Individual's friends and co-workers; Ex. I: IOP Certificate of Completion; Ex. J: Receipt showing installation of interlock device; Ex. K: Certificate of Completion of DWI Education Program; Ex. L: Order of Deferred Adjudication of the Individual's DWI charge; Ex. M: Receipt showing the Individual paid court fines; Ex. N: PEth test result from October 2023; and Ex. O: Discharge and attendance records for the Individual's IOP and aftercare program.

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 Psychologist's April 2023 determination that the Individual met the criteria for a diagnosis of AUD, Mild, and had not demonstrated adequate evidence of rehabilitation or reformation. Ex. 1. Additionally, the LSO cited the Individual's alcohol-related arrest in December 2022, for DWI and Unlawful Possession of a Firearm, and an alcohol-related arrest in October 2012, for Public Intoxication. *Id.* I find the LSO's security concerns related to the Individual's AUD diagnosis and his alcohol-related arrests, under Guideline G, are justified.³

IV. Findings of Fact

During a January 2019 Enhanced Subject Interview (ESI), the Individual disclosed that in October 2012, he was arrested and charged with Public Intoxication. Ex. 13 at 253, 256. The Individual explained that before his arrest, he was driving home from a party, and his car broke down. *Id.* at 256. The Individual pulled his car over, after which a police officer found the Individual "asleep in his car," while his car door was open, and while his car's hood was "popped up." *Id.*

In his March 2023 LOI, the Individual stated that in December 2022, he was arrested and charged with DWI, after he consumed "[r]oughly six to seven shots" of alcohol at his home, between 6:15 p.m. and 9:15 p.m. Ex. 9 at 51–52. The Individual then drove his car, failed to stop a red light, and was pulled over by a police officer. *Id.* at 51. The Individual was arrested after refusing to take a field sobriety test.⁴ *Id.* The Individual also reported that, as a condition of his bail, he was required to abstain from alcohol, and the last time he consumed alcohol was the evening of his December 2022 arrest. *Id.* at 52. 55.

The Individual also reported in his LOI that, pursuant to inclusion in the HRP, he was required to undergo a psychological assessment to demonstrate his fitness to be reinstated to the program.⁵ Ex. 9 at 57. In January 2023, the Individual's employer recommended that he attend a substance abuse evaluation by a licensed professional clinical counselor (LPCC), in order to be reinstated into the HRP. Ex. 6 at 23–24. The Individual also reported that the LPCC recommended he enter

³ Although raised as a security concern in the SSC, DOE Counsel stated at the hearing that any concern related to the Individual's possession of a gun at the time of his arrest was "inconsistent with the concern of alcohol" under Guideline G. Tr. at 47. Given this, I find that there is no Guideline G security concern raised by the firearm charge. Nor has any other security concern been raised by the LSO regarding this charge. Consequently, I will not consider any security concern raised solely by the Individual's possession of a firearm.

⁴ A search conducted "incident to" the Individual's arrest revealed a firearm in the Individual's waistband, and the Individual was also charged with the Unlawful Possession of a Firearm. Ex. 9 at 53, Ex. 3 at 37.

⁵ The findings from this psychological assessment were not provided as an exhibit in this case.

an intensive outpatient treatment program (IOP). Ex. 9 at 57. The Individual reported that he was not required to follow the LPCC's recommendation, but he knew it would "elevate [his] chances of HRP reinstatement." *Id.* The Individual also stated in his LOI response that he did not enroll in any form of alcohol-related counseling or treatment, but at time he completed the LOI, he was "looking at treatment options in [his] area." *Id.*

After the Individual's April 2023 evaluation with the Psychologist, the Psychologist issued a report (Report) detailing her findings. Ex. 10. According to the Report, the Individual's pattern of alcohol consumption in 2012 was "two or three beers and one shot of liquor[,] biweekly at social gatherings." *Id.* at 64. By 2019, the Individual consumed three beers per week "to relax" and consumed six to eight beers approximately once per month, but "when [he would] celebrate something, shots [were] brought out." *Id.* The Individual reported to the Psychologist that the last time he consumed alcohol was the night of the December 2022 arrest. *Id.* at 64–65. The Individual also reported to the Psychologist that his "future intentions" with alcohol were to have "a couple of beers socially and not get too much." *Id.* at 65.

Regarding alcohol treatment, the Report noted that the DOE's HRP and the Individual's employer recommended that the Individual undergo a substance abuse evaluation by a LPCC, "and comply with any recommendations" made. Ex. 10 at 64. After speaking with the LPCC by telephone, the Psychologist learned the Individual met with the LPCC for an initial screening, and "based upon the alcohol screening evaluation," the LPCC recommended the Individual enter an IOP. *Id.* at 65. The LPCC did not conduct a formal diagnostic evaluation of the Individual. *Id.* The Report also indicated that, as of the date of his evaluation with the Psychologist, the Individual "ha[d] not had any alcohol treatment." *Id.*

As part of the April 2023 evaluation, the Individual underwent a Phosphatidylethanol (PEth)⁶ test, the results of which were negative. *Id.* at 66, 84. The Psychologist stated that the Individual's PEth test result provided "medical evidence that he has not been drinking on a regular, heavy basis within a few weeks of the test," and was "supportive of his report that he has not consumed alcohol since [December 2022]." *Id.* at 66. However, the Report indicated that, on the night of the Individual's December 2022 arrest, his blood alcohol concentration was "nearly twice the [legal] level for intoxication,"⁷ and the Individual minimized how much he had to drink when questioned by the police officer. *Id.* The Psychologist also found that the Individual met the criteria of someone who spends "a great deal of time" in obtaining and using alcohol; the Individual lost his access authorization at his job because of alcohol; and the Individual exhibited a degree of alcohol tolerance, as exhibited by his level of alcohol consumption while he operated a vehicle. *Id.* at 66. The Psychologist, in her Report, concluded that the Individual met the criteria for a diagnosis of AUD, Mild, without adequate evidence of rehabilitation or reformation. *Id.* at 66–67.

⁶ A PEth blood test detects the presence of a biomarker that indicates past alcohol consumption. Ex. 10 at 84–85. The Psychologist noted in the Report that the test "detects any significant alcohol use over the past three to four weeks." *Id.* at 66.

⁷ During his evaluation, the Individual told the Psychologist that after his December 2022 arrest, he underwent a blood test, the results of which showed his alcohol level was ".152 or .153 g/210L." Ex. 10 at 63. The Psychologist stated that the Individual's alcohol level on the night of his December 2022 arrest was "nearly twice the [legal] level of intoxication[,] which is .08 g/210L." *Id.* at 63.

The Psychologist determined that for the Individual to show evidence of rehabilitation, he should attend, and successfully complete, an IOP “similar to what [the LPCC] recommended.” Ex. 10 at 67. The Psychologist determined that the IOP should consist of “a minimum of nine hours per week of treatment which consists of group and individual sessions for a period of 12 to 16 weeks.” *Id.* The Psychologist also determined that, following the IOP, the Individual “should continue in an Aftercare program for a total of six months of treatment,” during which, the Individual “should remain abstinent from alcohol which he could verify through PEth testing every four to six weeks.” *Id.*

V. Hearing Testimony

At the hearing, the Individual testified that he could not “quite recall exactly” what happened before his 2012 arrest, but he remembered going to a party and his car malfunctioned. Tr. at 32. He stated he pulled his car over to the side of the road, “tried to troubleshoot” the car, and then “just passed out in [his] car.” *Id.* He believed that he left his car door open, someone called the police, and he was charged with Public Intoxication. *Id.*

The Individual explained that before his December 2022 arrest, he was consuming alcohol at home. Tr. at 15. The Individual stated he became hungry and decided to drive to get food, “without really considering [his] level of sobriety.” *Id.* at 16. The Individual stated that while driving, he and failed to stop at a red light, and a police officer pulled him over and arrested him. *Id.* at 16, 18–19. He believed that he made “two compounding poor decisions” at that time: he should have been “more measured in the amount of alcohol [he] drank,” and he should not have drove after he “surpassed [his] limit to be able to function well.” *Id.* at 19. He also stated he refused to take a breath test during his arrest, so he was taken to a hospital, where he underwent a blood test, that showed his alcohol level of “approximately .15 or almost double the limit.” *Id.* at 20.

The Individual further testified that he followed the Psychologist’s recommendation to complete an IOP and an aftercare program. Tr. at 13. The Individual submitted attendance records and a Certificate of Completion indicating he enrolled in an IOP on July 19, 2023, and completed the program on September 14, 2023. Exs. J, P. He stated he attended the IOP “four nights a week for two-and-a-half hours,” during each session. Tr. at 25. He stated that he learned about the social and physical “triggers” that cause a person to drink and ways to “proactively keep [himself] sober,” such as keeping a regular schedule, exercising, and eating well. *Id.* at 14–15. He stated that since completing the IOP, he knows better than to get behind the wheel of a car after drinking. *Id.* at 21–22. He stated that, although he did not consider himself to be an “emotional drinker,” the IOP taught him that he must understand where his emotions are coming from and how to manage his emotions related to alcohol. *Id.* at 23–24. He stated he also participated in group sessions as a part of the IOP. *Id.* at 27.

Regarding aftercare, the Individual testified that the LPCC recommended he attend the aftercare program “weekly for a 90-day period following the discharge [from the IOP].” Tr. at 27. The Individual submitted attendance records corroborating his testimony that he completed the IOP, and as of the date of the hearing, he had attended three sessions of the aftercare program. *Id.* at 28; Ex. P. The Individual’s last session with the aftercare program before the hearing was on October

4, 2023. Tr. at 14; Ex. P. As to the Psychologist's recommendation that he undergo PEth testing, the Individual stated he began PEth testing in April 2023, and he has abstained from alcohol since his December 2022, arrest. Tr. at 29. The Individual submitted as exhibits, documentation he underwent seven PEth tests, once every four weeks, between April 2023 and October 2023, the results of which were all negative. Exs. C and O.

The Individual explained that he is currently on "deferred probation." *Id.* at 30. He stated that after he completes the "deferred" portion of his probation, "[his] arrest will be visible, but [his] conviction or whatever [he] pleaded to will not [be visible] to nongovernment agenc[ies]. So[,] anybody pulling my background could potentially see the arrest but not the conviction." *Id.* The Individual submitted a Probation Receipt, showing he has paid his probation fees during the past six months and a Court Fine Receipt, demonstrating he paid his court fines. Exs. A, N. He stated he meets with a probation officer monthly. Tr. at 31. He also stated he has an interlock device installed in his vehicle and submitted a certificate indicating the device was installed in his vehicle in July 2023. *Id.* at 31; Ex. K. He testified that he completed a "DWI Education Program" and submitted a Certificate of Completion for that class. Tr. at 31–32; Ex. L. The Individual also submitted a Certificate of Completion, indicating he completed a "victim impact panel" class on July 10, 2023. Ex. B.

When asked what his "future intention" was regarding consuming alcohol, the Individual replied, "For now, the intention is sobriety. Long-term, I don't want to make speculations. I'll just have to see when I get there . . . I don't know if I'm going to ever really pick it back up again." Tr. at 33–34. He stated that he still associates with his friends; his friends do not drink around him; and when he goes out with his friends, "it's not in places that are conducive to heavy drinking." *Id.* at 36–37. The Individual submitted six letters, from his friends and co-workers, in support of his character. Exs. D–I. He also stated that he now has a better understanding of why he would consume alcohol, and he has "been doing rather well," remaining sober. Tr. at 35.

After observing the Individual's testimony, the Psychologist testified that she would change the Individual's diagnosis to AUD, Mild, "in early remission" because the Individual "has now met [the] criteria for more than three months but fewer than 12 months" of abstinence. Tr. at 43. The Psychologist stated that she recommended the Individual participate in a treatment program for a total of six months. *Id.* at 44. However, the Psychologist noted that the Individual had attended an IOP for approximately eight weeks and has been enrolled in an aftercare program for one month. *Id.* at 44–45. The Psychologist also noted, as a positive factor, that the Individual had undergone seven months of PEth tests with negative results. *Id.* at 45. The Psychologist stated that the Individual had not, at the time of the hearing, met her recommendation of six months of treatment, but this was "through no fault of [the Individual]," and further stated "it's just a matter of time over which he doesn't have control." *Id.*

The Psychologist opined that the Individual is adequately rehabilitated and reformed from his AUD, Mild. *Id.* The Psychologist explained when an AUD diagnosis is at the "Mild" level, "one of the most important things is that the person can demonstrate control over their drinking. The fact that [the Individual] has so many months of demonstrated abstinence from alcohol is an important factor in that determination for me." *Id.* at 46. The Psychologist also stated the Individual's prognosis is "good." *Id.*

VI. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony presented 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's alcohol consumption no longer rises to the level of a security concern. 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.

The relevant Guideline G mitigating factors in this case include:

....

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;

....

Adjudicative Guidelines at ¶ 23.

Considering factor (b), the Individual has admitted that he has a maladaptive pattern of alcohol misuse regarding to his inability to control the amount of his alcohol consumption. Tr. at 26. The Individual has acknowledged his decision to drive his vehicle after consuming alcohol to intoxication, which led to his alcohol related arrests, showed poor judgment. Tr. at 20. The Individual has demonstrated, as of the date of this hearing, a clear and established pattern of abstinence from alcohol for at least seven months, as confirmed by negative PEth test results from April 2023 to October 2023. Further the Individual has provided evidence of his successful completion of the IOP and his current participation in aftercare. Tr. at 27-28; Ex. O. Consequently, I find that mitigation factor (b) is applicable in this case.

Regarding factor (c), after being evaluated by the Psychologist, the Individual took actions to resolve his AUD by following the Psychologist's recommendation to seek treatment. The Individual completed eight weeks of an IOP, testified that he recognizes the triggers that can lead to excessive alcohol consumption, and testified he learned tools he can use to maintain his sobriety. The Individual is also participating in an aftercare program and completed three sessions as of the date of the hearing. Additionally, in reviewing the state of the Individual's progress in treatment, the DOE Psychologist concluded that, as of the date of the hearing, the Individual has demonstrated

adequate rehabilitation or reformation. *Id.* at 45-46. Consequently, I find that mitigation factor (c) is applicable in this case.

After reviewing the evidence and testimony before me as well as the Guideline G mitigation factors that are applicable in this case, I find that that the Individual has mitigated the security concerns raised by his AUD diagnosis and his alcohol-related arrests under Guideline G of the Adjudicative Guidelines.

VII. Conclusion

After considering all 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 find that the Individual has brought forth sufficient evidence to resolve the security concerns associated with Guidelines 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.

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