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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-23-0122
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_____)	

Issued: January 19, 2024

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position which requires that she hold a security clearance. Derogatory information was discovered about the Individual’s alcohol consumption. She was evaluated by a DOE Contractor Psychologist (the Psychologist) and diagnosed with an alcohol use disorder. The Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding her eligibility to continue holding 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 the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of two witnesses—her former supervisor and her boyfriend—and testified on her own behalf. The LSO presented the testimony of the Psychologist who had evaluated the Individual. *See* Transcript of Hearing (hereinafter cited as “Tr.”). The LSO submitted ten exhibits, marked as Exhibits 1 through 10 (hereinafter cited as “Ex.”). The Individual submitted one exhibit, marked as Exhibit A.

¹ Under the regulations, “[a]ccess authorization’ means 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). Such authorization will also be referred to in this Decision as a security clearance.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for a security clearance. That information pertains to Guideline G of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. 10 C.F.R. § 710.7.

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 include:

- (a) Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;
- (b) Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder;
- (c) Habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;
- (d) Diagnosis by a duly qualified medical or mental health professional (*e.g.*, physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;
- (e) The failure to follow treatment advice once diagnosed;
- (f) Alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder; and
- (g) Failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Id. at ¶ 22.

The LSO alleges that the Individual attended counseling and alcohol treatment in late 2016 during which she was diagnosed first with Alcohol Use Disorder, Moderate to Severe, and then with Alcohol Use Disorder, Severe. Ex. 1 at 1. The LSO further alleges that the Psychologist evaluated the Individual in April 2023, and diagnosed her with Alcohol Use Disorder, Severe. *Id.* The LSO alleges that the Individual had a positive result of 391 ng/mL² on a blood test, administered directly after the evaluation, to determine whether she had consumed alcohol in the preceding three or four weeks, which indicated that the Individual was engaging in heavy alcohol consumption. *Id.* Accordingly, the LSO's security concerns under Guideline G are justified.

² The detection cutoff for this test was 20 ng/mL. Ex. 7 at 13.

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 of 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 entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. 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 her 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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

In April 2023, prior to her security clearance suspension, the Individual underwent a psychological evaluation with the Psychologist. Ex. 7. During the evaluation, the Individual told the Psychologist that she had not consumed alcohol since December 2022. *Id.* at 5–6. Immediately after the evaluation, the Individual submitted to a Phosphatidylethanol (PEth) blood test, which can detect significant alcohol use over the preceding three to four weeks. *Id.* at 4. The Individual's results were positive at 391 ng/mL, almost 20 times greater than the test's 20 ng/mL positivity threshold. *Id.* at 5–6, 13. The medical doctor who interpreted the test results opined that the result was consistent with daily consumption of multiple alcoholic drinks. *Id.* at 4–5. The Psychologist issued a report later that month in which she diagnosed the Individual with Alcohol Use Disorder, Severe. *Id.* at 6. The Psychologist recommended that, in order to show that she was rehabilitated, the Individual should complete an intensive outpatient treatment program (IOP) followed by weekly group and individual therapy sessions and participate in Alcoholics Anonymous (AA) meetings at least three to four times per week. *Id.* Alternatively, she could provide evidence of two years of abstinence. *Id.* For both options, the Psychologist recommended monthly PEth tests and lifelong abstinence. *Id.*

At the hearing, the Individual's former supervisor testified that he supervised the Individual in person four or five days per week from 2021 until late summer 2023. Tr. at 11, 13, 20. He was aware that the Individual's alcohol consumption was the reason she was going through Administrative Review. *Id.* 15–16. He only saw her outside of work at work-related events, including holiday and happy hour events where alcohol was served. *Id.* at 14. He had only seen her consume alcohol once and testified that on that occasion she had only consumed one drink. *Id.* at 14–15. He had never seen the Individual intoxicated. *Id.* at 15. The former supervisor testified that the Individual had discussed the Psychologist's report with him and had expressed disagreement with the PEth test result. *Id.* at 16–17. He testified that she expressed remorse at that time. *Id.* at 17. He testified that he had never seen the Individual intoxicated or in any way incapacitated at work and stated that her performance was excellent. *Id.* at 18. The former supervisor testified that the Individual was surprised to learn that she had an alcohol issue. *Id.* He testified that he found her honest and trustworthy while she worked for him and that if her clearance was restored, he would welcome her back to his office if given the opportunity to do so. *Id.* at 19.

The Individual's boyfriend testified that he had met her in July or August of 2022 and that they began dating in November or December of that year. Tr. at 56–57. He testified that he consumed alcohol at most once per year but generally did not consume any alcohol. *Id.* at 57. He testified that they saw each other frequently, usually when they did not have their respective children, and stayed at his house. *Id.* at 57–58. He had only observed her drinking alcohol on one occasion, at a nice dinner, and recalled that she had only had one mixed drink on that occasion. *Id.* at 58–59. However, the boyfriend was aware that the Individual consumed alcohol at other times and was aware that the Individual had consumed alcohol during the week before the hearing. *Id.* at 60–61. The Individual had not expressed to him any intentions about her future alcohol consumption; however, due to past experiences with others, he had “zero tolerance” for habitual alcohol users and would not have them in his life. *Id.* at 63. The Individual had told him the reasons she was going through Administrative Review and had told him that her PEth test result was inaccurate. *Id.* at 62. He had never observed the Individual hung over or having cravings for alcohol. *Id.* at 63–64. The boyfriend described the Individual as reliable, predictable, and “good to the core.” *Id.* at 65.

The Individual testified that in July 2023, around the time she received the letter suspending her clearance, she typically consumed about two shots of alcohol once per week in her home. Tr. at 23–24; Ex. 1 at 3. She admitted that she was not candid with the Psychologist when she told her that she no longer consumed alcohol, stating that she had accidentally mislead the Psychologist. Tr. at 24–25. She admitted that she made the same abstinence claim on her response to the DOE's February 2023 Letter of Interrogatory (LOI). *Id.* at 25–26. She testified that she picked a December 2022 date as the date she claimed to have stopped drinking alcohol because that was when she significantly decreased her alcohol intake, which had previously been about five shots of alcohol per week, and that by Christmas, she was drinking less than once per week. *Id.* at 26–27. She stated that she was not honest with the Psychologist or on the LOI because she was embarrassed that she had consumed alcohol. *Id.* at 27. She testified that after the Psychologist's evaluation, she consumed about three shots of alcohol once every two weeks until the end of the first week of July 2023 when she received the Psychologist's report. *Id.* at 28–29, 54. She testified that she decided to abstain from alcohol at that time to show that she could do it and to prove that she did not have

an alcohol problem. *Id.* at 29. The Individual testified that she did not consume alcohol from that time until about a week before the hearing when she had two shots of alcohol to celebrate her birthday. *Id.* at 30. She testified that she was at home by herself that night and “just felt like” having the alcohol because it was her birthday. *Id.* at 44.

The Individual believed that she may have underestimated the amount of alcohol she was consuming prior to being evaluated by the Psychologist, though she denied consuming four or five servings of alcohol every day. Tr. at 28, 31–32. She also believed that one of her medications may have caused her PEth level to be artificially high. *Id.* at 32. The Individual testified that she did not undergo monthly PEth testing as recommended by the Psychologist because she had understood the recommendation to be a recommendation for the Administrative Review judge as a possible outcome of the hearing. *Id.* at 33. In the summer of 2023, she asked her nurse practitioner if she could get PEth tests on her own and underwent one in October 2023. *Id.* at 32–34; Ex. A. The PEth test’s result was negative, indicating that the Individual had not consumed alcohol during the three or four weeks preceding the test. *Id.* at 1.

The Individual testified that she did not follow the Psychologist’s recommendations because “I didn’t feel like I needed them, because I don’t feel like I have a problem with alcohol.” *Id.* at 37. The Individual testified that she had not had any treatment for alcohol since February 2023, when she had first learned that her alcohol use might cause problems for her security clearance. Tr. at 34. She had attended two AA meetings in that time period, once in April, the day before her psychological evaluation, and once more in June. *Id.* at 34–35. She testified that she did not attend more meetings because she felt at the time that she did not need it. *Id.* at 35. She attended weekly phone counseling sessions for one month, in February 2023, for general counseling rather than substance abuse, and stopped because she felt she was not getting a significant benefit from it. *Id.* at 35–36.

The Individual voluntarily entered a 30-day inpatient alcohol treatment program in 2016. Tr. at 38; Ex. 7 at 6. She testified that prior to entering treatment, she consumed four to five shots about three times per week. Tr. at 28, 38. She testified that she did have an alcohol problem at that time but does not believe she currently has problems with alcohol. *Id.* at 37–38. Though the Individual’s 2016 substance use program recommended lifelong abstinence for her, the Individual only abstained for about four-and-a-half years. *Id.* at 38. She testified that she was able to drink occasionally without issue now. *Id.* She testified that she did not keep alcohol in the house. *Id.* at 39. She further testified that she had not had the desire to consume alcohol since July 2023 and did not experience alcohol cravings. *Id.* 39–40. The Individual testified that she intended to abstain from alcohol for the rest of her life so she could be healthier. *Id.* at 40. She was open to attending alcohol treatment in the future if she felt she needed it. *Id.* at 43. She testified that her boyfriend had been supportive of her abstinence. *Id.* at 42.

The Psychologist testified that a 2020 study had specifically shown that the Individual’s medication was “readily discernable” from PEth when determining the results of a PEth test. Tr. at 69–70. She also testified that the Individual’s medication does not bind to red blood cells and, therefore, it would not have affected the Individual’s high result. *Id.* at 76. She testified that her diagnosis of Alcohol Use Disorder, Severe, had not changed based on the information she heard at the hearing. *Id.* at 70. She testified that, given the severity of the Individual’s alcohol history,

she would have needed to see a return to alcohol treatment and evidence of abstinence from alcohol use in order to change that diagnosis. *Id.* at 70–71. She also found it significant that the Individual had consumed alcohol recently on her birthday. *Id.* at 71. She believed the Individual was still at risk of alcohol use due to her recent alcohol consumption, her lack of honesty about her alcohol use, her decision not to follow the recommendations from her previous alcohol treatment, and her decision not to take substantial steps to address her current alcohol use. *Id.* at 71–72. She testified that when someone is diagnosed with Alcohol Use Disorder, Severe, it is unsafe for them to continue consuming alcohol at any level. *Id.* at 73–74. She cited a statement from the National Institute of Alcoholism and Alcohol Abuse stating that someone who has been alcohol dependent cannot be considered in remission without sustained abstinence. *Id.* at 74. The Psychologist testified that the Individual was not in remission and was not rehabilitated or reformed from her alcohol issues. *Id.* at 76. She gave the Individual a guarded prognosis. *Id.* at 76–77.

V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a commonsense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines at ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO’s security concerns have been mitigated such that restoring the Individual’s clearance is not an unacceptable risk to national security.

Conditions that may mitigate Guideline G concerns 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; 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. None of the conditions are applicable in this case.

Regarding condition (a), the Individual drank alcohol just days before the hearing, despite having decided in July 2023 that she would abstain from alcohol in order to prove that she did not have an alcohol issue. She stopped using alcohol less than six months before the hearing and used alcohol regularly prior to abstaining. I cannot find that it is unlikely that she will consume alcohol in the future. The Individual's choice to consume alcohol days before the hearing, despite her commitment to abstain, casts doubt on her judgment and reliability. Furthermore, she has not taken steps to address her lack of candor with the Psychologist, which casts doubt on her trustworthiness.

Regarding conditions (b), (c), and (d), the Individual does not acknowledge that she has a current problem with alcohol and, for that reason, she has not taken steps to overcome her alcohol problem. She recently consumed alcohol, which precludes her from demonstrating a clear and established pattern abstinence and directly contradicts the Psychologist's recommendation of lifelong abstinence. The Individual has not complied with the Psychologist's recommendations of substance abuse treatment, counselling, and AA attendance. She did not begin, let alone make progress in or complete, any alcohol-related treatment. She has a history of relapse, as she resumed consuming alcohol after four-and-a-half years of abstinence that began in 2016. Her decision to consume alcohol just before the hearing can be seen as a relapse as well.

For the foregoing reasons, I cannot find that the Individual has mitigated the security concerns raised under Guideline G.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for access authorization under Guideline G of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that restoring DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore access authorization to the Individual.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Kristin L. Martin
Administrative Judge
Office of Hearings and Appeals