*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing	)	
	)	
Filing Date: August 17, 2023	)	Case No.: PSH-23-0129
	)	
____	)	

Issued: December 21, 2023

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXX (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 should not be granted access authorization.

I. BACKGROUND

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. In November 2022, the Individual completed a Questionnaire for National Security Positions (QNSP) on which he admitted that he was hospitalized for issues related to alcohol misuse in May 2021 and October 2021. Exhibit (Ex.) 1 at 5.[2] Due to the derogatory information, the LSO requested that the Individual be evaluated by a DOE-contracted psychiatrist (DOE Psychiatrist) for a psychiatric assessment. Ex. 5. In April 2023, the DOE Psychiatrist issued the results of the assessment (Report) in which he opined that the Individual had an Alcohol Use Disorder (AUD), severe, in partial remission. *Id.* at 32. He continued that the Individual had not demonstrated adequate evidence of rehabilitation or reformation. *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.

[2] The exhibits submitted by DOE were Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to exhibits submitted by DOE but will not use the word "Bates."

The LSO issued the Individual a letter notifying him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted eight exhibits (Exs. 1–8). The Individual submitted nineteen exhibits (Exs. A–R).[3] The Individual testified on his own behalf. Hearing Transcript, Case No. PSH-23-0129 (Tr.) at 13–130. The LSO offered the testimony of the DOE Psychiatrist. *Id.* at 141–220.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline G of the Adjudicative Guidelines as the basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1. Guideline G indicates that "[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guidelines at ¶ 21. In addition to the DOE Psychiatrist's diagnosis of AUD, severe, in partial remission, the LSO cited the Individual's positive Phosphatidylethanol (PEth)[4] test results on April 5, 2023, which indicated that he was consuming four or more drinks per day. Ex. 1 at 5. The LSO also relied upon the Individual's admission on his November 2022 QNSP that he was hospitalized for substance abuse issues related to alcohol in May 2021 and October 2021. *Id.* In addition, the LSO relied upon his claim that his alcohol consumption increased due to the pandemic and social isolation from between four or five beers daily to a peak of ten drinks a day. *Id.* Finally, the LSO cited the Individual's assertion that between 2008 and June 2020 he consumed four to five drinks of liquor or beer on the weekends. *Id.* The LSO's reliance on the DOE Psychiatrist's opinion, the PEth test results, and the Individual's reporting of his alcohol-related hospitalizations and alcohol consumption justifies its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (d).

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

---

[3] The Individual's exhibits contained two exhibits lettered "Q." I have designated them as Q1 and Q2 to differentiate them. Exhibit Q1 is the results of the Individual's PEth test dated October 20, 2023. Ex. Q1 at 8. Exhibit Q2 is the Individual's SMART program attendance verification sheets dated October 28, 2023; October 29, 2023; November 4, 2023; and November 5, 2023. Ex. Q2 at 3–10.

[4] PEth can only be made when consumed ethyl alcohol reacts with a compound in the Red Blood Cell (RBC) membrane. PEth builds up in the RBC with repeated drinking episodes, and a parallel process slowly eliminates the accumulated PEth (with an elimination half-life of about 6 days). PEth can still be detected in the blood for about 28 days after alcohol consumption has ceased. MedTox Laboratories uses a cutoff of 20 ng/mL to detect "moderate to heavy" ethanol consumption. Ex. 5 at 28.

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 Dep't 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).

An 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). An individual is afforded a full opportunity to present evidence supporting his or her 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.* at § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. FINDINGS OF FACT AND HEARING TESTIMONY

The Individual was hospitalized for suicidal ideation from June 27 through July 3, 2018. Ex. I at 46. At the time of his release from the hospital, he was diagnosed with alcohol abuse. *Id.* In his November 2022 QNSP, the Individual reported that he had been hospitalized for issues related to alcohol misuse in May 2021 and October 2021. Ex. 7 at 65–66.

During the April 2023 psychiatric evaluation, the Individual told the DOE Psychiatrist that he began drinking at age 12 and continued through college consuming approximately four to five drinks at weekly parties. Ex. 5 at 22. The Individual testified that, during the pandemic, while studying for his Ph.D., he began consuming alcohol more heavily. Tr. at 24–25. He explained that his alcohol consumption increased for several reasons, including that his mentor for his Ph.D. was abusive and ended up being fired by the university and his roommate moved out during the beginning of the pandemic, which greatly isolated the Individual. *Id.* at 24. He continued that, due to his isolation, he was depressed and self-medicated with alcohol. *Id.* The Individual asserted that, during this time, while he was always able to complete his schoolwork, he was not eating regularly, leading him to be frequently sick, weak, and tired. *Id.* at 26. The Individual asserted that, in May 2021, realizing he had an alcohol problem, he attempted to quit alcohol "cold turkey" by spending two days in his room "drinking water and sweating through the bedsheets." *Id.* at 25–26. He claimed that he researched alcohol withdrawal, determined it was more dangerous than he realized, and decided to admit himself to the hospital, on the advice of a physician friend and his mother, who is a nurse practitioner. *Id.* at 25–27. The Individual claimed that the May 2021 stay at the hospital was purely for medical monitoring to control the withdrawal symptoms. *Id.* at 27. He continued that he completed a two-week Intensive Outpatient Treatment Program (IOP) following the May 2021 hospitalization and was sober for a time. *Id.* at 28. The Individual maintained that the IOP was primarily educational videos about addiction. *Id.* He maintained that the program was not individualized and did not include counseling or any education on coping mechanisms. *Id.*

By October 2021, the Individual had begun overconsuming alcohol again. *Id.* at 29, 31. He realized that he was consuming alcohol at the same level he was consuming prior to his May 2021 hospitalization and went to the hospital emergency room, where a social worker located an inpatient rehabilitation program (IRP) for him. *Id.* at 31. Although the IRP began with medical monitoring, after he was medically cleared, the Individual began one-on-one counseling, group counseling, and seminars to help with abstinence. *Id.* He was in the IRP for two weeks prior to discharge. *Id.* After discharge, he was linked with outpatient group therapy and one-on-one counseling with an alcohol therapist recommended by the IRP (IRP-recommended therapist). *Id.* The Individual began seeing the IRP-recommended therapist in November 2021, and continued seeing her until June 2022, when he was discharged. Ex. I at 46; Ex. H at 38, 40. At discharge, the IRP-recommended therapist told the Individual that he could consume alcohol again in moderation. *Id.*

The Individual was evaluated by the DOE Psychiatrist in April 2023. During the evaluation, the Individual told the DOE Psychiatrist that he had begun consuming alcohol again in August 2022. Ex. 5 at 25. He also told the DOE Psychiatrist that since August 2022, he had been consuming alcohol only on the weekends and did not keep alcohol in his house. *Id.* As part of his evaluation of the Individual, the DOE Psychiatrist had the Individual undergo a PEth test, which showed alcohol use higher than the Individual's reported consumption of two beers approximately two weeks prior to the evaluation. *Id.* at 29, 30, 32. The DOE Psychiatrist noted that the Individual's positive PEth test result measured at 157 ng/ml, which would indicate that the Individual was consuming approximately four or more drinks per day. *Id.* at 29. In his Report, the DOE Psychiatrist opined that the Individual was suffering from AUD, severe, in partial remission. *Id.* at 32. He recommended that the Individual abstain from alcohol for a full twelve months to demonstrate rehabilitation or reformation. *Id.* at 33. He also recommended that the Individual attend Alcoholics Anonymous or SMART program at least once a week, along with individual counseling. *Id.* He asserted that the Individual is "not a good candidate to attempt drinking in moderation," "given his past history of two severe episodes of alcohol dependence with withdrawal symptoms." *Id.* at 33.

The Individual testified that he received the DOE Psychiatrist's Report in July 2023, approximately three months prior to the hearing date. *Id.* at 228. Following his receipt, he immediately began abstaining from alcohol. *Id.* at 49.

The Individual submitted into the record letters from four different medical professionals: a psychiatrist, a psychologist, the IRP-recommended therapist, and his current therapist. Ex. E at 22–26; Ex. G at 35–36; Ex. H at 38–40; Ex. I at 42–51. None of these individuals testified at the hearing. The psychiatrist, who evaluated the Individual but is not the Individual's treating psychiatrist, opined, in her October 10, 2023, written report, that the Individual had an AUD, in full remission, because he had not had a loss of control within two years. Ex. E at 25. The psychologist, who also is not treating the Individual but evaluated him prior to the hearing, stated in his October 10, 2023, written report that:

> [T]hough he once met diagnostic criteria for an alcohol use disorder, he no longer does. While some may formally label this as Alcohol Use Disorder, in full

> remission, I would no longer carry this diagnosis for [the Individual] given the amount of time that has passed since he last exhibited symptoms.

Ex. I at 50. The IRP-recommended therapist stated in her letter that, at the time the Individual completed treatment with her in June 2022,[5] his diagnosis was substance use disorder, in early remission. Ex. H. at 40. She claimed that the Individual was abstinent from alcohol during the November 2021 through June 2022 timeframe in which she was treating him. *Id.* Further, she indicated that she had informed the Individual that he "may opt to drink in moderation in the future and that he has the skills and knowledge to avoid a relapse." *Id.* Finally, the Individual's current therapist stated that she began weekly psychotherapy with the Individual in August 2023. Ex. G at 36. She opined that the Individual has a history of AUD, but no longer meets the criteria. *Id.* Like the IRP-recommended therapist, she asserted that the Individual could continue to consume alcohol in moderation. *Id.* In addition to the opinions of these individuals, the Individual submitted into the record six negative PEth tests covering the time from September through October 2023.[6] Ex. A at 5–8; Ex. Q1 at 8; Ex. R at 12. The Individual also submitted as exhibits sixteen attendance verifications from Self-Management and Recovery Training (SMART)[7] meetings dated September through November 2023.[8] Ex. J at 53–74; P at 3–6; Q2 at 3–10. The Individual also submitted thirteen support letters, from his mother, his father, his brother, four co-workers, two previous roommates in college, a graduate school professor, and four friends. Ex. K at 76–91.

At the hearing, the DOE Psychiatrist opined that the Individual was not rehabilitated or reformed from the AUD diagnosis, because he only had three months in recovery at the time of the hearing. Tr. at 172–73. The DOE Psychiatrist confirmed his opinion that the Individual should not consume alcohol in the future. *Id.* at 147. He explained that "it's a fairly good consensus that once you get to the point that you are physically dependent on alcohol, with alcohol dependence, it generally

[5] According to the IRP-recommended therapist's letter, they ceased a therapy relationship in June 2022 because the IRP-recommended therapist was moving to a new practice, and they agreed that the Individual was prepared to discharge from the program. Ex. H at 38.

[6] Those tests were dated September 7, 2023; September 15, 2023; September 29, 2023; October 5, 2023; October 20, 2023; and October 30, 2023. Ex. A at 5; Ex. Q1 at 8; Ex. R at 11.

[7] According to its website,

> SMART [program] is an evidenced-based recovery method grounded in Rational Emotive Behavioral Therapy (REBT) and Cognitive Behavioral Therapy (CBT), that supports people with substance dependencies or problem behaviors to:
>
> 1. Build and maintain motivation
> 2. Cope with urges and cravings
> 3. Manage thoughts, feelings and behaviors
> 4. Lead a balanced life

What is SMART Recovery?, SMART Recovery, https://smartrecovery.org/what-is-smart-recovery (last visited Dec. 7, 2023).

[8] The dates of his SMART program attendance were September 6, 2023; September 7, 2023; September 16, 2023; September 17, 2023; September 24, 2023; September 28, 2023; October 1, 2023; October 7, 2023; October 8, 2023; October 12, 2023; October 15, 2023; October 23, 2023; October 28, 2023; October 29, 2023; November 4, 2023; and November 5, 2023. Ex. J; Ex. P; Ex. Q2.

indicates you're not a good candidate to attempt drinking in moderation in the future." *Id.* The DOE Psychiatrist stated that "the best predictor of risk of relapse is the particular person's own history." *Id.* at 157. He then outlined that the Individual was diagnosed with alcohol dependence and attempted to consume alcohol in moderation again and failed. *Id.* The DOE Psychiatrist indicated that this pattern was repeated again, which is not a "good prognosis." *Id.* at 158. He disputed the written opinions set forth by the psychiatrist, psychologist, and the two therapists who evaluated the Individual. *Id.* at 160–70. However, he did admit that the psychologist had more information than he did regarding the Individual's past alcohol use, including information that the Individual was diagnosed with alcohol abuse in June 2018, after a hospitalization for suicidal ideation. *Id.* at 149–50. The DOE Psychiatrist explained that the Individual's relapse following his May 2021 hospitalization was a deciding factor in his determination that the Individual should abstain from future alcohol use. *Id.* The DOE Psychiatrist stated:

> [The Individual] had an episode of alcohol dependence in 2018, and then he attempted to drink in moderation, and it didn't work. And in May of 2021, he had a relapse with alcohol dependence. And then he tried to drink in moderation again, and it didn't work. And he had a relapse into alcohol dependence in October of 2021.
>
> So he's got two, I would say two significant failures of attempting to drink in moderation. So to come back for a third strike, I think it makes it even stronger that it's not recommended that he attempt to drink in moderation.

Id. He concluded that the Individual had demonstrated three months of sobriety and two months of attending the SMART program, which was insufficient to show rehabilitation or reformation from his AUD, severe, diagnosis. *Id.* at 172–73.

V. ANALYSIS

Conditions that could mitigate security concerns under Guideline G include:

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

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

Id. at ¶ 23.

The Individual had two alcohol-related hospitalizations in 2021, after being diagnosed with alcohol dependence in 2018. Then, after ten months of sobriety, he began consuming alcohol again in 2022 after being told by his IRP-recommended therapist that he could drink in moderation. At the time of the hearing, he had only been abstinent for three months. The DOE Psychiatrist opined that the Individual has relapsed previously and, in light of the severity of his AUD, he should not consume alcohol again. Although the psychiatrist, psychologist, and therapists whose written opinions the Individual submitted into the record offered opinions that diverged from the DOE Psychiatrist, they were not called to testify. I find the DOE Psychiatrist's assessment to be credible and persuasive because his opinion that the Individual should be abstinent aligns with his diagnosis of AUD, severe. In addition to having only three months of abstinence, the Individual began attending the SMART program and weekly psychotherapy sessions only two months prior to the hearing. Considering the Individual's short period of recent treatment and abstinence, I cannot find that so much time has passed that the Individual's problematic alcohol-related behavior is unlikely to recur. In addition, the Individual's two alcohol-related hospitalizations point toward the behavior not happening under unusual circumstances. Accordingly, I find the alcohol-related concerns are not mitigated by the first mitigating condition. *Id.* at ¶ 23(a).

The Individual has admitted to his maladaptive alcohol use and provided evidence of steps he has taken to overcome his problematic use. He has also offered evidence of abstinence, by way of his testimony and PEth tests. In addition, the Individual has begun the treatment recommended by the DOE Psychiatrist. But the Individual has been abstinent from alcohol use for only three months, and such a short period of abstinence is not sufficient to establish a pattern, particularly in light of his prior relapses. The DOE Psychiatrist testified that the Individual has "two significant failures of attempting to drink in moderation." Tr. at 149. Although the Individual claimed to have been consuming alcohol in moderation since August 2022, a full 14 months prior to the hearing, the PEth test results April 2023 indicate that he underreported his use to the DOE Psychiatrist. In fact, according to the DOE Psychiatrist, those PEth test results indicate that he was drinking four or more drinks per day. This is significantly more than he reported to the DOE Psychiatrist, and significantly more than would be considered moderate consumption. With the AUD, severe, diagnosis and the underreporting of his alcohol consumption, I cannot trust the Individual's claim that he has consumed alcohol only moderately since August 2022. Thus, the security concerns are not mitigated by the second mitigating condition. *Id.* at ¶ 23(b).

While the Individual previously completed counseling and two treatment programs, the IOP after his May 2021 hospitalization and the IRP after his October 2021 hospitalization, he began consuming alcohol again in August 2022, after a 10-month period of abstinence. As stated above, I am persuaded by the DOE Psychiatrist's opinion that the Individual should remain abstinent from alcohol, given his diagnosis of AUD, severe, and his history of multiple relapses. The concerns he raised in his Report and during the hearing were based on the Individual's history of relapse followed by problematic alcohol consumption. At the time of the hearing, the Individual had not

demonstrated a clear and established pattern of abstinence since he had only been abstinent for three months as of the hearing. Therefore, the security concerns are not mitigated by either the third or fourth mitigating condition. *Id.* at ¶ 23(c)–(d).

The DOE Psychiatrist opined at the hearing that the Individual's prognosis would not be "good" because he was diagnosed with AUD and previously attempted to consume alcohol in moderation and failed. The Individual's recent three-month period of abstinence from alcohol consumption is simply not enough for me to find that his problematic alcohol use is unlikely to recur, in light of his history. Accordingly, I find that none of the mitigating conditions have been satisfied, and that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline G of the Adjudicative Guidelines. After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual's access authorization should not be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

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