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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: September 18, 2023 ) Case No.: PSH-23-0141  
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Issued: December 11, 2023

**Administrative Judge Decision**

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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."<sup>1</sup> 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 not be restored.

**I. BACKGROUND**

The Individual was granted access authorization in 2018 in connection with his employment by a DOE contractor. Exhibit (Ex.) 11 at 126.<sup>2</sup> Prior to being granted access authorization, the Individual pleaded guilty to Minor in Possession of alcohol (MIP) in 2009 and was found guilty of Driving Under the Influence of alcohol (DUI) in 2013. *Id.* at 269.

On March 16, 2023, the Individual tested positive on a random workplace alcohol test. *See* Ex. 6 at 23 (summarizing the results of the testing). The local security office (LSO) issued the Individual a letter of interrogatory (LOI) concerning his alcohol consumption and the circumstances of his positive workplace alcohol test. Ex. 8. The Individual's response to the LOI did not resolve the LSO's security concerns regarding his alcohol consumption. *See* Ex. 4 at 18 (summarizing the LSO's review of the Individual's eligibility for access authorization). The Individual underwent laboratory testing for alcohol at the direction of the DOE contractor on March 20, 2023, and May

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<sup>1</sup> 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.

<sup>2</sup> 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.

10, 2023, the results of which indicated that the Individual had consumed significant quantities of alcohol in the periods measured by the tests. *Infra* p. 4.

The Individual met with a DOE-contracted psychologist (DOE Psychologist) for a psychological evaluation on May 31, 2023. Ex. 9 at 40. Following the evaluation, the DOE Psychologist issued a report (Report) in which she concluded that the Individual met sufficient diagnostic criteria for a diagnosis of Unspecified Alcohol-Related Disorder (UAD) under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*, and that the Individual engaged in “heavy” alcohol consumption which could impair his judgment. *Id.* at 45.

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 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 eleven exhibits (Ex. 1–11). The Individual submitted eleven exhibits (Ex. A–K). The Individual offered his own testimony and the testimony of a representative of the DOE contractor’s employee assistance program (EAP Representative), a coworker, his supervisor, and a licensed professional clinical counselor (Individual’s Counselor). Hearing Transcript, OHA Case No. PSH-23-0141 (Tr.) at 3, 12, 32, 43–44, 57, 75. The LSO offered the testimony of the DOE Psychologist. *Id.* at 3, 115.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

The LSO cited Guideline G of the Adjudicative Guidelines as the basis for its suspension of the Individual’s access authorization. Ex. 1. “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. The SSC cited the DOE Psychologist’s opinion that the Individual met sufficient diagnostic criteria for a diagnosis of UAD under the *DSM-5*, the DOE Psychologist’s opinion that the Individual engaged in “heavy” alcohol consumption, the results of the alcohol testing performed on the Individual by the DOE contractor, and the Individual’s alcohol-related offenses in 2009 and 2013. Ex. 1 at 5. The LSO’s allegations that the Individual engaged in alcohol-related incidents away from work, tested positive for alcohol use at work, and habitually or binge consumed alcohol to the point of impaired judgment, as well as the DOE Psychologist’s opinion that he met sufficient diagnostic criteria for a diagnosis of UAD, justify the LSO’s 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 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 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 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.* 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**

In 2009, when he was under 21 years of age, the Individual was arrested and charged with DUI after being pulled over by a law enforcement officer and refusing to undergo a Breathalyzer test. Ex. 11 at 269, 385. The Individual pleaded guilty to MIP and Negligent Driving. *Id.* at 269. The Individual's driving privileges were suspended for two years, and he was ordered to pay a fine and attend an alcohol education class. *Id.*

In 2013, the Individual was stopped by a law enforcement officer who observed him driving approximately 30 miles per hour over the posted speed limit. *Id.* The Individual underwent a Breathalyzer test which estimated his blood alcohol content at .12 g/210L. *Id.* The Individual was arrested and charged with DUI. *Id.* at 269, 386. The Individual was convicted and ordered to pay a fine and undergo four weeks of alcohol counseling. *Id.* at 269; *see also* Tr. at 69–70 (reflecting the testimony of the Individual's Counselor at the hearing that, based on the Individual's description of the intervention, the Individual's Counselor understood the intervention to have been "formal treatment" for alcohol misuse).

The Individual attended a weekly alcohol education class facilitated by the EAP Representative from November 2019 to January 2020. Tr. at 13–14 (reflecting the testimony of the EAP Representative at the hearing). The Individual testified at the hearing that he abstained from alcohol for several weeks following completion of the course and then only consumed two beers per sitting for several months after resuming consuming alcohol. *Id.* at 104. However, the Individual subsequently returned to his prior practice of consuming alcohol to intoxication "2-4 times per month." *See* Ex. 8 at 33 (describing his alcohol consumption in response to the LOI).

On March 16, 2023, at approximately 1:30 PM, the Individual tested positive on a random workplace alcohol test. *See* Ex. 6 at 23 (summarizing the test results); *see also* Ex. 8 at 30 (reflecting the Individual's admission to having tested positive in response to the LOI). In his response to the LOI, the Individual indicated that he had consumed approximately six 16-ounce beers, each of which was approximately seven percent alcohol by volume, the night prior to his positive workplace alcohol test. Ex. 8 at 31; *see also* Ex. 9 at 41 (reflecting the DOE Psychologist's calculation that, based on the Individual's age, stature, and self-reported alcohol consumption, his BAC reached .25 g/210L on the night of March 15 and that the Individual was intoxicated when he reported to work on the morning of March 16).

The DOE contractor required the Individual to participate in eight sessions with a psychologist employed at the DOE facility at which the Individual works (Site Psychologist) and to undergo random Phosphatidylethanol (PEth) testing to assess his alcohol consumption.<sup>3</sup> Ex. 8 at 31; Ex. 9 at 42. The Individual provided samples for PEth testing on March 20, 2023, and May 10, 2023, the results of which were positive at 598 ng/mL and 250 ng/mL, respectively. *See* Ex. 9 at 42 (summarizing the results of the testing); *see also id.* at 62 (reflecting the opinion of a medical doctor to whom the DOE Psychologist provided the Individual's PEth test results that a PEth level of 200 ng/mL "is sometimes used as a rough guideline to indicate 'Heavy Consumption'" and citing to a research study in which participants with a mean PEth of 202 ng/mL self-reported having consumed an average of 4.3 alcoholic drinks per day). At the end of the Individual's eight sessions with the Site Psychologist, the Site Psychologist "remain[ed] concerned about [the Individual's] drinking," and thought that the Individual demonstrated "little accountability." *Id.* at 42 (summarizing a conversation between the Site Psychologist and DOE Psychologist).

On May 31, 2023, the Individual met with the DOE Psychologist for a clinical interview. *Id.* at 40. During the clinical interview, the Individual reported that he had been drinking "a lot less" alcohol since the March 2023 positive workplace alcohol test. *Id.* at 43. He estimated that he regularly consumed four or five drinks once weekly, but sometimes consumed as little as one beer in a sitting. *Id.* at 42–43. At the request of the DOE Psychologist, the Individual provided a sample for PEth testing immediately following the clinical interview, the results of which were positive at 299 ng/mL. *Id.* at 43, 61. According to the medical doctor who reviewed the results of the PEth test, the increase in the Individual's PEth level since the May 10, 2023, test showed that the Individual had increased his alcohol consumption in the three weeks between the two tests. *Id.* at 62. Based on the opinion of the medical doctor, the DOE Psychologist indicated that the PEth test results were "higher than would be expected based upon [the Individual's] description of his alcohol consumption." *Id.* at 44.

The DOE Psychologist issued her Report on June 8, 2023. *Id.* at 46. In the Report, the DOE Psychologist concluded that the Individual met sufficient diagnostic criteria for a diagnosis of UAD under the *DSM-5*. *Id.* at 45. She also opined that the Individual's "heavy" alcohol consumption, as demonstrated by the PEth test results, was evidence that he either habitually or binge consumed alcohol to the point of impaired judgment. *Id.* The DOE Psychologist recommended that the Individual either attend group and individual substance abuse counseling

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<sup>3</sup> PEth, a compound produced in the presence of ethanol, is a biomarker for alcohol consumption that can be used to detect whether a subject consumed alcohol up to four weeks prior to sample collection. Ex. 9 at 61–62 (citing an academic paper describing the PEth test).

on a weekly basis for three months and abstain from alcohol during treatment or abstain from alcohol for six months. *Id.* The DOE Psychologist indicated that the Individual should document his abstinence from alcohol through monthly PEth testing. *Id.*

On June 23, 2023, the Individual began meeting with the Individual's Counselor. Tr. at 59, 61. According to the Individual's Counselor, the Individual denied that he had "any issues with alcohol" when he began counseling but "was open to the idea of doing what he was requested to do" by attending the counseling. *Id.* at 60. The Individual initially met with the Individual's Counselor on a weekly basis before switching to biweekly sessions. *Id.* at 62. This treatment focused on helping the Individual to recognize patterns related to his alcohol consumption and triggers that led him to misuse alcohol, as well as techniques to avoid alcohol misuse in the future. *Id.* at 71–72. After several meetings with the Individual, the Individual's Counselor concurred with the DOE Psychologist's diagnosis of the Individual. *Id.* at 63.

On August 28, 2023, the Individual submitted his request for an administrative hearing in connection with this matter in which he indicated that he had "decided to quit drinking for the time being." Ex. 2 at 10. However, the Individual continued to consume alcohol through September 2023. Tr. at 80, 82–83, 87 (testifying that he continued to consume alcohol, albeit at a significantly lower level than he had in the past, after entering treatment with the Individual's Counselor and that he decided to stop consuming alcohol after a golf outing in late September in which he consumed three or four beers). The Individual explained his decision to stop consuming alcohol in September as follows:

I was thinking I still had six, maybe eight months or so before this hearing was going to happen. So, I was kind of thinking . . . I could still drink and cut out drinking for the three months prior to the hearing. Then I think we scheduled this [] towards the end of September, I don't remember the exact date, somewhere around the 30th. And when it was scheduled I went, oh, crap. I don't have three months until that date. So, pretty much, from that time after the golf outing, I said, [a]ll right. Got to cut it off.

*Id.* at 91.

In October 2023, the Individual enrolled in a class related to maintaining changes in alcohol consumption through the DOE contractor's EAP. Ex. A at 8. The Individual attended the weekly classes beginning on October 5, 2023, through the date of the hearing. *Id.* at 9–10; Ex. I at 24. The EAP Representative characterized the Individual's participation in the class as open and expressive. Tr. at 17–18. The EAP Representative reported that if the Individual continued to attend the class as scheduled, he will complete the class in early 2024. *See id.* at 20, 22, 26 (indicating that the Individual had attended seven sessions, most recently on December 7, 2023, and that he would graduate from the class after attending 12 classes). The EAP Representative indicated that the Individual had told her that it was his intention to abstain from alcohol until the adjudication of his access authorization was resolved and then to return to "low risk responsible" alcohol consumption at some point in the future. *Id.* at 27.

The Individual underwent PEth testing on October 24, 2023, November 14, 2023, and December 5, 2023. Ex. E at 16; Ex. J at 25; Ex. K. The first test was positive at 37 ng/mL. Ex. K. The second test was positive at 28 ng/mL. Ex. E at 16. The third test was positive at 11 ng/mL. Ex. J at 25.

The Individual's friend testified at the hearing that he previously consumed alcohol with the Individual when fishing and socializing at restaurants and bars, but that he has not observed the Individual consume alcohol for at least three months. Tr. at 33, 35–36, 39. The friend also testified that he had observed the Individual refuse alcohol in social settings where others were consuming alcohol. *Id.* at 40. The Individual's supervisor testified that he found the Individual to be "open and transparent" in the workplace and he has no reason to question his honesty. *Id.* at 51.

The Individual's Counselor testified that the Individual had recognized through treatment that he had a lack of awareness as to the impact of alcohol on his life and that he needed to make changes to his behavior to reduce excessive alcohol consumption. *Id.* at 63. The Individual's Counselor indicated that he had recommended to the Individual that he seriously consider abstaining from alcohol in light of the Individual's adverse life experiences related to alcohol use. *Id.* at 65–66. According to the Individual's Counselor, the Individual is more open than he was when treatment began to considering "the impact of alcohol on his functioning, where it fits into his lifestyle, [and] possible issues related to it." *Id.* at 68. The Individual's Counselor opined that the Individual's risk of relapse is "pretty low" based on the Individual "taking it seriously" unlike when he previously received alcohol-related treatment. *Id.*

The Individual testified that he had consumed alcohol on one occasion since September 2023 when he had a beer with a friend who was leaving the country in November 2023. *Id.* at 83. The Individual testified that he had not decided whether he would resume consuming alcohol in the future, but that, if he did, he would do so at a much lower level than he had in the past. *Id.* at 84. The Individual came to believe through treatment that his prior alcohol use was "bordering on a problem" and that there was "frequent enough binge drinking" that it could have evolved into a "full-fledged problem." *Id.* at 101. He also indicated that he had recognized that "something needed to change" because he had been consuming too much alcohol. *Id.* at 101–02.

The DOE Psychologist opined that the Individual's UAD was still active and not in remission because he had consumed a significant quantity of alcohol in September 2023, less than three months prior to the hearing. *Id.* at 118, 121. The DOE Psychologist indicated that the Individual's treatment with the Individual's Counselor and through the EAP was sufficient to meet her treatment recommendations, and that her opinion was based on the Individual's failure to establish three months of abstinence from alcohol as recommended. *Id.* at 124. The DOE Psychologist opined that the Individual presented "at least a moderate level of risk" of relapse into problematic drinking based on his failure to abstain from alcohol as she recommended and his prior inability to sustain moderate levels of alcohol consumption, such as his relapse following his efforts to moderate his drinking in 2019 and 2020. *Id.* at 125–26, 128–29.

## 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 has a lengthy history of alcohol misuse which, by his own admission, was neither infrequent nor occurred under unusual circumstances. The Individual decided to continue consuming alcohol against treatment recommendations through September 2023 and consumed alcohol despite his intention not to do so in the month prior to the hearing. While the Individual displayed candor during the hearing in describing his alcohol consumption, his decision to continue consuming alcohol against treatment recommendations even knowing that doing so could cost him his access authorization reflects that his reliability and judgment remain impaired. Thus, the first mitigating condition is inapplicable. *Id.* at ¶ 23(a).

While the Individual has taken actions to overcome his alcohol misuse, he has not complied with treatment recommendations concerning abstinence from alcohol. Therefore, the second mitigating condition is inapplicable. *Id.* at ¶ 23(b).

The third mitigating condition is not relevant to the facts of this case because the Individual returned to problematic alcohol consumption following court-ordered alcohol-related treatment he received in connection with his 2013 DUI conviction. Moreover, although the Individual's participation in the alcohol education class with the EAP Representative in 2019 was not formal treatment for alcohol misuse, I find it notable that he maintained a moderate level of alcohol consumption following that intervention before returning to excessive alcohol consumption several months later. Thus, the third mitigating condition is inapplicable to the facts of this case. *Id.* at ¶ 23(c). The fourth mitigating condition is likewise inapplicable because the Individual did not comply with the DOE Psychologist's recommendation to abstain from alcohol. *Id.* at ¶ 23(d).

As described above, none of the mitigating conditions under Guideline G are applicable to the facts of this case. The Individual demonstrated poor judgment in attempting to consume alcohol for as long as possible prior to the hearing, and the DOE Psychologist opined that the Individual's UAD remains active and that he is at risk of a relapse that could undermine his judgment and reliability. Accordingly, I find 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 restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick  
Administrative Judge  
Office of Hearings and Appeals