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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: October 11, 2023) Case No.: PSH-24-0003
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Issued: February 9, 2024

Administrative Judge Decision

James P. Thompson III, 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."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 possession of a security clearance. In May 2023, the DOE Local Security Office (LSO) learned from the Individual that he was hospitalized that same month for alcohol withdrawal symptoms. The LSO requested that the Individual be evaluated by a DOE-consultant psychologist (Psychologist). Afterward, the LSO informed the Individual by letter (Notification Letter) that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline G of the Adjudicative Guidelines.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review

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.

hearing. At the hearing, the Individual presented the testimony of four witnesses and testified on his own behalf. The LSO presented the testimony of the Psychologist. The Individual submitted seventeen exhibits, marked Exhibits A through Q.² The LSO submitted nine exhibits, marked Exhibits 1 through 9.³

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 1. Guideline G provides 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. Conditions that could raise a security concern include "[a]lcohol-related incidents away from work, such as driving while under the influence[,] . . ." and "[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist . . .) of alcohol use disorder . . ." *Id.* at ¶ 22(a) and (d). The SSC cited that in July 2023 the Psychologist concluded that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, criteria for Alcohol Use Disorder (AUD), Severe, and, in 2012, law enforcement arrested and charged the Individual with Driving Under the Influence of Liquor (DUI). Ex. 1 at 5. The cited information justifies the LSO's invocation of Guideline G.

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 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 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.*

² The Individual's exhibits are composed of several .pdf workbooks. References to these exhibits are to the exhibit letter and the page number of that particular exhibit's pages as if the exhibit is a standalone .pdf. Exhibits P and Q were submitted on the hearing date under different labels; however, they are now consistent with the labeling of the Individual's other exhibits.

³ References to the LSO exhibits are to the exhibit number and the Bates number located in the top, right corner of each exhibit page.

§ 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

On May 18, 2023, the Individual reported to DOE that he received inpatient treatment at a hospital from May 12 to May 14 after experiencing vertigo symptoms. Ex. 5 at 18. He disclosed in the same incident report that he had been regularly consuming alcohol at the rate of eight “shots” in one “sitting” and that, as a result of his hospitalization, he intended to go through his employer’s rehabilitation program “with the goal of not using alcohol.” *Id.* According to the Psychologist who evaluated the Individual and provided a subsequent report (Report) to the LSO, the Individual stated that the hospital treated him for alcohol withdrawal. Ex. 6 at 22.

During the evaluation, the Individual reported his alcohol use history. The Individual stated that he was arrested and charged with DUI in 2012 when he was in his mid-twenties. *Id.* at 23. He reported that he had several drinks at a bar with a friend and was stopped by law enforcement. *Id.* The Individual pled guilty to the charges and was court-ordered to attend alcohol education classes and satisfy other requirements, which he successfully completed. *Id.* Turning to more recent events, the Individual stated that, during the Covid-19 pandemic, he was newly divorced and working a stressful job, and his alcohol use gradually increased from a few times a week to every day. *Id.* at 23. By the end of 2021, he was consuming three to four alcoholic beverages every day, and he noticed that his tolerance had increased. *Id.* The Psychologist reported that the Individual eventually realized that he was attempting to “manage psychosocial stressors in his life” by using alcohol, and the Individual became concerned in spring of 2023 that his “excessive alcohol use was going to negatively impact his job because he wasn’t functioning effectively at work.” *Id.* at 24. The Individual decided to stop consuming alcohol on May 11, 2023, he consequently fell ill, and his fiancée transported him to the hospital where he received treatment for alcohol withdrawal starting May 12. *Id.* On May 17, a few days after his being released from the hospital, he consumed two shots of vodka. *Id.*

The Individual told the Psychologist that, after he reported to his employer the circumstances of his hospitalization, he started attending monthly appointments with a treatment provider through his employer’s Employee Assistance Program (EAP). *Id.* He also entered into a “recovery agreement” with his employer. *Id.* He reported that, at the time of the evaluation, he had been attending weekly Alcoholics Anonymous (AA) meetings and had recently initiated individual and group alcohol treatment. *Id.* The Psychologist contacted the Individual’s treatment provider and confirmed that the Individual began a twenty-six-week program on June 30 to treat his AUD and had been attending “more group[] [treatment sessions] per week than . . . required.” *Id.* The Individual reported that he had not consumed alcohol since May 17. *Id.*

As part of the evaluation, the Individual underwent a Phosphatidylethanol (PEth) test to determine whether he had recently consumed alcohol. *Id.* at 25, 38. The test results were negative, which corroborated the Individual’s reported abstinence. *Id.* At the conclusion of the Report, the

Psychologist opined that Individual had AUD, Severe, and that the Individual could demonstrate rehabilitation or reformation by abstaining from alcohol for at least a year, completing his current treatment program, engaging in aftercare or AA twice per week for a year, and undergoing a PEth test at least every six weeks for one year. *Id.* at 26.

At the hearing, the Individual's ex-wife testified that while she had previously been concerned about the Individual's alcohol "dependency," she had observed the Individual go "above and beyond" over the seven months preceding the hearing by "attend[ing] classes" and making sure his alcohol use did not "impact him any further." Hearing Transcript, OHA Case No. PSH-24-0003 (Tr.) at 14–15.

The Individual's coworker and the Individual's supervisor also testified at the hearing. The coworker testified that the Individual embraced the process of addressing the LSO's concerns without appearing bitter or reluctant. *Id.* at 42–43. The coworker also testified that the Individual had become more reliable and significantly improved his communication. *Id.* at 45. The Individual's supervisor testified that he too had seen positive changes in the Individual's performance since May 2023. *Id.* at 50–51.

The Individual's licensed treatment counselor testified that she had been treating the Individual since July 3, 2023, and the Individual's therapeutic goal is to maintain sobriety, which includes identifying coping skills and the triggers for his alcohol use. *Id.* at 26–28. She testified that his reported sobriety date is May 17, 2023. *Id.* at 35. She also testified the Individual's treatment program consisted of weekly individual therapy with her, two group substance abuse sessions per week, and one group anger management session per week. *Id.* at 29. The counselor also testified that the Individual successfully completed the twenty-six-week treatment program and the anger management treatment, and he is scheduled to begin attending a twenty-six-week aftercare treatment program to include weekly individual counseling and weekly group substance abuse treatment. *Id.* at 29, 33–34. She described him as "engaged and fully participating." *Id.* at 30. She also testified that the Individual made significant progress over the previous six months, he realized that his alcohol use had been problematic, and he demonstrated a good understanding of how to continue addressing his alcohol use to prevent it from becoming a problem again. *Id.* at 31. She noted that, through talk therapy, the Individual had "done a good job" identifying his triggers and the coping skills to work through them. *Id.* at 32–33. Regarding the likelihood that the Individual will continue his sobriety, the counselor opined that the Individual had "shown really good progress [and] dedication," and she did not "foresee that there's going to be a problem going forward." *Id.* at 36.

At the hearing, the Individual acknowledged that he has a problem with alcohol and agreed with the Psychologist's conclusions in the Report. *Id.* at 55. He testified that, leading up to his hospitalization, he had been consuming "a pint a night . . . of vodka." *Id.* at 77. He testified that he attempted to follow the Psychologist's recommendations for treatment after he received the Report by completing the twenty-six-week treatment program and moving into the aftercare program that also includes weekly individual and group treatment. *Id.* at 56–57. He testified that he attended all classes in-person to receive the maximum benefit, and he "developed a relationship" with his counselors. *Id.* at 58. He testified that the treatment helped him address issues he had used alcohol to avoid, such as "childhood traumas," and he discovered techniques to get him "through the

difficult stuff” and better “cope and discuss things, as opposed to using alcohol as a crutch” *Id.* at 58–59. He described his coping skills as “taking time for [himself], being able to talk about [his] problems,” and realizing “it’s okay.” *Id.* at 59. He also testified that anger management treatment taught him that anger issues could be the result of other issues, such as sadness, that need to be addressed. *Id.* He testified that he enrolled in anger management at the recommendation of his substance abuse counselor because he wanted to identify “better ways to manage” his “emotions and anger” because he “felt . . . overwhelmed all the time” *Id.* at 75–76. Through anger management treatment, he learned to actively regulate his emotions instead of trying to suppress them. *Id.* at 60. The Individual also described addressing his triggers for alcohol consumption by using visualization and planning to prepare for his workday or scenarios where he may be around alcohol. *Id.* at 61.

Regarding his reported AA attendance, the Individual clarified that he attended a weekly group class similar to AA six times at the beginning of his treatment before discontinuing it and beginning the twenty-six-week treatment program. *Id.* at 65, 77. He testified that he decided to enroll in aftercare because he “knew [the treatment] was already working,” he “was already doing well in it,” and he knew the program would provide the documentation he needed to show compliance with the program. *Id.* at 65–66. The Individual highlighted the fact that he had followed the rules and obligations of his employer’s voluntary treatment program. *Id.* at 74–75.

The Individual confirmed his sobriety date as May 17, 2023. *Id.* at 67. He testified that he will continue to be successful in his sobriety because it is something he wants, and he described experiencing positive changes that include having “more ambitions,” improving his relationship with his daughter, and being able to pay more attention to details at work. *Id.* at 68. He testified that he intends to remain abstinent into the future. *Id.* at 69.

The record includes a November 20, 2023, letter from the EAP psychologist. Ex. G. That psychologist reported that the Individual “has been highly compliant with all aspects of the [EAP agreement],” including monthly PEth testing, random drug and breath alcohol tests, attending the twenty-six-week program, and attending monthly visits with the EAP psychologist. *Id.* The EAP psychologist reported that the Individual is “exceptionally well-motivated to succeed in all aspects of his recovery” and that all test results were negative. *Id.* The record also includes monthly PEth test results covering July 2023 to December 2023; all test results are negative. Ex. I; Ex. Q.

At the hearing, the Psychologist testified and provided an updated opinion regarding the Individual’s AUD and stated that it was now in early remission based on the Individual’s demonstrated abstinence since May 2023. *Id.* at 83. The Psychologist also testified that the Individual’s accomplishments, including completing the treatment program and PEth testing for the preceding seven months, demonstrated reformation and rehabilitation of his AUD. *Id.* at 83–84. The Psychologist also noted that while he initially recommended twelve months of abstinence, treatment, and clinical PEth testing, the evidence presented by the Individual, including the testimony of his counselor and her opinion of his likely success going forward, was sufficient to demonstrate adequate evidence of rehabilitation because the Individual had successfully demonstrated “engagement and compliance and participation and treatment.” *Id.* at 84–86.

V. ANALYSIS

A. Guideline G Considerations

Conditions that can mitigate security concerns based on alcohol consumption include the following:

- (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.

Adjudicative Guidelines at ¶ 23.

Paragraphs 23(b) and 23(c) apply to resolve the Guideline G concerns. Regarding ¶ 23(b), first, the evidence demonstrates that the Individual acknowledged his maladaptive alcohol use. At the hearing, he admitted that he has a problem with alcohol and accepted the Psychologist's diagnosis of AUD. His testimony reflects his realization that he had used alcohol as a crutch to address emotional issues.

Second, I find that the Individual has taken significant action to overcome his problem. He successfully completed the EAP-recommended twenty-six-week treatment program, he enrolled in and is set to begin a twenty-six-week aftercare program, he proactively completed an anger management program to further address issues that contributed to his alcohol consumption, and he successfully stopped consuming alcohol shortly after his hospitalization. I find it particularly compelling that the Individual attended more treatment sessions per week than initially recommended by attending three individual counseling sessions instead of one per week, which demonstrates his sincere effort to overcome his problem.

Finally, I find that the Individual's established pattern of abstinence has been in accordance with treatment recommendations. The record demonstrates that the Individual successfully maintained abstinence for the seven months leading up to the hearing date. Furthermore, the counselor's and Individual's testimony demonstrate that the Individual complied with the counselor's treatment recommendations and successfully completed the twenty-six-week program. In doing so, the

record demonstrates that the Individual exceeded the program participation requirements. Additionally, the EAP psychologist reported that the individual had been “highly compliant” with the program requirements. And the Psychologist opined that the Individual had successfully demonstrated reformation and rehabilitation. This evidence makes clear that the Individual successfully maintained abstinence by following the recommendations of his treatment providers and thus satisfies ¶ 23(b).

Turning to ¶ 23(c), the evidence also demonstrates that 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. The evidence demonstrates that the Individual is scheduled to continue his current treatment by starting a twenty-six-week aftercare program. There is no evidence in the record that the Individual previously relapsed after receiving treatment. Lastly, the Individual’s treatment providers agree that the Individual is making satisfactory progress. Accordingly, I find that the evidence satisfies ¶ 23(c).

Because I find that the Individual has put forth sufficient evidence to mitigate the concerns that stem from his AUD, I also conclude that he has resolved the concerns that stem from his decade-old DUI. I therefore conclude that the Individual has resolved the Guideline G security concerns.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline G of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the SSC. 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 at 10 C.F.R. § 710.28.

James P. Thompson III
Administrative Judge
Office of Hearings and Appeals