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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: November 21, 2023)	Case No.: PSH-24-0017
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Issued: March 6, 2024

Administrative Judge Decision

Janet R. H. Fishman, 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 not be restored.

I. BACKGROUND

The Individual has been employed by a DOE contractor in a position that requires her to hold an access authorization. Exhibit (Ex.) 1. In June 2023, the Individual voluntarily entered an in-patient treatment program (ITP) for alcohol use. Ex. 2 at 10. As a result of her attendance at the ITP, the Local Security Office (LSO) sent the Individual for an evaluation by a DOE-consultant Psychologist (DOE Psychologist). The DOE Psychologist diagnosed the Individual with Alcohol Use Disorder (AUD), severe, without adequate evidence of rehabilitation or reformation. Ex. 1 at 5; Ex. 6 at 29.

The LSO subsequently issued the Individual a Notification Letter advising her that it possessed reliable information that created substantial doubt regarding her eligibility for access authorization. Ex. 1 at 6. 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. *Id.* at 5.

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.

The Individual exercised her right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2 at 10–12. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative hearing. The LSO submitted eight exhibits (Exs. 1–8). The Individual submitted five exhibits (Exs. A–E). The Individual testified on her own behalf and offered the testimony of her mother, her co-worker, and her two friends. Hearing Transcript, Case No. PSH-24-0017 (Tr.) at 15, 26, 50, 68, 79. The LSO called the DOE Psychologist to testify. *Id.* at 118.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As previously mentioned, the Notification Letter included the SSC, which sets forth the derogatory information that raised concerns about the Individual’s eligibility for access authorization. Guideline G relates to security risks arising from excessive alcohol consumption. “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines at ¶ 21. In citing Guideline G, the LSO relied upon the DOE Psychologist’s August 2023 diagnosis that the Individual suffered from AUD, severe. Ex. 1 at 5.

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 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

The Individual testified that prior to the COVID-19 pandemic, she was a “social drinker.” Tr. at 81. She claimed that her alcohol consumption increased from drinking two to three days a week and bingeing on the weekends to consuming alcohol most days² during the pandemic because she was suffering from stress due to her work situation while caring for her son. *Id.* at 82. Her stress was worsened by moving back into her parents’ house. *Id.* at 82–83. The Individual claimed that she was “very good” at hiding her alcohol consumption prior to entering the ITP, and that after her discharge, she showed her mother all the locations where she could hide alcohol. *Id.* at 85. In fact, her mother testified that she never saw the Individual consume more than one or two beers and never saw her intoxicated. *Id.* at 54–55. The Individual and her friend (Friend One) testified that in June 2023 she had a one-car automobile accident after consuming alcohol, which led her to voluntarily enter the ITP. *Id.* at 38, 83. The Individual testified that she did not consume any alcohol while she was in the ITP, but that she struggled once she was discharged in July 2023 and prior to enrolling an Intensive Outpatient Program (IOP) in August 2023.³ *Id.* at 90–91. The Individual testified, and her mother confirmed, that she graduated from the first 12-week session of the IOP and was, at the time of the hearing, attending a second 12-week session. *Id.* at 60, 91–92. The Individual asserted that she would only consume alcohol occasionally after the ITP. *Id.* However, she also stated that she consumed a glass of wine at Thanksgiving 2023 and two beers at Christmas 2023 with family, with Christmas being the last time she consumed any alcohol. *Id.* at 98. Her mother’s testimony confirmed that she consumed alcohol during those two holidays, but her mother did not specify the amount she consumed. *Id.* at 58, 61–62.

The Individual testified that her long-term plan is remain sober, however, she understands it is a struggle every day. *Id.* at 100. She also stated that, “I feel I did have a problem with alcohol.” *Id.* at 80. She continued, “I know I did struggle like the first month after I got out [of the ITP], but I also wasn’t set up with an IOP at that point and was kind of just trying to get it all sorted myself.” *Id.* at 81. The day of the accident, the Individual testified, she left work early, purchased alcohol, and consumed it prior to attempting to return home. *Id.* at 83.

The Individual stated that her employer put her on a fitness for duty (FFD) after her return from the ITP. *Id.* at 105. The FFD required that she remain abstinent, however, she admitted that she consumed alcohol during this time. *Id.* The Individual claimed that she reported her violative consumption every time to the doctor who oversaw the FFD program. *Id.* at

² The Individual indicated that during the pandemic she was consuming two 1.7-ounce bottles of hard liquor and three to four 12-ounce bottles of beer to the point of intoxication every day. Ex. 6 at 25.

³ The Individual testified that she finally arranged to enter the IOP in October 2023, but the DOE Psychologist corrected her memory and confirmed that she actually enrolled in the IOP in August 2023, had an assessment in early September 2023, and began the program three weeks after the assessment, also in September 2023. *Id.* at 115–16.

106–07. She stated that she currently attends IOP, which consists of SMART⁴ recovery, group counseling, and individual therapy once a week. *Id.* at 108. The Individual claimed that she attends Alcoholics Anonymous (AA) online and that her employer administers a breathalyzer every day, at random times.⁵ *Id.* at 110–11, 104. The Individual’s exhibits included two college transcripts, Ex. A and Ex. B; a letter from her supervisor, Ex. D; and a letter from a co-worker, Ex. E.

The Individual’s co-worker testified that they shared an office for approximately six months and that he has known her for a year and a half. *Tr.* at 16. He continued that he never saw any signs of intoxication or the Individual being “hungover.” *Id.* at 19, 24–25. Friend One testified that they have known each other for at least 10 years. *Id.* at 27. They graduated from school together, and although they do not see each other frequently, they communicate by texting regularly. *Id.* at 29–30. Friend One testified that she has never seen the Individual consume more than two to three drinks during one evening. *Id.* at 32. Friend One claimed that the Individual has not changed since she entered the ITP, but that she appears to be remaining at home with her parents and son more than in the past. *Id.* at 44. The Individual’s second friend knows the Individual through his wife. *Id.* at 67. He claimed that they see each other every few months, but that they communicate every day. *Id.* at 70. He stated that he never saw a problem with her alcohol consumption. *Id.* at 71. Finally, the Individual’s mother testified that they have lived together for two years. *Id.* at 51. She stated that she was unaware of the Individual’s overconsumption of alcohol prior to her entering the ITP. *Id.* at 52. She clarified that they are a close family who celebrate occasions together and she would see the Individual consume a “couple of beers.” *Id.* The Individual’s mother stated that she last saw the Individual consume alcohol at Christmas, which was approximately one month prior to the hearing. *Id.* at 58. She also saw the Individual consume alcohol at Thanksgiving. *Id.* at 62.

The DOE Psychologist summarized his evaluative report, in which he diagnosed the Individual with AUD, severe. *Id.* at 120. He met with the Individual approximately six

⁴ SMART stands for Self-Management and Recovery Training. 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 Mar. 5, 2024).

⁵ The Individual’s Exhibit C provides the negative results of 40 breathalyzer tests. Ex. C. Although the tests are frequent, they do not appear to be daily. *Id.* The first few tests provided are dated July 25, 2023; July 31, 2023; August 8, 2023; and August 22, 2023. *Id.* at 1–4. The frequency of the tests appears to increase in December. *Id.* at 23–31. However, there are three tests dated December 21, 2023, two of which state “interferent detect.” *Id.* at 30–31.

weeks after she was discharged from the ITP. *Id.* At the interview, the Individual stated that she had consumed two 1.7-ounce bottles of liquor approximately two weeks prior. Ex. 6 at 26. The DOE Psychologist stated that he referred her for a Phosphatidylethanol (PEth)⁶ test to be administered immediately following the evaluative interview. Tr. at 120. That PEth test was positive, which according to a psychiatrist who reviewed the laboratory report indicated that the Individual had significantly underreported her alcohol consumption to the DOE Psychologist. Ex. 6 at 28. In his report, the DOE Psychologist recommended that to demonstrate rehabilitation or reformation from her AUD, severe, the Individual continue with the IOP for 24 weeks, followed by aftercare. Tr. at 121. He also recommended that she attend AA or SMART meetings, five times per week. *Id.* at 122; Ex. 6 at 29. The DOE Psychologist recommended that the Individual remain abstinent for one year and provide PEth tests monthly to demonstrate her abstinence.⁷ Ex. 6 at 29; Tr. at 122. According to the record, the Individual received a copy of the DOE Psychologist's report with the Notification Letter, which was dated November 10, 2023. Ex. 1 at 8.

At the hearing, the DOE Psychologist testified that they did not discuss her car accident at the interview, even though it was a catalyst for her entering ITP. Tr. at 126–27. He concluded that, as of the date of the hearing, the Individual was not reformed or rehabilitated from her alcohol diagnosis. *Id.* at 127. The DOE Psychologist stressed that the Individual has not remained abstinent, nor has she completed the recommendations he made in his report. *Id.* at 127–28. He indicated that her attendance at the IOP and the fact that she has signed up for an additional 12 weeks are both positive factors, however she is still in the early stages of her treatment. *Id.* at 128–29. He emphasized that her psychiatric history indicates that she seeks help when she needs it, which is very positive. *Id.* at 132.

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;

⁶ 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). Ex. 6 at 41.

⁷ At the hearing, the DOE Psychologist asserted that if the Individual stays in treatment, she could be considered rehabilitated or reformed from the date of her last alcoholic consumption, which was December 2023. Tr. at 131.

(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(a)-(d).

Condition (a) does not apply to the Individual's situation. She voluntarily entered the ITP only six months prior to the hearing. Further, she admitted, which was confirmed by her mother's testimony and the PEth test results, that she consumed alcohol after being discharged from the ITP and again only one month prior to the hearing. I cannot find that so much time has passed, the behavior was so infrequent, or it happened under such unusual circumstances that is unlikely to recur.

Condition (b) also does not apply. Although the Individual acknowledged her maladaptive alcohol use, she equivocated on whether she presently has an alcohol problem, stating rather that she "did struggle [with alcohol] the first month after [she] got out" of the ITP. Tr. at 81. In addition, even though she has provided evidence of actions that she has taken to overcome her problem, she has not yet demonstrated a clear and established pattern of abstinence, which was recommended by the DOE Psychologist. The Individual admitted that she consumed alcohol in violation of the FFD requirements. In the evaluative report, the DOE Psychologist recommended abstinence, but the Individual testified that she consumed alcohol at Thanksgiving and Christmas, after she had received his report.

Condition (c) does not apply. Although the Individual is participating in a treatment program, her testimony indicated that she has had relapses during that treatment by consuming alcohol. The DOE Psychologist testified the Individual is early in her treatment program and that he was concerned that she does not believe she has a problem with alcohol now.

Finally, condition (d) also does not apply. Although the Individual completed the ITP and the first 12 weeks of the IOP, she has not demonstrated abstinence in accordance with the DOE Psychologist's recommendation.

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 restored. 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