

Department of Energy
Washington, DC 20585

United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing)
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Filing Date: November 27, 2023) Case No.: PSH-24-0022
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Issued: April 24, 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 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 March and April 2023, DOE received Information Reports (IR) that indicated that the Individual had been suspended for a week without pay because of two incidents involving coworkers and inappropriately aggressive behavior. Ex. 5 at 22–23. As a result of these reports, DOE asked the Individual to complete a Letter of Interrogatory (LOI). *Id.* at 22. After receiving the Individual's LOI in June 2023, DOE still had concerns and asked the Individual to undergo a psychological evaluation with a DOE-contracted psychologist (DOE Psychologist). Ex. 4 at 19. The DOE Psychologist diagnosed the Individual with Unspecified Alcohol-Related Disorder (UARD), without adequate evidence of rehabilitation or reformation. Ex. 1 at 5; Ex. 7 at 46. Additionally, the DOE Psychologist diagnosed the Individual with Generalized Anxiety Disorder (GAD) with Panic Attacks. Ex. 1 at 5; Ex. 7 at 47.

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 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 and Guideline I of the Adjudicative Guidelines. *Id.* at 5.

The Individual exercised her right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2 at 13–14. 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 nine exhibits (Ex. 1–9). The Individual submitted four exhibits (Ex. A–D).² The Individual testified on her own behalf and offered the testimony of her aunt, her supervisor, her former co-worker, her group leader, her Employee Assistance Program (EAP) counselor, and a clinical psychologist. Hearing Transcript, Case No. PSH-24-0022 (Tr.) at 11, 40, 58, 71, 90, 115, 207. The LSO called the DOE Psychologist to testify. *Id.* at 194.

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 July 2023 diagnosis that the Individual suffered from UARD. Ex. 1 at 5. Guideline I relates to “[c]ertain emotional, mental, and personality conditions [which] can impair judgment, reliability, or trustworthiness.” Adjudicative Guidelines at ¶ 27. The LSO relied upon the DOE Psychologist’s July 2023 diagnosis that the Individual suffered from GAD with Panic Attacks when citing Guideline I. 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

² The Individual submitted PEth tests after the hearing. The PEth tests submitted with the original exhibits did not all show the dates the tests were taken. *See* Ex. A. After the hearing, the Individual submitted the dated PEth tests and the results of her March PEth tests. Ex. D.

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

In September 2022, the Individual was consuming alcohol at a bar with several co-workers. Ex. 3 at 16. Two of her co-workers asked her several times if she wanted another drink, and she stated that she did not. Ex. 6 at 27. An ex-partner who was also a co-worker came up to the group and told the others that the Individual “had said no.” *Id.* One of the coworkers then put the ex-partner in a chokehold until he was unconscious. *Id.*

In October 2022, two co-workers filed an ethics complaint against the Individual for harassment and creating a hostile work environment. Ex. 4 at 19. As a result of this complaint and the subsequent investigation, the Individual was given a written reprimand and suspended from work without pay for one week. *Id.* Due to the reports related to these two incidents, the Individual was asked to complete an LOI. *Id.* In her LOI responses, the Individual denied the behaviors that her co-workers complained of in their ethics complaint. Ex. 6 at 25. The LSO found that the Individual had mitigated the security concerns related to the interpersonal conflict. Ex. 4 at 19.

However, because of the two incidents, the LSO sent the Individual to the DOE Psychologist for an evaluation in August 2023. Ex. 7. After the evaluation, the Individual was asked to take a laboratory test for Phosphatidylethanol (PEth).³ *Id.* at 43. Her PEth test was returned positive result at a level of 134 ng/mL, which indicated that she had “ingested significant quantities of alcohol within the past few weeks.” *Id.* at 43–44. Based on this

³ In a letter that accompanied the psychologist’s report, a medical doctor explained the presence of PEth in blood:

PEth is not a normal body metabolite. PEth accumulates when ethanol binds to the red blood cell membrane. The PEth level reflects the average amount of alcohol consumed over the previous 28- 30 days as red blood cells degrade and enzymatic action removes PEth. A MedTox PEth exceeding 20 ng/mL is evidence of “moderate to heavy ethanol consumption.” PEth above 20 ng/mL indicates medium drinking (averaging between 2 to 4 drinks/day for several days/week). This range corresponds to the top of NIAAA’s “low risk” category (females: 3 drinks/day or 7 drinks/week).

Ex. 5 at 71.

information and his evaluation, the DOE Psychologist determined that the Individual met the diagnostic criteria for UARD. *Id.* at 46. He recommended that she enroll in and successfully complete an intensive outpatient substance abuse program (IOP) and then complete at least six months in an aftercare program. *Id.* at 47. He also suggested that the Individual should provide negative monthly PEth testing for six months. *Id.*

Additionally, the DOE Psychologist determined that the Individual met the diagnostic criteria for GAD with Panic Attacks which is an emotional, mental, and personality conditions that can impair the Individual's judgment, reliability, or trustworthiness. *Id.* at 45. He noted that if the Individual was willing to engage in therapy, her prognosis on these concerns would be positive. *Id.* at 47.

The Individual provided five negative PEth tests dated October 4, 2023, November 10, 2023, January 9, 2024⁴, February 15, 2024, and March 26, 2024. Ex. A at 16–18, Ex. D. She also provided documentation that shows that she completed an IOP in February 2024. Ex. A at 6. The Individual also provided a letter from her EAP counselor, which explained that she had been regularly attending sessions since October 2023, and that he was impressed with her progress. *Id.* at 21. In addition to the EAP sessions, the Individual submitted a letter from a different provider that stated that she had been attending counseling sessions with a therapist every two weeks beginning in December 2023. *Id.* at 22.

Finally, the Individual submitted a psychological evaluation completed in October 2023 by her own clinical psychologist. Ex. A at 23. The Individual's clinical psychologist diagnosed her with Alcohol Use Disorder (AUD), mild, in early remission. *Id.* at 26. The Individual also presented eight statements from family members and colleagues speaking to her integrity and professionalism. Ex. B. She included her work performance evaluations from 2018 to 2022. Ex. C.

The Individual's aunt testified that the Individual's extended family is extremely close and spends a lot of time together. Tr. at 14–15. She explained that the family has weekly gatherings at the grandmother's house to play games and do puzzles. *Id.* When the Individual's security clearance was suspended, she called and asked if she could speak with her aunts, uncles, and grandmother all together and told them about the suspension in person. *Id.* at 16. Everyone immediately asked what the Individual needed to do to get her clearance back and wanted to know what they could all do to support her in taking those steps. *Id.* The large family gatherings do not include alcohol as a sign of respect for the grandmother, who is a recovering alcoholic. *Id.* at 18, 33. She also explained that the Individual told the family about her counseling and the other steps she was taking in order to show DOE that she was taking the concerns seriously. *Id.* at 24–25. The aunt believes that this process has taught the Individual to ask for more support if she needs it. *Id.* at 26.

The aunt explained that the Individual took legal custody of her younger brother right after she completed college. *Id.* at 21. The aunt testified that being her brother's legal guardian

⁴ The Individual was told that she could do a test in December 2023 through her IOP, but the IOP was unable to provide the testing, so she did not complete a PEth test in December 2023. Tr. at 155–56.

forced the Individual to take on a lot of responsibilities at a young age. *Id.* at 21–22. She believes that since starting treatment, the Individual has figured out how to take care of herself after spending a long time focused on taking care of everyone around her. *Id.* at 36.

The Individual’s supervisor has known her since she was a child and hired her to work in his group in 2018, supervising her from about 2019 to 2023. *Id.* at 41–42, 54. He does not recall any issues with her co-workers but thinks someone might possibly have taken offense to her somewhat “stern” approach. *Id.* at 54–55. Based on his experience working with her, he feels confident that she can be trusted to handle sensitive national security information. *Id.* at 52–53.

The Individual’s former co-worker testified that when she and the Individual interacted socially on work trips, the Individual’s consumption of alcohol was appropriate. *Id.* at 63. She also stated, based on her experience working with the Individual, she did not have any concerns about the Individual getting her security clearance back. *Id.* at 67–68.

The Individual’s group leader stated that he was not the Individual’s direct supervisor, but he regularly reviewed her work. *Id.* at 73. He also testified that he has never had any issues where the Individual was involved in the mishandling of classified information. *Id.* at 74. Further, he does recall seeing the Individual drinking on work trips, “but not more than anyone else was in – given the situation.” *Id.* at 77.

The Individual’s EAP counselor began having sessions with the Individual in October 2023. *Id.* at 91–92. He testified that they have had three sessions since then, where they focused on childhood trauma and anxiety and, to a degree, how that related to her alcohol use. *Id.* at 94, 96. The EAP counselor feels that they are making “significant inroads and progress” related to those issues. *Id.* Specifically, he believes they are working on “making sounder decisions about her emotional wellbeing and how to work that out, not medicate that [with alcohol].” *Id.* at 104. He also stated that he thinks the support system provided by the Individual’s extended family has been important to her progress and continues to be a great resource for her. *Id.* at 99–100. He plans to continue seeing the Individual as long as she has sessions available under the EAP program and will help her to find a referral when they run out of sessions. *Id.* at 101.

The Individual testified that she has not consumed any alcohol since her security clearance was suspended in September 2024 and intends to continue abstaining from alcohol. *Id.* at 128, 160, 177. She stated that in late February 2024 she completed a twelve-week IOP that consisted of three group sessions and one individual session a week. *Id.* at 145. Every session began with a breathalyzer test, and the Individual tested negative at all of the sessions. *Id.* at 148. She feels that the program helped her learn better coping mechanisms for dealing with life and emotions and how those issues related to substance abuse. *Id.* at 147. She testified that she is signed up to begin an aftercare program that meets monthly with the option for more sessions beginning in April 2024. *Id.* at 152. The aftercare program was not available immediately after she completed her IOP, but she committed to attending as soon as it was available. *Id.* at 153.

The Individual further testified that in addition to her EAP sessions, she has been seeing a therapist since the beginning of December 2023. *Id.* at 116. At first, they met every week, and now, by mutual decision, they meet every other week. *Id.* at 117–18. The therapist has helped her learn coping methods to deal with anxiety, like breathing exercises and reframing. *Id.* at 180. The Individual testified that she decided that she wanted to make sure her counseling was helpful to her healing and growth in addition to addressing DOE’s concerns. *Id.* at 162. She feels that regardless of what happens in the hearing, the treatments she has undergone since her clearance was suspended have had “a significant impact on [her] life.” The Individual admitted that she had an issue with alcohol in the past. *Id.* at 171.

After being present for the entire hearing, the DOE Psychologist testified that he believed that the Individual had displayed adequate evidence of rehabilitation and reformation. *Id.* at 200. He explained that because the Individual completed her IOP, is continuing with aftercare, and has “recogniz[ed] the relationship between alcohol, anxiety, and [] trauma,” she is in a good place. *Id.* He opined that “she really comes across with a real commitment to recognizing how this was interfering with what she wanted to be and succeed in life.” *Id.* at 201. The DOE Psychologist stated that her prognosis regarding both substance abuse and anxiety were positive. *Id.* at 202. He also believed that she is a low risk for relapse regarding alcohol misuse and a low risk of being unable to deal with her anxiety. *Id.* at 202–03. The DOE Psychologist also testified that the Individual has met the mitigation requirements proposed in his report. *Id.* at 203–04. And that she was rehabilitated and reformed. *Id.* at 201.

The Individual’s clinical psychologist testified the Individual has “embraced her treatment” and “benefited from it tremendously.” *Id.* at 208. She would describe the Individual’s prognosis as “excellent.” *Id.* at 209.

V. ANALYSIS

A. Guideline G

Conditions that could mitigate security concerns under Guideline G include:

(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

Adjudicative Guidelines at ¶ 23(b)–(c).

The Individual testified that she had a problem with alcohol prior to her attendance at the IOP. She provided testimony from her EAP counselor that she was making significant progress. The Individual also submitted documentation from her completed IOP and five negative PETH tests. The DOE Psychologist testified that the Individual completed the mitigation requirements made in his report. He opined that she was rehabilitated and reformed. Therefore, I find that the Individual has mitigated the Guideline G concern pursuant to mitigating factor b. *Id.* at ¶ 23(b).

The Individual provided documentation and significant testimony that showed that she had completed an IOP recommended by the DOE Psychologist and is signed up to begin attending aftercare as soon as it is available to her. She is also regularly seeing her EAP counselor and a therapist to provide further support in her recovery. Her providers have indicated, in both written and hearing testimony, that she is making good progress in her treatment. Further, the Individual has no previous history of treatment and relapse. Therefore, I find that she has mitigated the Guideline G concern pursuant to mitigating factor c. *Id.* at ¶ 23(c).

Accordingly, I find that the mitigating conditions have been satisfied, and that the Individual has resolved the security concerns asserted by the LSO under Guideline G.

B. Guideline I

Conditions that could mitigate concerns under Guideline I include:

- (b) The individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) Recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

Adjudicative Guidelines at ¶ 29(b)–(c).

The Individual has been attending therapy sessions related to her childhood, trauma, and other concerns since October of 2023. During that time, she has also been attending sessions with her EAP counselor to help deal with her alcohol use and anxiety. As she testified, she voluntarily began seeing these providers because she believed doing so would help her to address DOE's Guideline I concerns. Both the therapist and EAP counselor gave the Individual a favorable prognosis regarding her anxiety. Therefore, she has mitigated the Guideline I concern pursuant to mitigating factor b. *Id.* at ¶ 29(b).

Further, the DOE Psychologist testified that, in his view, the Individual was addressing her GAD well and that that particular condition was "stabilized." He felt that her prognosis

was positive and that there was “low risk” of that part of her condition deteriorating. As such, the Individual has also mitigated this concern pursuant to mitigating factor c. *Id.* at ¶ 29(c).

Accordingly, I find that the mitigating conditions have been satisfied, and that the Individual has resolved the security concerns asserted by the LSO under Guideline I.

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 and Guideline I 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 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 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