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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: December 12, 2023) Case No.: PSH-24-0033
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Issued: May 8, 2024

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position that requires a security clearance. Derogatory information was discovered regarding the Individual’s alcohol consumption. The Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility to continue holding a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of four witnesses—a former supervisor, his counselor, his wife and his Alcoholics Anonymous (AA) sponsor—and testified on his own behalf. The LSO presented the testimony of the DOE psychologist who had evaluated the Individual. *See* Transcript of Hearing, OHA Case No. PSH-24-0033 (hereinafter cited as “Tr.”). The LSO submitted twelve exhibits, marked as Exhibits 1 through 12 (hereinafter cited as “Ex.”). The Individual submitted twenty-one exhibits, marked as Exhibits A through U.

¹ Under the regulations, “[a]ccess authorization’ means 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). Such authorization will also be referred to in this Decision as a security clearance.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline G of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. 10 C.F.R. § 710.7.

Guideline G states 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) Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder;
- (b) Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder;
- (c) Habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;
- (d) Diagnosis by a duly qualified medical or mental health professional (*e.g.*, physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;
- (e) The failure to follow treatment advice once diagnosed;
- (f) Alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder; and
- (g) Failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Id. at ¶ 22.

The LSO alleges that:

1. A DOE-contractor Psychologist concluded that the Individual habitually binge drank to the extent that it could impair his judgment and that the Individual was not reformed or rehabilitated.

2. Prior to June 3, 2023, the Individual consumed four to six beers or mixed drinks over a three- to four-hour period on two weekends every other month.
3. On June 3, 2023, the Individual was arrested and charged with Boating Under the Influence (BUI) and Violation of Navigation Light Law, had a breath alcohol content of 0.163, and admitted to consuming eight to ten alcohol beverages prior to his arrest.
4. In June 2004, the Individual was charged with Violation of the Open Container Law and admitted that he was holding and had consumed some of a cup of light beer when the police arrived.

Accordingly, the LSO's security concerns under Guideline G are justified.

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 entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. 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 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.* § 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

In 2004, the Individual was sitting in traffic on vacation with his friends when police approached the vehicle. Ex. 4 at 3. He was holding a cup of light beer from which he had taken four to five

sips. *Id.* The Individual passed a field sobriety test and was charged with Violating the Open Container Law. *Id.*

On June 3, 2023, the Individual and his then-fiancé (now wife) loaded his boat into a lake and rode to various spots in the lake while consuming alcohol with friends. Ex. 4 at 3. They stopped at a marina restaurant and ate before returning to the boat. Ex. 9 at 1. The boat's navigation light was not working when the Individual arrived at the boat ramp. Ex. 5 at 1. The law enforcement agency with jurisdiction over boating stopped the Individual and administered a field sobriety test, which the Individual failed. *Id.* The Individual was arrested and cited for BUI and for Violation of Navigation Light Law. *Id.*; Ex. 1 at 1. At the time, the Individual admitted to having consumed two beers, but he later admitted in his response to a Letter of Interrogatory from the LSO that from noon to around 9:00 p.m. that day, he consumed eight to ten alcoholic drinks. Ex. 5 at 1; Ex. 9 at 1. At the time of his arrest, the Individual's breath alcohol content was .16. Ex. 5 at 1.

The LSO referred the Individual to a DOE-contractor psychologist (the Psychologist) for a substance abuse evaluation, which was performed at the end of August 2023. Ex. 10 at 3. The Individual reported to the Psychologist that he had completed alcohol and drug assessments in 2021 and 2023 subsequent to legal involvement and that he had completed an online BUI education course and twenty hours of AA meetings. *Id.* at 5. The Individual also reported that, prior to the 2023 BUI, he consumed alcohol two weekends per month and had four to six drinks on each occasion. *Id.* The Psychologist noted that the Individual would likely have consumed alcohol every weekend if he did not have his children every other weekend. *Id.* She further noted that the Individual had been abstinent from alcohol for nearly three months at the time of his evaluation, which was supported by the results of a Phosphatidylethanol (PEth) blood test that indicated the Individual had not consumed alcohol in the preceding four weeks. *Id.* at 5, 12. The Individual told the Psychologist that he had abstained from alcohol since June 8, 2023, because the Human Reliability Program doctor at his workplace told him that "it would be in his best interest not to drink for the time being." *Id.* at 5. He also stated that he was not interested in consuming alcohol in the future. *Id.*

The Psychologist issued a report based on the Individual's evaluation in which she opined that prior to the recent BUI incident, the Individual habitually binge drank twice per month and that the Individual was not yet rehabilitated or reformed. Ex. 9 at 7. She listed the following recommendations for the Individual to show rehabilitation:

- Six months or more of abstinence;
- At least one PEth test over a six-month period; and
- Documented once weekly participation in AA or a comparable program such as SMART or Motivation-Enhanced Therapy.

Id.

At the hearing, the Individual presented the testimony of his former supervisor. The Individual's supervisor had known him for about six months in a professional capacity. Tr. at 24, 33. She testified that she paid close attention to the Individual and that she had not seen any fitness for

duty concerns from the Individual. *Id.* at 29–30. She had never smelled alcohol on the Individual or seen evidence that he was under the influence of alcohol while at work. *Id.* at 29. She testified that the only reason he had ever asked to change his schedule was when he needed to accommodate an AA meeting. *Id.* at 25. She believed the Individual had learned his lesson and would not operate a vehicle while under the influence of alcohol in the future. *Id.* at 31.

The Individual had met with his counselor three times. Tr. at 55. His counselor evaluated him in March 2024. *Id.* at 42. She performed a substance abuse assessment of the Individual. She had also reviewed the Psychologist's report. *Id.* at 43–44. She testified that the Individual was at low risk for substance abuse disorder and that negative drug testing and regular AA attendance would bolster that opinion. *Id.* at 45–46. She further testified that the Individual's wife was a strong support system. *Id.* at 47. She also testified that the Individual told her that he did not intend to drink anymore. *Id.* at 52. She believed there was no risk of the Individual doing anything to jeopardize his security clearance in the future. *Id.* at 64. She also believed that the Individual was rehabilitated. *Id.* at 67. The counselor testified that the Individual could likely consume moderate amounts of alcohol in the future. *Id.* at 68.

The Individual's wife testified that they met in 2019. Tr. at 75. She attended AA with the Individual except when she needed to watch the children. *Id.* at 76. She testified that since the Individual's BUI, he had consumed two or three drinks while camping over the weekend of July 7, 2023,² three glasses of champagne at their wedding in October 2023, and three or four beers at the wife's mother's birthday in November 2023. *Id.* at 80. The Individual drove later in the day on the day of their wedding, but a significant amount of time had passed since he consumed alcohol. *Id.* at 82–83. The wife testified that the Individual had not consumed alcohol since November 17, 2023, and she believed he intended to abstain from alcohol in the future. *Id.* at 84, 86. She testified that she and the Individual had a plan in place to remain abstinent when they feel pressured to consume alcohol. *Id.* at 85. If they felt pressured, they would simply leave. *Id.* at 99. The wife testified that their friends still consumed alcohol in front of the Individual but were supportive of his sobriety. *Id.* at 108–09. The Individual's wife testified that the Individual had told her he does not believe he has an alcohol problem. *Id.* at 104. The wife also did not believe the Individual had an alcohol problem. *Id.* at 103. However, she added, at AA meetings, he would introduce himself as an alcoholic. *Id.* at 104.

The Individual's AA sponsor testified that the Individual was working the 12 Steps sincerely and diligently. Tr. at 119–20, 123. He met the Individual in the summer of 2023. *Id.* at 117. They talked or saw each other at AA meetings about once a week. *Id.* at 122. He testified that the Individual could reach out to him at any time of day or night. *Id.* at 125. He testified that the Individual had told him he did not intend to drink in the future. *Id.* at 131. He testified that he would not continue sponsoring the Individual if the Individual said he did not believe he had an alcohol problem and that he would be concerned if the Individual's wife did not believe he had an alcohol problem. *Id.* at 132–33.

The Individual testified that he had not consumed alcohol since November 17, 2023. *Id.* at 153. In support, he submitted into evidence two PEth tests with negative results covering the period from

² The Psychologist's report states that the Individual said that this incident happened on June 8, 2023, not in July. Ex. 10 at 4–5.

about January 9, 2024, through the hearing date. Ex. F; Ex. S. He also submitted into evidence the negative result of a January 9, 2024, blood test for Ethyl Alcohol, which measures the amount of alcohol in the blood to determine levels of intoxication.³ Ex. E. The Individual testified that he did not plan to drink in the future because alcohol had caused serious problems in his life “from one simple mistake.” Tr. at 145. When asked what the problems were, he testified that since his security clearance was suspended, he had refinanced his home and taken about \$60,000 out of his 401(k) retirement account to keep up with his expenses. *Id.* at 147.

The Individual testified that he identifies as an alcoholic in AA meetings because otherwise “they’re just not going to listen to you.” Tr. at 148. The Individual testified that in AA he had learned a lot about himself and his limits and that finding hobbies or something to do helped him stay away from alcohol. *Id.* at 148, 163. He testified that he had attended about two AA meetings per week since July 2023. *Id.* at 149–50. The Individual testified that he found his counseling sessions beneficial because “[i]t’s nice to have somebody to talk to.” *Id.* at 148. He intended to continue counseling in the future. *Id.* at 148–49. He stated that his counselor had tools he could use to vent about different stressors in his life. *Id.* at 168. As of the hearing, he did not have any future appointments scheduled with her. *Id.* He also completed a sixteen-hour alcohol education course on July 18, 2023, which had been recommended by the Human Reliability Program doctor at his workplace. *Id.* at 153; Ex. R.

When asked if he had a problem with alcohol, the Individual testified, “I would say I do have a problem, or I have had a problem.” Tr. at 156. He testified that he read the Psychologist’s report recommending abstinence in October 2023, but relapsed when he consumed alcohol in November. *Id.* at 161–62. He testified that he considered drinking any amount of alcohol to be a relapse. *Id.* at 162. He testified that he began taking his sobriety seriously when he learned in mid-November 2023 that his security clearance would be suspended. *Id.* at 191. He further testified that he believed he could control his drinking in the future if he wanted to but was not interested in future alcohol consumption. *Id.* at 178–79. When reminded that he expressed the same belief to the Psychologist in August 2023, he testified that he felt pressured to drink at his wedding and with his mother-in-law because he wanted to make others happy. *Id.* at 179–80. He added again that he is no longer interested in alcohol. *Id.* at 180.

The Individual testified that peer pressure, large social gatherings, and stress are alcohol triggers. *Id.* at 164–65. To cope with the triggers, his first step was to call his wife or, if she was unavailable, his sponsor. *Id.* at 165. He testified that he stayed away from situations where he might encounter peer pressure. *Id.* However, he further testified that he could attend large gatherings and not consume alcohol because he put himself “in that mindset.” *Id.* at 166–67.

The Psychologist testified that the Individual was not reformed or rehabilitated. Tr. at 206. She testified that she had recommended six months of abstinence and that the Individual was just short of five months of abstinence. *Id.* She testified that the Individual demonstrated that he was working toward rehabilitation by getting a sponsor, working the 12 Steps, and undergoing PEth testing. *Id.* at 206–07. She was troubled by the wife’s testimony—that neither she nor the Individual had an alcohol problem—because they had been going to AA together, despite acknowledging that having

³ ALC – Overview: Ethanol, Blood, Mayo Clinic Laboratories, <https://www.mayocliniclabs.com/test-catalog/overview/8264#Overview> (last visited May 5, 2024).

a problem with alcohol was a requirement of the program—and his wife was his main source of support. *Id.* at 207–08. The Psychologist testified that she would update the Individual’s diagnosis to Alcohol Use Disorder, mild severity, in early remission based on the Individual’s difficulty in remaining abstinent after his initial attempts to stop drinking. *Id.* at 209–10. She gave him a moderate prognosis for remaining abstinent. *Id.* at 216. She believed that the Individual now understands that he needs to abstain from alcohol but also believed the Individual’s treatment efforts were still relatively superficial. *Id.* at 216–17.

V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a commonsense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO’s security concerns have been mitigated such that restoring the Individual’s clearance is not an unacceptable risk to national security.

Conditions that can mitigate 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; or
- (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. None of the mitigating conditions apply in this case.

Regarding condition (a), the BUI incident is relatively recent, occurring less than a year ago, and still casts doubt on the Individual's judgment, trustworthiness, and reliability. The Individual has not been in recovery long enough to mitigate that doubt. While the Individual's BUI is, when viewed narrowly, an isolated incident, the Individual has continued a pattern of poor judgment and reliability. Despite being advised to stop drinking multiple times over the course of 2023, he continued to consume multiple drinks on more than one occasion throughout the year. He also testified that he did not take this process seriously until his clearance was suspended. These are examples of issues with the Individual's judgment in assessing circumstances. The Individual's continued alcohol use through November 2023 is an example of issues with the Individual's reliability.

Regarding condition (b), the Individual stated at the hearing that he has a problem with alcohol, however, he has not taken significant steps to alleviate the problem. He attends AA twice weekly, completed an alcohol education class, and has been to three counseling sessions. AA is a support group, but it does not offer substance abuse treatment from a medical professional. While education is important, an alcohol education course is not intended to address the therapeutic bases for an alcohol problem. Though counseling is often used for substance abuse treatment, the Individual has only been to three sessions and does not have future sessions scheduled. The Individual has had multiple relapses while attending AA, which may indicate that he requires a higher level of treatment than just two meetings per week. While the Psychologist recommended only one AA meetings per week, she did not know that the Individual would relapse when making that recommendation. She also recommended monthly PEth testing as proof of abstinence, which the Individual did not begin until nearly two months after his last relapse. Even after relapsing, the Individual did not increase the number of meetings he attended weekly, which is consistent with the Individual's testimony that he did not take this process seriously until his clearance was suspended at the end of 2023. For these reasons, I cannot find that the majority of the Individual's treatment activities are able to help him successfully overcome his alcohol problem on their own. Moreover, his pattern of abstinence is not clear and established. He relapsed at least two times since initially abstaining from alcohol, and the PEth testing he underwent only covers a period of just under three months. I cannot find that this evidence is sufficient to prove abstinence for five months due to the Individual's history of relapse.

Regarding condition (c), the Individual's three counseling sessions and no future appointments are not enough to establish that the Individual is participating in counseling. As of the hearing, he has not had time to begin meaningful substance abuse treatment with his counselor and it is difficult to have confidence that he intends to continue with counseling without his having set up future appointments.

Regarding condition (d), the Individual has not attended a treatment program and has not, as previously stated for condition (b), demonstrated a clear and established pattern of abstinence at this time.

For the foregoing reasons, I cannot find that the Individual has mitigated the Guideline G security concerns.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for access authorization under Guideline G of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that restoring DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore access authorization to the Individual.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Kristin L. Martin
Administrative Judge
Office of Hearings and Appeals