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In the Matter of: Personnel Security Hearing )  
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Filing Date: January 18, 2024 ) Case No.: PSH-24-0050  
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Issued: May 8, 2024

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**Administrative Judge Decision**

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Noorassa A. Rahimzadeh, 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 be granted.

**I. Background**

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. As part of the clearance process, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in April 2023. Exhibit (Ex.) 10. In the QNSP, the Individual disclosed the fact that he was arrested for Driving While Intoxicated (DWI) in April 2023. *Id.* at 30–31. The Individual subsequently underwent an Enhanced Subject Interview (ESI), which was conducted by an investigator in May 2023. Ex. 11.

In July 2023, the Individual signed and submitted a Letter of Interrogatory (LOI) at the behest of the Local Security Office (LSO). Ex. 7. The LSO subsequently instructed the Individual to undergo a psychological evaluation conducted by a DOE-consultant psychologist (DOE Psychologist) in September 2023. Ex. 8. That same month, the DOE Psychologist issued a report (the Report), which indicated that he diagnosed the Individual with Alcohol Use Disorder (AUD), Mild, without adequate evidence of rehabilitation or reformation. *Id.* at 8.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization.

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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.

In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold 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 Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of five other witnesses. *See* Transcript of Hearing, Case No. PSH-24-0050 (hereinafter cited as "Tr."). He also submitted four exhibits, marked as Exhibit A through D. The DOE Counsel presented the testimony of one witness, the DOE Psychologist, and submitted eleven exhibits marked as Exhibits 1 through 11.

## II. Notification Letter

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline G of the Adjudicative Guidelines. Ex. 1. Under Guideline G, "[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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are "[a]lcohol-related incidents away from work, such as driving while under the influence, . . . regardless of frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder[.]" and "[d]iagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder[.]" *Id.* at ¶ 22(a), (d).

The LSO alleged that following a psychological evaluation in September 2023, the DOE Psychologist diagnosed the Individual with AUD, Mild, without adequate evidence of rehabilitation or reformation. Ex. 1 at 1. The LSO also alleged that the Individual was charged with DWI in April 2023, and that he had admitted to consuming "eight beers and two shots of liquor prior to the arrest." *Id.*

## 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 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.* § 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 and Hearing Testimony

On the day of the April 2023 DWI, the Individual consumed his first alcoholic beverage around noon, about an hour prior to meeting a friend for drinks. Ex. 7 at 1. He proceeded to spend four-and-a-half hours at a bar with his friend, and during that time, he consumed approximately six to eight beers and two shots of alcohol.<sup>2</sup> Ex. 11 at 56; Ex. 7 at 1, 9. The friends decided to go to a second location, and each drove his own car to get there. Ex. 11 at 56; Ex. 7 at 1. On his way to the second location, the Individual decided to go home instead, and as he “turned down his residential street, he made the turn too fast[.]” Ex. 11 at 56; Ex. 7 at 1. As a result, he struck a curb, lost control of the car, and “ran into a . . . truck.” Ex. 11 at 56; Ex. 7 at 1. When law enforcement responded to the scene, the Individual was arrested after refusing to submit to a breath test or any field sobriety tests.<sup>3</sup> Ex. 11 at 56. At the time he was arrested, approximately one hour had elapsed since his last drink. Ex 7 at 2.

The Individual stated in his LOI that he had not consumed alcohol since the April 2023 incident. Ex. 7 at 6–7, 9. Prior to the April DWI arrest, he would “consume alcohol on Fridays and Saturdays[,] unless [he] needed to work the next day.” Ex. 7 at 7; Ex. 11 at 56; Ex. 8 at 3. His consumption typically consisted of six to eight light beers on weekends, and this pattern of consumption began in 2013.<sup>4</sup> Ex. 7 at 7; Ex. 8 at 3. He did, however, reduce his consumption when he was first employed by the contractor in March 2023, and the last time he consumed alcohol prior to the incident, he consumed “[a]pproximately [eight] beers in [seven] hours.” Ex. 7 at 7–9. The Individual stated in the LOI that at the time he was drinking, six light beers were sufficient for him to become intoxicated, and that in the period prior to the DWI, he would become intoxicated one to two times per week. *Id.* at 8, 10. He also indicated that he does not intend to consume alcohol in the future. *Id.* at 10.

The DOE Psychologist indicated in his Report that he was informed of the precipitating April 2023 DWI and the Individual’s history of alcohol consumption, and the Individual told him that since completing an Outpatient Treatment Program (IOP), he gained an understanding of how his alcohol consumption was not “normal.” Ex. 8 at 3–4. Previously, the Individual never believed

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<sup>2</sup> In total, the Individual consumed “approximately [ten] alcoholic beverages” prior to his arrest. Ex. 7 at 1, 7–8.

<sup>3</sup> Although the Individual had not yet been granted an access authorization, he reported the incident to the Security Office, causing his badge to be revoked. Tr. at 67; Ex. 6 at 1.

<sup>4</sup> The investigator’s report indicates that the Individual stated that would consume a twelve pack of beer every weekend. Ex. 11 at 56.

that his consumption was problematic and denied any previous attempts in “cut[ting] down on his drinking[.]” *Id.* at 4. He told the DOE Psychologist that his goal is “total abstinence.” *Id.* at 5. The Individual underwent a PEth test in conjunction with the evaluation, the results of which were negative. *Id.* at 6. The DOE Psychologist also consulted with the Individual’s one-on-one therapist, who indicated that the Individual previously “lacked insight into the consequences of his alcohol use[.]” and that he has had a “positive impact on his peers in the [IOP].” *Id.* at 7. He stated his belief to the DOE Psychologist that the Individual is sincere in his desire to remain abstinent. *Id.*

The DOE Psychologist concluded in his Report that the Individual suffers from AUD, Mild, in early remission. *Id.* The DOE Psychologist stated that for the Individual to show adequate evidence of rehabilitation or reformation, he recommends the Individual continue with aftercare for six months, attend a weekly Alcoholics Anonymous (AA) group, engage a sponsor, and remain abstinent for an additional six months and verify his abstinence with monthly PEth testing. *Id.* at 7–8.

In April 2023, the Individual engaged his current one-on-one therapist for a substance abuse evaluation and was subsequently referred to an IOP, which he started in June 2023. Ex. 11 at 56; Ex. 7 at 5; Tr. at 68. The Individual voluntarily completed an online DWI education program in May 2023. Ex. C; Tr. at 80–81. From July 2023 through April 2024, the Individual voluntarily submitted to ten monthly Phosphatidylethanol (PEth) tests, all of which were negative.<sup>5</sup> Ex. A; Ex. D; Tr. at 83–84. He completed the IOP in August 2023. Ex. B; Tr. at 68–69. He believes that the IOP allowed him to “identify the problem[.]” “develop[] a plan, identify[] triggers, and [come] up with ways to get out of situations that [he] should not put [himself] into.” Tr. at 70. Following the completion of the IOP, the Individual immediately started the aftercare program, which he continues to attend on Mondays. *Id.* at 68–69. He indicated that he intends to continue attending weekly aftercare in the future. *Id.* at 71. In December 2023, the Individual began regularly attending AA and recovery meetings at a church. *Id.* at 71–72. Although he continues to attend AA meetings every Thursday, he stopped attending the church recovery meetings after two months, as he felt greater camaraderie with AA attendees. *Id.* at 72–73. He intends to continue attending AA meetings in the future. *Id.* at 79. In January 2024, the Individual began biweekly one-on-one therapy, which became monthly sessions in March 2024. *Id.* at 79–80, 91.

The Individual’s mother, with whom the Individual resides, testified that the Individual feels that rehabilitating himself is a form of restitution, and that he has gained “insight as how the alcohol affects him[.]” Tr. at 18–21. She has no reason to believe that the Individual is consuming alcohol. *Id.* at 21–22, 25–26.

The Individual’s brother-in-law, who retrieved the Individual from the detention center following the arrest, testified that the Individual immediately began investigating ways to mitigate the situation. *Id.* at 53–56. Accordingly, the Individual began attending various “classes and groups,” and even passed on family vacations to attend these “classes and groups.” *Id.* at 56–57. They spent time together with their extended family through the holidays, and although others were drinking alcohol, the Individual refrained from consuming with the support of the family. *Id.* at 57–58.

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<sup>5</sup> PEth tests “can provide evidence of high alcohol consumption over approximately the three, possibly four, preceding weeks, depending on the individual.” Ex. 8 at 6.

The Individual's friend of decades testified that there were times when he felt that the Individual's alcohol consumption was "getting a little bit out of hand[.]" *Id.* at 28–29. The Individual told him that his arrest "was actually very good for him[.]" and the Individual has proceeded to "change everything about his life." *Id.* at 29–31. The Individual's friend believes that the Individual will not drink again, and he feels that the Individual exhibits good judgment and that he is reliable and trustworthy. *Id.* at 32–33.

The Individual's AA sponsor indicated that the Individual asked for his sponsorship months ago, and that he meets with his group of three sponsees every Saturday to discuss the AA "Big Book" and their current problems. *Id.* at 39–41. He also has one-on-one meetings with the Individual with varying frequency. *Id.* at 93–94. He speaks to his sponsees daily and stated that the Individual is on step four of the Twelve Steps. *Id.* at 41–42. He was happy with the Individual's participation in working the Twelve Steps, and stated that he "make[s his] sponsees journal" every day. *Id.* at 43. He is able to read through their journals to monitor any potential problems or issues. *Id.* He testified that although the Individual was initially shy about participating at AA chapter meetings, he "speaks freely now" and has even chaired some meetings. *Id.* at 43–44, 47.

The Individual's therapist,<sup>6</sup> who also conducts portions of the IOP and the weekly aftercare meetings, testified that the Individual has been an active participant in treatment. *Id.* at 96–98. He indicated that during the IOP exit interview, the Individual was able to demonstrate a good understanding of the education he received in the program, and that the Individual seems to be able to apply those lessons in his life. *Id.* at 100. He testified that he believes that the Individual "knows that if he returns to alcohol[,] then some very consistent patterns will probably reappear." *Id.* at 103. When asked about a prognosis, the therapist testified that the Individual has "exceeded expectations[.]" and that his prognosis is favorable. *Id.* at 106–07.

The DOE Psychologist testified that the Individual has proven "faithful to all of the [recommendations,]" and that the Individual "progressed quickly in terms of [] reformation." *Id.* He indicated that the Individual's "cooperation was high" and that "[h]is commitment was visible." *Id.* at 112–13. The DOE Psychologist confirmed that the Individual has shown adequate evidence of rehabilitation and reformation and concluded his testimony by indicating that the Individual's AUD is now in full remission. *Id.* at 114–15, 119.

## V. Analysis

The Adjudicative Guidelines provide that 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;

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<sup>6</sup> The therapist testified that he examined the DOE Psychologist's Report and agreed with his conclusions and recommendations. Tr. at 108–09.

- (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.

The Individual recognized the fact that his alcohol consumption was maladaptive following the April 2023 DWI, prompting him to immediately abstain from alcohol and engage an IOP. The record indicates that the Individual successfully completed the IOP prior to his evaluation with the DOE Psychologist, and that he began attending AA meetings and engaged an AA sponsor in December 2023. His ongoing abstinence is corroborated by ten months of negative PEth tests, and the Individual has remained active in aftercare since completing the IOP in August 2023. He is working through the Twelve Steps and regularly attends one-on-one therapy. The Individual also enjoys steadfast support from his family and fellow AA members. Importantly, the Individual's therapist indicated that his prognosis is good, and the DOE Psychologist testified that he has shown adequate evidence of rehabilitation or reformation and is now in full remission. The Individual's swift and thorough action to overcome his maladaptive alcohol consumption has provided me with enough confidence to conclude that he has successfully demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations. I conclude that he has mitigated the stated concerns pursuant to mitigating factor (b).

## **VI. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that he has brought forth sufficient evidence to resolve the concerns set forth in the SSC. Accordingly, the Individual has demonstrated that granting his security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh  
Administrative Judge  
Office of Hearings and Appeals