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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: January 18, 2024) Case No.: PSH-24-0048
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Issued: June 12, 2024

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an 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 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

On June 12, 2023, police arrested the Individual and charged him with Aggravated Assault (Use of A Deadly Weapon). Exhibit (Ex.) 7 at 3. The Individual admitted that he had consumed a pint of whisky about an hour before the incident. Ex. 6 at 2–3, 8; Ex. 7 at 3. The arresting officer reported that the Individual’s ex-girlfriend had alleged that the Individual had threatened to shoot her. Ex. 7 at 3.

After the Individual reported this incident to the Local Security Office (LSO), the LSO issued a Letter of Interrogatory (LOI) to the Individual. In his September 3, 2023, response to the LOI, the Individual claimed that he did not have a firearm on his person or in his vehicle at the time of the incident. Ex. 6 at 3–4. The Individual further reported that the state had dropped the Aggravated Assault (Use of A Deadly Weapon) charge against him. Ex. 6 at 4. The Individual further reported that he was “taking classes for my anger and also for my drinking.” Ex. 6 at 5. He also reported that he last used alcohol on June 12, 2023. Ex. 6 at 6, 8. He reported that he had started an alcohol treatment program on July 6, 2023, and an anger management program on July 11, 2023. Ex. 6 at 7.

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.

At the LSO's request, the Individual underwent a psychological evaluation by a DOE-contracted psychologist (the Psychologist). On October 6, 2023, the Psychologist conducted a clinical interview (CI) of the Individual. Ex. 8 at 2. In addition to interviewing the Individual, the Psychologist reviewed the Individual's personnel security file, administered the Minnesota Multiphasic Personality Inventory-Third Edition (MMPI) to the Individual, and had him undergo a Phosphatidylethanol (PEth) laboratory test to detect alcohol consumption. Ex. 8 at 2. The Individual's PEth test was negative, and his MMPI results did not indicate elevations on any clinical scales, except the validity scales which were slightly elevated. Ex. 8 at 6–7. The Psychologist issued a report of her findings (the Report) on October 23, 2023, in which she found that the Individual met the criteria for Alcohol Use Disorder (AUD), Severe, in early remission, set forth in the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition – Text Revision* (DSM-5-TR). Ex. 8 at 8.

The Psychologist noted that the Individual had taken several positive steps towards addressing his AUD. The Individual had begun treatment at an Intensive Outpatient Program (IOP) and was expected to graduate from the IOP on October 26, 2023. Ex. 8 at 5. The Psychologist further noted that she contacted the Individual's IOP therapist (Therapist) who reported that: the Individual's IOP attendance had been excellent, he had “displayed complete sobriety,” and every alcohol test administered to him during the IOP had been negative. Ex. 8 at 5. The Individual was also attending anger management meetings. Ex. 8 at 5. The Psychologist further noted that the Individual's PEth test was negative, which supported his claim that he had been abstaining from alcohol use. Ex. 8 at 7.

The Psychologist opined that, in order to show that he was reformed or rehabilitated, the Individual should: (1) abstain from using alcohol for one year; (2) continue working with a one-on-one substance abuse therapist; (3) continue working with his employer's employee assistance program (EAP); and (4) take monthly PEth tests. Ex. 8 at 8–9.

After receiving this information, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that it received derogatory information that created a substantial doubt regarding his eligibility to hold a security clearance and that he was entitled to a hearing before an Administrative Judge to resolve the security concerns. *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), I took testimony from the Individual, the Therapist, the IOP Group Leader (Group Leader), his supervisor, his mother and father, and the Psychologist. *See* Transcript of Hearing, Case No. PSH-24-0048 (hereinafter cited as “Tr.”). The DOE Counsel submitted ten exhibits, marked as Exhibits 1 through 10. The Individual submitted the following three exhibits, marked as Exhibits A through C.

Exhibit A consists of five laboratory test reports for PEth tests administered to the Individual on January 29, 2024, February 26, 2024, March 25, 2024, April 22, 2024, and May 20, 2024. Each of these five PEth tests was negative.

Exhibit B is a Certificate of Completion for the IOP dated October 26, 2023.

Exhibit C is a copy of the Group Leader's resume.

II. The Summary of Security Concerns (SSC)

The Summary of Security Concerns (SSC) attached to the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Under Guideline G, the LSO cites the Psychologist's conclusion that the Individual met sufficient criteria for a diagnosis of AUD, Severe, under the DSM-5-TR and the Individual's alcohol-related arrest.² This information adequately justifies the LSO's invocation of Guideline G. 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 "alcohol-related incidents away from work . . ." and "diagnosis by a duly qualified medical or mental health professional (e.g. . . . clinical psychologist . . .) of alcohol use disorder." Adjudicative Guidelines at ¶ 22(b), (d).

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 their 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. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Hearing Testimony

² The SSC does not allege that the Individual's alcohol-related arrest raised a security concern under Adjudicative Guideline J (Criminal Conduct).

At the hearing, the Individual's supervisor testified on his behalf. He testified that he has supervised the Individual for three years. Tr. at 15. He does not have contact with the Individual outside of work. Tr. at 15. The Supervisor described the Individual as "good attitude, good person, nice person, always professional, always nice to all of us." Tr. at 19.

At the hearing, the Individual's mother testified on his behalf. She testified that the Individual has been living with her and his father since January 2023. Tr. at 35. She has not observed him using alcohol since his arrest. Tr. at 36, 40. She observed that the Individual has abstained from alcohol use during family gatherings where others were consuming alcohol. Tr. at 38. She was present when the police searched the Individual's car at his former girlfriend's house on the night of the arrest. Tr. at 38, 43. They did not find any firearms. Tr. at 38. She testified that the Individual told her that he has learned his lesson and is going to refrain from using alcohol permanently. Tr. at 38–39. The Individual told her that his talks with his therapist have made "a big impact on his life." Tr. at 42.

The Individual's father testified on his behalf at the hearing. He has daily contact with the Individual, who has lived with him since January 2023. Tr. at 52. He testified that the Individual has not used alcohol since June 2023. Tr. at 53–54. He observed the police search of the Individual's car on June 12, 2023. Tr. at 56. He observed that the police did not find anything when they searched his son's car. Tr. at 56. The Individual told him he intends to permanently abstain from alcohol use. Tr. at 56.

The Group Leader testified on the Individual's behalf at the hearing. He testified that he is a "certified peer support worker." Tr. at 66. The Group Leader testified that he facilitated the group therapy sessions at the IOP that the Individual attended. Tr. at 67. He now facilitates the Individual's aftercare program group. Tr. at 68. He saw the Individual three times a week during the Individual's IOP. Tr. at 68. Now he sees the Individual weekly in the group and on a one-on-one basis once a month. Tr. at 68, 76–77. The Individual's IOP included a SMART Recovery component. Tr. at 69. He testified that the Individual consistently attended the IOP and that his participation was excellent. Tr. at 69. The Group Leader testified that the Individual showed a lot of initiative during the IOP. Tr. at 69. The Individual was administered a Breathalyzer test at least four times a week during the IOP. Tr. at 72. The Individual always tested negative. Tr. at 72. The Group Leader characterized the Individual's IOP participation as "very successful." Tr. at 73. He further opined that the Individual was honest and forthright and had followed the IOP's treatment recommendations. Tr. at 73. He believes the Individual has maintained a clear and established pattern of abstinence. Tr. at 74. The Individual has expressed an intention "to remain abstinent." Tr. at 74, 81. The Group Leader characterized the Individual's prognosis as "very favorable." Tr. at 74, 82. He noted that the Individual's family provides him with a good support network. Tr. at 80.

The Therapist testified at the hearing on the Individual's behalf. She has worked at the IOP for over seventeen years. Tr. at 111–12. She testified that she is a licensed alcohol and drug abuse counselor and a senior certified prevention specialist. Tr. at 112. She is now the assistant director of the IOP. Tr. at 112. The Therapist provided the Individual with individual counseling while he was enrolled in the IOP. Tr. at 113. She began working with him in July 2023 and met with him weekly. Tr. at 113. The IOP included 17.5 hours a week of treatment. Tr. at 113. The Individual

was breath tested every time he came to the IOP, usually four times a week, and he always tested negative. Tr. at 115. When asked to describe the Individual's progress in his treatment, the Therapist testified:

It was very significant progress. He was very engaged and attentive. He was always very personable and working with his peers and with the facilitators. He was open and self-disclosed. He answered all the curriculum-based questions . . . He also encouraged others, because he has – he had a very open personality. He gave feedback concerning the sessions in groups. And I know at the end he was very grateful for the treatment, and he expressed that to staff. He didn't just go through the motions where oftentimes in this arena we have clients doing that. He was very engaged. Always – and also he never broke a rule.

Tr. at 115–116. She further testified that the Individual always appeared to be honest and forthright with her and followed instructions “to a T.” Tr. at 116. The Therapist further testified that the Individual completed the IOP. Tr. at 116–117. She further opined that the Individual “exhibits a clear pattern of abstinence, absolutely, and is still engaged in aftercare.” Tr. at 117. She also stated “[h]e's had a positive outlook on his sober life. He has said that he enjoys not drinking and the clarity that he has.” Tr. at 117. The Therapist opined that the Individual's prognosis is “very favorable.” Tr. at 117. She noted that the Individual was already abstaining from alcohol use when he began the IOP. Tr. at 119.

At the hearing, the Individual testified that, on the night of his arrest, the police had searched his car looking for a firearm and had found none. Tr. at 101. The criminal case was dismissed. Tr. at 101–102. He testified that he has not used alcohol since the night of the arrest. Tr. at 102. He started the IOP in July 2023, and completed it in October 2023. Tr. at 102–103. He testified that it has been easy for him to stop drinking and that he has not experienced any withdrawal symptoms or cravings for alcohol. Tr. at 104. During the IOP, he was Breathalyzer tested four times a week and “passed each test.” Tr. at 104. He has also passed each Breathalyzer test given to him in Aftercare. Tr. at 104. He testified that he intends to permanently abstain from alcohol use. Tr. at 104–105. The Individual further testified: “Through my therapy what I've learned is just how to cope with life's problems in a healthy way.” Tr. at 105. The Individual testified that his last use of alcohol occurred on June 12, 2023. Tr. at 122. When asked why he stopped drinking, the Individual stated, “because keeping my job and getting my clearance back are more important to me than drinking alcohol.” Tr. at 122. He further noted: “[w]hen I drank, I usually used poor judgment, and it would cause a lot of things. So obviously, now that I'm not on it, I can actually think clearly, I can do better decisions and do better for myself and my future.” Tr. at 122. The Individual testified that he has learned to engage in healthy outlets such as exercise, relaxation techniques, spending time with friends and family, and talking about his emotions and conflicts. Tr. at 125–128. The Individual has become involved with the SMART Recovery Program. Tr. at 136–137. The Individual testified that alcohol has interfered with the realization of his goals and his relationships with his family and friends. Tr. at 138, 140–141. He testified that abstaining from alcohol use has left him healthier, in a better mental state, with more self-respect, and in a better financial position. Tr. at 141–142.

The Psychologist testified after observing the other witnesses' testimony. The Psychologist testified that the Individual has fully complied with her treatment recommendations. Tr. at 155–

156, 160. She opined that the Individual's AUD is now in "Full Remission." Tr. at 156. When asked to supply a prognosis for the Individual, she stated: "he seems to have a lot of insight and enough to where I think my prognosis would be favorable in terms that he would be less likely to make kind of poor judgments should he ever choose to have a drink, but in general I think he's got a good prognosis of sobriety." Tr. at 156–157. She opined that his risk of relapse is "low." Tr. at 158. She further opined that the Individual "seems to have gone through reformation as well as rehabilitation." Tr. at 159. She also agreed that he has demonstrated a clear and established pattern of abstinence. Tr. at 159–160.

V. Analysis

The Individual claims, and the record supports, that at the time of the hearing, he had abstained from alcohol use for a year. Therefore, he has clearly established a pattern of abstinence. In addition, the Individual has fully complied with the Psychologist's treatment recommendations. Those recommendations included his attendance at and completion of an alcohol treatment program. Testimony from the Group Leader and the Therapist from that program indicates that the Individual was highly engaged in that program and completed it in a highly satisfactory manner. The Individual's hearing testimony has convinced me that he fully understands the effect that alcohol has had on his life, the threat it poses to his future, and the importance of maintaining his sobriety. Most importantly, the Individual's testimony, and that of the other witnesses at the hearing, have convinced me that the Individual is fully committed to maintaining his sobriety and permanently abstaining from alcohol use.

The Adjudicative Guidelines set forth four conditions that may mitigate security concerns under Guideline G. Each of the four mitigating conditions is present in the instant case. First, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if they can show "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." Adjudicative Guidelines at ¶ 23(a). In the present case, the Individual has taken the positive steps discussed above to ensure that his problematic alcohol use is unlikely to recur. Moreover, the manner in which the Individual has forthrightly addressed his AUD has demonstrated his current reliability, trustworthiness, and good judgment. Accordingly, I find that the Individual has satisfied the mitigating condition set forth at ¶ 23(a).

Second, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if "[t]he 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." Adjudicative Guidelines at ¶ 23(b). In the present case, the Individual has fully acknowledged the extent of his alcohol problem, has taken the appropriate actions taken to overcome this problem, and has demonstrated a clear and established pattern of abstinence. Accordingly, I find that the Individual has satisfied the mitigating condition set forth at ¶ 23(b).

Third, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if "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.” Adjudicative Guidelines at ¶ 23(c). In the present case, the Individual has been participating in the IOP, individual substance abuse counseling, SMART Recovery meetings, and Aftercare. Moreover, the record shows that these programs have been highly effective since the Individual has been abstaining from alcohol use for a year and intends to continue doing so. Accordingly, I find the Individual has satisfied the mitigating condition set forth at ¶ 23(c).

Finally, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if “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(d). In the present case, as noted above, the Individual has successfully attended an IOP and is continuing in Aftercare. Moreover, he has clearly established a pattern of abstinence from alcohol through his credible testimony, a series of negative Breathalyzer tests, and six negative PEth tests. Accordingly, I find that the Individual has satisfied the mitigating condition set forth at ¶ 23(d).

I therefore find that the Individual has resolved the security concerns raised under Guideline J by his AUD diagnosis and alcohol-related arrest by establishing the presence of all four mitigating conditions set forth at Guideline G.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G. After considering all the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has resolved each of the security concerns raised under Guideline G. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, the Individual’s security clearance should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals