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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: February 29, 2024) Case No.: PSH-24-0073
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Issued: June 14, 2024

Administrative Judge Decision

Brenda B. Balzon, 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 granted.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In May 2023, as part of the security clearance application process, the Individual completed a Questionnaire for National Security Positions (QNSP), and in July 2023, he underwent an Enhanced Subject Interview (ESI) conducted by an investigator. Exhibit (Ex.) 10 at 129, 135.² During the ESI, the Individual disclosed that in February 2010, he had voluntarily

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.

² The exhibits submitted by the DOE were Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to exhibits submitted by DOE.

sought counseling due to his alcohol use.³ *Id.* at 136. The Local Security Office (LSO) issued the Individual a Letter of Interrogatory (LOI), concerning his alcohol consumption, which the Individual completed in September 2023. Ex. 7. In the September 2023 LOI, the Individual stated that in 2011, his alcohol consumption increased and consisted of binge drinking. *Id.* at 36. He reported that during 2011, he consumed alcohol two to four times per month, during which he consumed from fifteen to twenty-four beers in addition to one to two whiskey drinks. *Id.* He also stated that in 2011, he was using alcohol as a “stress outlet” from his job in the military and to escape marital problems. *Id.* at 36, 40. The Individual reported that he voluntarily referred himself to a military substance abuse program and underwent an initial consultation in July 2011, after which he entered inpatient treatment for six days. *Id.* at 40–42. The Individual reported that during inpatient treatment, he was diagnosed with Alcohol Dependency and depression. *Id.* at 42. The Individual further reported that between 2014–2023, he drank eight to twelve beers on weekends, two to three times monthly. *Id.* at 36. He stated that he last consumed alcohol on January 28, 2023. *Id.* The Individual stated that he decided to cease alcohol use to get his physical health back in order. *Id.* at 35. He explained that after retiring from the military in May 2022, he had gained weight, was having abdominal problems, and medical tests showed an enlarged and fatty liver. *Id.*

In October 2023, the Individual completed a second LOI. Ex. 6. In the October 2023 LOI, he stated that he also underwent depression treatment as part of his alcohol inpatient treatment in August 2011. *Id.* at 28. He stated he was previously prescribed an antidepressant in 2010–2012 and 2021–2022 to help with his irritability and mood, and subsequently stopped taking the antidepressant after he spoke with his doctor who determined he no longer needed medication. *Id.* at 29.

In November 2023, the Individual was evaluated by a DOE consultant psychologist (DOE Psychologist), who diagnosed the Individual with Alcohol Use Disorder (AUD), Moderate, in early remission. Ex. 8 at 54.

The LSO informed the Individual in a Notification Letter that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. In the Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the DOE Counsel submitted ten numbered exhibits (Ex. 1–10) into the record and presented the testimony of the DOE Psychologist. The Individual submitted four lettered exhibits (Ex. A–D) into the record, and presented the testimony of two witnesses, including himself. *See* Transcript of Hearing, Case No. PSH-24-0073 (hereinafter cited as “Tr.”).

³ The Individual stated that he had previously reported his alcohol counseling in a 2019 QNSP, and believed he had reported it in his May 2023 QNSP. Ex. 10 at 136. A copy of his February 2019 QNSP reflects that the Individual had previously reported his alcohol counseling in his February 2019 QNSP. Ex. 10 at 209; *see* Ex. 5 at 24 (DOE Case Evaluation confirming the Individual reported his prior alcohol counseling as part of his prior security clearance reinvestigation when he held a security clearance through the Department of Defense).

II. Notification Letter and Associated Security Concerns

The LSO cited Guideline G (Alcohol Consumption) as the basis for its concerns regarding the Individual's eligibility for access authorization. Ex. 1 at 5. "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. The SSC cited: the DOE Psychologist's determination that the Individual met sufficient *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)* criteria for a diagnosis of AUD, Moderate, the Individual's diagnosis of Alcohol Dependence in July 2011 while attending alcohol treatment, and the Individual's admission that he consumed alcohol consistent with binge drinking in 2011 to 2012. Ex. 1 at 5. The LSO's assertions in the SSC justify its invocation of Guideline G.

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 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

As stated above, the Individual underwent an evaluation with the DOE Psychologist in November 2023. Ex. 8. He told the DOE Psychologist that regarding his alcohol treatment in 2011, he completed medical detox, however, while the inpatient program was intended to be completed in twenty-eight days, his request to discharge after six days was granted. *Id.* The Individual told the DOE Psychologist that his alcohol problem was not as severe as the problems that the other patients had, and he stated that it was difficult for him to be around them. *Id.* He reported that he subsequently resumed alcohol consumption but stated that from 2011 to 2014 he drank alcohol less frequently and had stopped consuming liquor. *Id.* at 51. The Individual told the DOE

Psychologist that beginning in 2014 until January 2023, his alcohol consumption increased. *Id.* He reported consuming beer most weekends and drank “8–12 beers per sitting over the course of the weekend” *Id.*

The Individual told the DOE Psychologist that he last consumed alcohol on January 28, 2023. *Id.* at 50. At the request of the DOE Psychologist, the Individual provided a sample for a Phosphatidylethanol (PEth) test. *Id.* at 60. The Individual’s PEth test was negative for traces of alcohol consumption. *Id.* The DOE Psychologist stated in her report (Report) that the Individual’s negative PEth result was consistent with his report that he had remained abstinent from alcohol. *Id.* at 50. She stated that while his PEth result “was only reflective of his alcohol use (or lack thereof) in the month prior to the evaluation, the negative results indicate some integrity, trustworthiness, and reliability on [the Individual’s] part.” *Id.* The DOE Psychologist stated that the Individual did not believe his pattern of drinking was concerning or excessive, as he believed his drinking pattern from 2014 to 2023 was “controlled and not problematic.” *Id.* at 51. She noted that he only became motivated to view his alcohol use as potentially problematic when he received objective evidence of liver malfunction. *Id.*

Ultimately, the DOE Psychologist concluded that the Individual met sufficient *DSM-5* diagnostic criteria for AUD, Moderate, in early remission and had not demonstrated adequate evidence of rehabilitation or reformation.⁴ *Id.* at 54. The DOE Psychologist recommended that to show rehabilitation or reformation, the Individual should maintain abstinence for at least eighteen months, undergo at least two PEth tests over an eighteen-month period, and participate at least once weekly in Alcoholics Anonymous (AA) or other “alternatives to AA such as SMART, Motivation-Enhanced Therapy, or 12-step Facility Therapy.” *Id.*

At the hearing, the Individual’s girlfriend testified that she has been living with the Individual since January 2023, and she sees him daily. Tr. at 11–12. She stated that to her knowledge, the Individual last consumed alcohol in January 2023. *Id.* at 12, 20. She testified that the Individual decided to stop consuming alcohol at that time because he wanted to make healthier life choices and he was worried because he had a cystic lesion on his liver. *Id.* at 12, 25. She testified that she is aware that the Individual attends an alcohol treatment group on a weekly basis through the Department of Veterans Affairs (VA). *Id.* at 16–17. She stated that the Individual has told her that the group participants have shared some similar life experiences, and she knows that the treatment group has a substance abuse focus. *Id.* at 17. The girlfriend also testified that the Individual has told her that he will never consume alcohol again. *Id.* at 14.

The girlfriend testified that although she drank alcohol socially in the past, she has stopped drinking alcohol since the Individual began abstaining from alcohol. *Id.* at 12–13. She also testified that she and the Individual do not keep any alcohol in their home. *Id.* at 18. The girlfriend testified that she does not believe that the Individual would resume alcohol consumption, but if he ever did start consuming alcohol again, she stated she would definitely question him about it, and they would discuss why and what they could do to address and resolve the problem. *Id.* at 23–24.

⁴ The DOE Psychologist also concluded that the Individual does not have an “emotional, mental, or personality condition or conditions that can impair judgment, stability, reliability or trustworthiness.” Ex. 8 at 54.

The Individual testified that he last consumed alcohol on January 28, 2023. *Id.* at 28. He stated that he had started to decrease his alcohol consumption in October 2022 because he noticed that after he retired from the military, he had gained weight, and was not feeling well. *Id.* at 28, 30. He then saw a doctor who did a CT scan on his abdomen and found damage to his liver. *Id.* at 28. The Individual's doctor recommended that he lose weight, avoid alcohol, and avoid Tylenol. *Id.* at 28–29; *see also* Ex. D at 2 (reflecting a letter from the Individual's doctor concerning his recommendations). The Individual then decided to start abstaining from alcohol, and subsequent evaluations showed improvement in his liver health. Tr. at 28; *see also* Ex. D at 1 (containing a December 11, 2023, letter from the Individual's doctor with an updated CT scan confirming improvement to his liver health).

The Individual admitted that when he underwent his psychological evaluation with the DOE Psychologist, he was not convinced that he had an alcohol problem. *Id.* at 40. However, he testified that “throughout this last sixteen months of sobriety, [he] ha[s] come to the realization that [he] ha[s] a toxic relationship with alcohol” and he admitted that he recognized that from 2016 and thereafter, he was binge drinking on weekends.⁵ *Id.* at 35–36. He stated after he achieved one year of abstinence in January 2024, he recognized that he had maintained sobriety despite going through some significant events when he would ordinarily have consumed alcohol, such as football season, vacations, and birthdays. *Id.* at 36–37. Moreover, he stated he also recognized that he has a “great life now” without drinking alcohol because he is able to continue doing the same pastime activities as he did previously, such as watching football, cooking on the grill, and doing woodworking projects or other tinkering in the garage, however, he does all of these activities without alcohol. *Id.* at 37–38, 60.

Regarding his sobriety treatment, the Individual submitted a letter from his Substance Use Disorder (SUD) psychologist at the VA dated May 8, 2024. Ex. B. His SUD psychologist stated that the Individual has a diagnosis of AUD, Moderate, in sustained remission and Posttraumatic Stress Disorder, chronic. *Id.* The SUD psychologist further stated that the Individual began participating in the outpatient SUD program (hereinafter “SUD group”) on April 9, 2024, where he participates in “weekly in-person sobriety-focused group psychotherapy.” *Id.* In the letter, the SUD psychologist also wrote that the Individual has “consistently met his attendance and participation obligations of the outpatient program” and has “indicated his intention to continue receiving SUD services through the VA.” *Id.*

The Individual testified that he has attended approximately five or six total SUD group meetings, and he continues to attend the SUD group every week. *Id.* at 47, 49. He testified that he did not join the SUD group until April 2024 because it was at that time that he realized, after obtaining more information about the administrative review process, the importance of engaging in substance abuse treatment to address the security concerns. *Id.* at 62–63. Additionally, he stated that he also sought SUD treatment at the VA because he was seeking positive reinforcement regarding his sobriety. *Id.* at 40. He explained that it was hard to have conversations with people who do not have similar experiences like him, and he found that it was reassuring to be in a

⁵ During different parts of his testimony, the Individual sometimes referred to his “sixteen months” of sobriety and at other times, he referred to “fifteen months” of sobriety. Tr. at 36, 42, and 56. The actual period of sobriety from January 28, 2023, through the hearing date is fifteen months and nineteen days, which is just a few days short of sixteen months. Accordingly, I do not find an inconsistency in the Individual's testimony.

treatment group where the participants, like him, suffer from an alcohol use disorder, and are all working on their sobriety. *Id.* at 40, 63.

The Individual stated that he chose to participate in treatment with the SUD group, as opposed to AA, because his previous AA experience while in the military was an extremely toxic environment. *Id.* at 45. He testified that he has been developing leads on AA groups, but he has not yet explored those AA groups because he is noticing that he is experiencing success through participating in his SUD group. *Id.*

The Individual stated that the SUD group is led by his SUD psychologist, all participants are sober and are veterans, and one of the main focal points of his treatment in the group is “maintaining resiliency through sobriety.” *Id.* at 39. He stated that it is similar to AA in that everyone introduces themselves at each meeting by acknowledging that they have a problem with alcohol, and they discuss their different experiences with alcohol and how they maintain sobriety. *Id.* at 61. The Individual testified that he introduces himself as an alcoholic at the SUD group meetings. *Id.* at 62. He also provided an example of a lesson he learned from his SUD group about spending time with people who are in his support system and pursuing new sober activities to prevent boredom that could be a potential trigger for alcohol consumption. *Id.* at 58. He also stated that he has found an additional sense of purpose in his treatment since his SUD psychologist told him that because he opens up during the SUD group meetings and talks about his problems and his past alcohol use, other group members have stated that the Individual is a “positive light” in the group. *Id.* at 41. He testified that by sharing his experiences of getting through sixteen months of sobriety, he feels he is helping the other group participants and it also keeps him more motivated to maintain his own sobriety. *Id.* at 42. The Individual testified that he is committed to continuing to participate in his SUD group for the foreseeable future. *Id.*

The Individual testified that he is honest with his girlfriend about his present situation and stated that his girlfriend has provided him with a lot of support through the last fifteen months of his sobriety. *Id.* at 56. He testified that he has not seen her consume alcohol since he started abstaining from alcohol. *Id.* at 32. The Individual testified that while his girlfriend is the main person in his support system, he also talks with his mother who is aware of his history with alcohol use, he shares with her how he has been maintaining sobriety, and she is proud of him. *Id.* at 58, 70. He also stated he has discussed his sobriety with his daughters. *Id.* at 58–59.

The Individual testified that although in the past he resumed excessive alcohol consumption from time to time, this time is different because he knows that alcohol was a factor that caused his previous medical problem of having an enlarged liver and cystic lesion. *Id.* at 50. He stated that he is “terrified now to consume alcohol” because he knows that it could make his health situation worse and result in his premature death. *Id.* at 50–51. He testified that his daughters are very important to him such that he does not want to consume alcohol again because he wants to be there for them through their adulthood, and he values his career and health. *Id.* at 51. To further support his assertions of abstinence, the Individual submitted three EtG hair tests, from April 5, 2024; April 30, 2024; and May 15, 2024. Ex. A; Ex. C. All three of the hair EtG tests stated that the hair was tested for ethyl glucuronide, all the test results were negative, and the test results were signed and verified by the laboratory’s Certified Medical Review Officer, who is a physician. *Id.* The Individual testified that he had tried to get a PEth test but was not able to do so because a doctor

had to order it. Tr. at 46. He stated he had asked his SUD psychologist, but the SUD psychologist could not order it and advised the Individual to work with his primary care physician at the VA. *Id.* The Individual stated he was unable to get the VA medical provider to order the PEth test, so the Individual went to a laboratory and inquired which alcohol tests they offered. *Id.* He testified that the laboratory staff told him that the hair EtG had the longest reference range of measuring whether alcohol was consumed over a period of up to ninety days prior to sample collection. *Id.* at 47. The Individual testified that his plans for the future are to not consume alcohol for the rest of his life, and to stay committed to maintaining his sobriety. *Id.* at 67.

The DOE Psychologist opined that the Individual has demonstrated reformation and rehabilitation from AUD. *Id.* at 76. She further stated that she would change the Individual's diagnosis to AUD, Moderate, in sustained remission. *Id.* at 74. Regarding how she defines rehabilitation, the DOE Psychologist testified that this involves "behavioral action that specifically addresses the concern." *Id.* at 77. She stated that in the Individual's case, the Individual has been sober since January 2023, which she stated was adequate rehabilitation, given the Individual's history of alcohol use. *Id.* Regarding evidence of reformation, the DOE Psychologist stated that the Individual has acknowledged that he has had a problem with alcohol, and that he needs to address it with lifelong abstinence. *Id.* at 78. She testified that the Individual has recognized the consequences that alcohol has had on his health, and has taken steps that he had not taken in the past that can help him maintain his sobriety and sustain his changes. *Id.* The DOE Psychologist also concluded that the Individual's participation in his SUD group is sufficient, adequate treatment for his AUD. *Id.* at 80. She explained that it is very important for someone to be able to engage with a group in which they feel that they are peers with group members in order to get benefit from the support group. *Id.* She testified that she is very glad that the Individual was able to find his SUD group through the VA. *Id.* She opined that it is sufficient treatment because it is an in-person group, it is led by a psychologist who is a substance abuse specialist, there is accountability in the group of acknowledging substance abuse disorders, and the group also provides peer support. *Id.* at 80-81. Additionally, the DOE Psychologist concluded that the Individual has a favorable prognosis in that he has "good chances of continued sustained abstinence." *Id.* at 79. She also concluded that the Individual has followed her recommendations to maintain sobriety as evidenced by his EtG tests, the PEth test he took during his evaluation, and the testimony presented at the hearing. *Id.*

V. Analysis

A. Guideline G

Conditions that could mitigate security concerns under Guideline G include:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

- (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.

I find that the mitigating factor at ¶ 23(a) under Guideline G is applicable in this case. The Individual has provided credible testimony regarding his sixteen months of sobriety. During his November 2023 evaluation with the DOE Psychologist, he asserted that he had been abstinent from alcohol for ten months, and his initial PEth test at his evaluation was negative. As stated in her Report, the DOE Psychologist stated that the negative PEth test provided some evidence of the Individual's trustworthiness and reliability. The Individual also testified that he had stopped consuming alcohol in January 2023 because he became aware that his excessive alcohol consumption had resulted in liver problems. He stated that his doctor advised him to stop consuming alcohol to address his health problems, and he stated that after he ceased alcohol use, he later had subsequent ultrasounds which showed improvement in his liver health. His testimony was supported by two ultrasound test results he submitted. Ex. B. Moreover, the Individual provided three hair EtG tests from April 2024 and May 2024, all of which were negative and were certified by the laboratory's Certified Medical Review Officer, who is a physician. In addition to the Individual's sixteen months of abstinence, he has demonstrated, as further discussed below, that he has taken actions in compliance with the DOE Psychologist's treatment recommendations to ensure his continued long-term sobriety.

I find that the passage of sixteen months of abstinence, combined with objective evidence that bolsters the Individual's credibility, and his ongoing efforts in alcohol treatment leads me to conclude that his problematic alcohol behavior is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or judgment. Therefore, I find that the Individual has mitigated the Guideline G security concerns under the first mitigating factor at ¶ 23(a).

I also find that the mitigating factor at ¶ 23(b) under Guideline G is applicable in this case. As discussed above, I note that the Individual credibly testified regarding his sixteen months of sobriety. Moreover, the Individual has acknowledged his maladaptive alcohol use and continues to do so on a weekly basis as he introduces himself as an alcoholic at each SUD group meeting. He provided evidence of actions he has taken to overcome his AUD including a supportive statement from his treating SUD psychologist, who verified that he is participating in SUD group treatment through the VA, since April 2024. The Individual testified regarding the benefits he is gaining from his SUD group and how it also provides him with a purpose in helping other group members by sharing his experiences with past alcohol use and maintaining sobriety, which lends credibility to his assertions that he plans to continue participating in his SUD group for the foreseeable future. Moreover, as testified to by the DOE Psychologist, the Individual's SUD group

treatment meets the characteristics that she recommended for treatment because it is an in-person group, it is led by a psychologist who is a substance abuse specialist, there is accountability by group members in acknowledging their substance abuse disorders, and the group also provides peer support. In addition, the Individual has received a favorable prognosis from the DOE Psychologist and has presented hair EtG tests, a PEth test, and credible testimony showing that he has demonstrated a clear and established pattern of abstinence in accordance with the DOE Psychologist's treatment recommendations. Thus, I find that the Individual has mitigated the Guideline G security concerns under the second mitigating factor at ¶ 23(b).⁶

VI. Conclusion

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline G of the Adjudicative Guidelines. After considering all of 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 granted.

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

Brenda B. Balzon
Administrative Judge
Office of Hearings and Appeals

⁶ The mitigating factor at ¶ 23(c) does not apply in this case because the Individual has a previous history of treatment and relapse. The mitigating factor at ¶ 23(d) does not apply in this case because the Individual's alcohol treatment is ongoing and is not yet completed.