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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-24-0069
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Issued: July 9, 2024

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (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 access authorization should be restored.

I. BACKGROUND

The Individual is employed with a DOE Contractor, in a position which requires that he hold a security clearance. On June 9, 2023, the Individual was arrested for Assault Causing Bodily Injury to a Family Member, after having consumed two to three beers. Ex. 1 at 5, Ex. 8 at 58. In August 2023, the Individual completed a Letter of Interrogatory (LOI), in which he provided additional details about his alcohol-related arrest and his alcohol consumption. Ex. 9. Due to the security concerns raised by the Individual’s LOI responses, the Local Security Office (LSO) referred the Individual for an evaluation by a DOE consultant psychologist (DOE Psychologist). Ex. 10. Based on this evaluation, in October 2023, the DOE Psychologist opined that the Individual met the diagnostic criteria in the *Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR)*, for Unspecified Alcohol-Related Disorder. Ex. 1 at 5. In December 2023, the 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 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 OHA Director 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 testimony of four witness and testified on his own behalf. The LSO presented the testimony of the DOE Psychologist who evaluated the Individual. See Transcript of Hearing (hereinafter cited as “Tr.”). The LSO submitted 12 exhibits, marked as Exhibits 1 through 12

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.

(hereinafter cited as “Ex.”). The Individual submitted nine exhibits, marked as Exhibits A through I.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

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 (Alcohol Consumption) 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 “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. Conditions that could raise a security concern under this guideline 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.

In its Summary of Security Concerns, the LSO cited the following information:

- A. On October 2, 2023, [the DOE Psychologist] evaluated the Individual. In his reported dated October 23, 2023, [the DOE Psychologist] concluded that [the Individual] meets the diagnostic criteria in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5-TR) for Unspecified Alcohol-Related Disorder. He further concluded there is not adequate evidence of rehabilitation or reformation.
- B. On June 9, 2023, [the Individual was arrested] for Assault Causing Bodily Injury to a Family Member. He admitted he consumed three beers prior to the arrest incident.

Ex. 1 at 5. 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 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 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. 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.

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

On June 8, 2023, the Individual was home with his wife, during which he consumed two to three beers. Ex. 8 at 58. At about 11:00 p.m. that evening, the Individual and his wife got into an argument

in their bedroom, during which the Individual's 16-year-old daughter tried to intervene by entering the bedroom. *Id.* The Individual tried to prevent his daughter from entering the bedroom, but she "resisted" by "[putting] her arms in the door so [he] couldn't close the door," causing her to sustain bruises on her arm. *Id.* at 59. He reported that while he tried to close the bedroom door, his wife and daughter began hitting him. *Id.* at 59–60. The Individual's daughter later left the Individual's home and stayed with a neighbor. *Id.* at 60. The following morning, on June 9, 2023, the Individual was arrested and charged with Assault Causing Bodily Injury to a Family Member.² Ex. 8 at 60, Ex. 6 at 33.

In August 2023, the Individual completed an LOI, which sought additional information about his June 2023 arrest, and his alcohol consumption. Ex. 9. In the LOI, the Individual reported that before his June 2023 arrest, he consumed "no more than three" beers before 9:00 a.m. *Id.* at 66. He reported that since 2005, he typically consumes "no more than four" beers, "twice a week or less." *Id.* at 70. He also reported that the terms of his release from jail did not require him to abstain from alcohol or enter "any alcohol/drug establishment." *Id.* at 67. He also reported that the last time he consumed alcohol was on July 8, 2023, when he consumed "three beers over about a five-hour period." *Id.* at 71. The Individual also reported that since his June 2023 arrest, he believes he needs alcohol treatment, and that he would like "a professional opinion as to whether or not [he has] an alcohol problem." *Id.* at 73. He also reported that an "on site psychiatrist at [his] place of employment advised [him to] seek counseling." *Id.*

In October 2023, the Individual was evaluated by the DOE Psychologist, who issued a report of his findings (Report). Ex. 10. The Report indicates that during the evaluation, the Individual described the events that preceded his June 2023 arrest, which the DOE Psychologist found was "congruent with his LOI response." *Id.* at 85. The Individual acknowledged that he consumes alcohol "to manage his distress in his marriage." *Id.* at 91. The Individual reported that since 2005, he consumes "no more than four beers at a time," which the DOE Psychologist found was "inconsistent with his LOI response of 'no more than four beers at a time.'" *Id.* at 86. The Individual also reported that he last consumed alcohol on October 1, 2023, one day before the evaluation, and that "in the last week, he consumed one beer with dinner," and "consumed 10-12 beers in the last 30 days, usually one per occasion while out to dinner with his father." *Id.* at 86.

The Report also indicates that in June 2000, the Individual saw a substance abuse counselor related to a prior arrest.³ Ex. 10 at 86. After reviewing a copy of the report issued by the Individual's substance abuse counselor, and consulting with the counselor by telephone, the DOE Psychologist learned the Individual was diagnosed with Unspecified Anxiety Disorder, after he displayed symptoms of anxiety. *Id.* On August 23, 2023, and September 1, 2023, the Individual met with the substance abuse counselor, who found the Individual was "likely using alcohol to help cope with the turmoil in his marriage" but his alcohol use was not "presently at a diagnosable or maladaptive level." *Id.* at 87. The Report also indicates that since February 2022, the Individual has participated in "family therapy" with a marriage counselor, who identified the Individual's "tumultuous relationship" with his wife as a stressor. *Id.*

² An August 16, 2023, Incident Report indicates that after the police spoke "with everyone involved" in the altercation, they determined the Individual's actions toward his 16-year-old daughter "were abusive." Ex. 3 at 14.

³ In June 2000, the Individual was arrested for possession of marijuana, and attended Narcotics Anonymous (NA) as a condition of his sentencing. Ex. 10 at 86, Ex. 12 at 241. While at NA, the Individual attended "group sessions for two weeks for four hours per day," and was "not diagnosed as abusing drugs or being drug dependent." Ex. 10 at 86.

On October 11, 2023, as part of the psychological evaluation, the Individual underwent Phosphatidylethanol (PEth)⁴ testing, to provide evidence of his alcohol consumption. Ex. 10 at 89. The results of the Individual's PEth test was positive at a level of 106 ng/mL. *Id.* at 89, 112. The Report includes a letter from a medical doctor, who interpreted the Individual's PEth test results. *Id.* at 112–115. In the letter, the medical doctor opined that the Individual's reported alcohol consumption, of 10–12 beers in the 30 days before October 2, 2023, “would have resulted in a negative PEth result...averaging less than 2 drinks/day several days per week,” “unless he drank a substantial amount of that in the last two weeks before the PEth or heavily binge drank October 1–10, 2023.” *Id.* at 113. The doctor also opined that the Individual's PEth test results suggest the Individual “may be drinking up to 4 drinks/day,” and is “substantially underestimating the quantity of his alcohol intake.” *Id.*

The DOE Psychologist opined that the Individual is “an untrustworthy informant regarding his alcohol consumption” and is “likely using alcohol to self-medicate distress related to marriage conflict.” Ex. 10 at 91. The DOE Psychologist diagnosed the Individual with Unspecified Alcohol-Related Disorder, without evidence of rehabilitation or reformation. *Id.* at 91–92. To demonstrate adequate evidence of rehabilitation, the DOE Psychologist recommended the Individual “enroll in and successfully complete an intensive outpatient treatment program (IOP) and then continue participation in its aftercare program for at least six months.” *Id.* at 92. To show evidence of reformation, the DOE Psychologist recommended the Individual demonstrate he can control his alcohol consumption by remaining abstinent for six months, supporting by monthly PEth testing. *Id.*

In January 2024, the Individual enrolled in an IOP, from which he graduated in March 2024. Ex. A; Tr. at 33. At the hearing, the Individual testified that two weeks into the IOP, he realized he had an alcohol problem, and alcohol was affecting his life in a negative way. *Id.* at 33, 50. He described the IOP as having classes four nights a week; including group sessions, which he found helpful because he was able to relate to experiences other participants shared during the sessions. *Id.* at 35–36. The group sessions helped the Individual “step back, almost like looking through a mirror” and “really evaluate everything that led up to this.” *Id.* at 36. He also explained that it was beneficial to have a different instructor each night of the IOP because he gets to hear different viewpoints. *Id.* at 38. The IOP also taught him to identify the triggers that led him to drink. *Id.* at 53. He explained that “emotional issues,” like having a bad day at work, would make him want to “pick up a drink [and] start drinking.” *Id.* He now uses a tool, called “thought stopping,” which involves recognizing a trigger and telling himself, “hey, this is going to get you in trouble ... So [he's] able to stop that process and take a second and basically redirect [himself].” *Id.* at 53–54. After he completed the IOP, the Individual enrolled in an aftercare program, which was held two nights per week, on Mondays and Wednesdays. *Id.* at 38–39. Since starting the aftercare program, he thinks he is better at dealing with stressful situations in his life. *Id.* at 44–45. The aftercare program helps him avoid the instances or places that may make him want to drink. *Id.* at 54.

⁴ A Phosphatidylethanol (PEth) test measures a blood sample for levels of an alcohol byproduct. *Direct Ethanol Biomarker Testing: PETH*, Mayo Clinic Laboratories, (last visited June 28, 2023) <https://news.mayocliniclabs.com/2022/09/13/direct-ethanol-biomarker-testing-peth-test-in-focus/>. The test can detect alcohol consumption in the three to four weeks preceding the test. *Id.*

The Individual stated that on Thanksgiving Day, 2023, he decided to quit drinking. Tr. at 45. The Individual submitted the results of PEth tests, taken from January 2024 to April 2024, all of which were negative. *Id.* at 45, Ex. B–F. The Individual also submitted the results of a random breath alcohol test (BAT) administered by his employer in February 2024, which were also negative. *Id.* at 45–46, Ex. H. He intends to never drink again. Tr. at 49, 55.

As for his marriage counseling, the Individual testified that it was his idea to participate in marriage counseling because he and his wife were having marital issues, and they “did not have the tools and the resources to fix the problems [themselves].” Tr. at 40. His wife initially participated in marriage counseling with him, but after his June 2023 arrest, he continued the counseling alone. *Id.* at 41–42. From June 2023, through April 2024, the Individual met with a marriage counselor six times, every two to three weeks, due to the IOP schedule. *Id.* at 42. The marriage counseling has helped him deal with the stress in his life, and after talking to his marriage counselor, the Individual decided to end his marriage. *Id.* at 43–44. As for the criminal charges from his June 2023 arrest, the Individual explained that the criminal charges are still pending, he lives with his father, has limited contact with his ex-wife, and is “no longer around” the daughter that was involved in the arrest. *Id.* at 51.

The Individual’s father testified that the Individual has been living with him since June 2023, after the Individual was released from jail. Tr. at 12. He stated that in November 2023, the Individual decided to stop drinking. *Id.* at 14. He stated they do not keep alcohol in the home. *Id.* at 15. He explained that since the Individual started the IOP in January 2024, they discuss “bits and pieces” of what he learns at home, and his participation in aftercare is a “positive thing” that also gives him more time to spend with his kids. *Id.* at 17. He also stated that since starting treatment, he believes the Individual is handling his problems better than he would have a year ago. *Id.* at 19.

The Individual’s supervisor testified he met the Individual ten years ago, when they both worked for another employer. Tr. at 26. He supervised the Individual for six to eight months before the Individual’s June 2023 arrest. *Id.* at 27. He described the Individual as a good employee, who is very trustworthy. *Id.* at 27–28. He also stated that the Individual has been honest about his alcohol use and treatment. *Id.* at 28–29. He also stated he has never had to counsel the Individual for arriving at work under the influence of alcohol, he has never been concerned about the Individual’s drinking, and that the Individual has not had issues with his work performance. *Id.* at 30.

The Individual’s Counselor, who guided the Individual’s group therapy sessions during the IOP, testified that he evaluated the Individual in November 2023 and the Individual started the IOP in January 2024. Tr. at 60. He agreed with the DOE Psychologist’s diagnosis of Unspecified Alcohol-Related Disorder. *Id.* at 69. He explained that during the IOP, the Individual was quiet, but engaged. *Id.* at 61. During the group sessions, the Individual initially gave short, polite responses, but later shared more and was very “jovial” with the group. *Id.* at 62–63. He stated the Individual has been an asset during the group sessions and accepts engagement during the classes. *Id.* 67. He stated the Individual did not have the skill set to cope with some of the problems in his marriage, and “alcohol volunteered to help him cope.” *Id.* at 67–68. He stated that during the IOP, they worked on developing “strong coping skills and communication skills,” and now, the Individual is “more capable” of dealing with his life stressors. *Id.* at 68.

As for aftercare, the Individual has attended 28 aftercare sessions, 14 sessions on Mondays and 14 sessions on Wednesdays. *Id.* at 71–72. He stated the Individual’s participation was “meaningful.” *Id.* at 80. As for the Individual’s recovery, the Individual’s Counselor testified that under the *DSM-*

5, a diagnosis of Unspecified Alcohol-Related Disorder changes to “early remission” after three months, and changes again after 12 months. *Id.* at 70. He thinks the Individual knows that if he returns to alcohol and expects different results, “he’s fooling himself,” and the Individual “seems to be done” with alcohol. *Id.* at 73. He stated the Individual has “exceeded” his expectations for recovery, and the Individual’s prognosis regarding remaining abstinent is “favorable” and “positive.” *Id.* at 76, 81. He also explained that the Individual has taken accountability for his role in developing Unspecified Alcohol-Related Disorder, and he understands he is no longer at home “for reasons connected to his decision-making, his maladaptive coping, and...his alcohol use.” *Id.* at 83.

The DOE Psychologist testified that the DOE referred the Individual to him, for a psychological evaluation, after his June 2023 arrest, which involved the use of alcohol. Tr. at 86. He explained that after the evaluation, he was concerned the Individual was using alcohol to mediate stress and it was preventing him from showing good judgment, especially with his family. *Id.* at 86–87. After listening to the Individual’s testimony, the DOE Psychologist opined that, although the Individual has only completed approximately two months of aftercare, the Individual was “successful in rehabilitation and reformation.” *Id.* at 88. He also testified that the Individual’s documentation of PEth testing shows six months of abstinence from alcohol. *Id.* at 89.

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 my 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.

A. Guideline G

Conditions that could mitigate a Guideline G security concern 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. Conditions (b) and (d) apply in this case.

Regarding conditions (b) and (d), the Individual acknowledges that after his June 2023 arrest, he believed he had an alcohol problem and needed treatment. He also testified to realizing he had an alcohol problem after participating in the IOP for a few weeks. He also submitted evidence of actions he took to overcome this problem – including evidence he successfully completed an IOP and undergoing continued alcohol treatment as part of an aftercare program, of which he completed 28 sessions as of the hearing. The Individual also testified that since receiving treatment, he has decided to end his marriage, which contributed to his maladaptive alcohol use, and he is developing strong coping skills to deal with the additional stressors in his life. Furthermore, the Individual submitted evidence he has abstained from alcohol since November 2023, as demonstrated by negative PEth tests taken from January 2024 to April 2024. This demonstrates a pattern of abstinence that the DOE Psychologist concluded was sufficient evidence of the Individual’s rehabilitation and reformation from his Unspecified Alcohol-Related Disorder. The Individual’s Counselor also opined that the Individual’s prognosis for remaining abstinent was favorable.

For the foregoing reasons, I find that the Individual has mitigated the Guideline G 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 succeeded in fully resolving those concerns. Therefore, I 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 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