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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: April 17, 2024) Case No.: PSH-24-0108
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Issued: August 19, 2024

Administrative Judge Decision

Janet R. H. Fishman, 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 not be restored.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires him to hold an access authorization. Exhibit (Ex.) 1. In June 2023, the Individual was charged with Aggravated Driving While Intoxicated (DWI) and Open Container. *Id.* at 5.² As a result of the June 2023 criminal charge, the Local Security Office (LSO) issued the Individual a Letter of Interrogatory (LOI) concerning the incident, which the Individual answered in September 2023. Ex. 9. After receipt of his responses, the LSO requested that the Individual undergo a psychiatric evaluation in December 2023, by a DOE-consultant Psychiatrist (DOE Psychiatrist), which resulted in a finding that the Individual met sufficient *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)* criteria for a diagnosis of Alcohol Use Disorder (AUD), moderate, without adequate evidence of rehabilitation or reformation. Ex. 11 at 79.

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 Local Security Office’s (LSO) exhibits were combined and submitted in a single, 288-page PDF workbook. References to the LSO’s exhibits are to the exhibit number and the Bates number located in the top right corner of each exhibit page.

The LSO subsequently issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1 at 5. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline G of the Adjudicative Guidelines. *Id.*

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 conducted an administrative hearing. The LSO submitted thirteen exhibits (Ex. 1–13). The Individual submitted six exhibits (Ex. A–F). The Individual testified on his own behalf and offered the testimony of two additional witnesses. Hearing Transcript, OHA Case No. PSH-24-0108 (Tr.) at 12–74. The LSO called the DOE Psychiatrist to testify. *Id.* at 77–86.

II. THE SECURITY CONCERNS

Guideline G, under which the LSO raised the security concerns, relates to security risks arising from excessive alcohol consumption. “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. In citing Guideline G, the LSO relied upon the DOE Psychiatrist’s December 2023 diagnosis that the Individual suffered from AUD, moderate. Ex. 1 at 5. The LSO also cited the Individual’s June 2023 arrest for DWI and Open Container. *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 Dep’t 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).

An 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). An 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.* at § 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

In June 2023, the Individual was arrested for DWI and Open Container. Ex. 8 at 48. In his LOI, the Individual stated that he had consumed between six and eight beers in the eight hours prior to his arrest at a barbecue. Ex. 9 at 53; Ex. 11 at 75. However, the police report said that at the time of his arrest, the Individual told law enforcement that he had consumed “6 beers approximately 2 hours ago.” Ex. 6 at 30. The Individual also claimed that he was unaware of the open Twisted Tea that law enforcement found in his vehicle and that he had not purchased or consumed it. Ex. 9 at 52. The Individual refused a breathalyzer test. Ex. 6 at 30. As a result of this arrest, the Individual was asked to undergo an evaluation with the DOE Psychiatrist. Ex. 4.

In the psychiatric report (Report) issued after the evaluation, the DOE Psychiatrist stated that the Individual had informed him that after his arrest, the Individual had completed his employer’s fitness for duty (FFD) alcohol and drug treatment program.³ Ex. 11 at 74. While in the FFD program, the Individual did not use alcohol, but he admitted to the DOE Psychiatrist that, after completing the program, he resumed some alcohol consumption. *Id.* at 75. The DOE Psychiatrist diagnosed the Individual with AUD, moderate. *Id.* at 79. The DOE Psychiatrist indicated that the Individual met four diagnostic criteria for AUD and cited the following factors: (1) “alcohol often taken in larger amounts than intended”; (2) “unsuccessful efforts to cut down or control alcohol use”; (3) “failure to fulfill major role obligations”; and (4) “tolerance.” *Id.*

The Individual also underwent a Phosphatidylethanol (PEth)⁴ test as a part of the DOE Psychiatrist’s evaluation. *Id.* at 76. The Individual’s PEth test was positive at 96 ng/mL, indicating that the Individual was consuming a “medium” amount of alcohol. *Id.* The DOE Psychiatrist estimated the result of 96 ng/mL indicated usage of approximately four drinks per day. *Id.*

The DOE Psychiatrist recommended that to demonstrate rehabilitation or reformation of AUD, the Individual should restart his employer’s FFD program,⁵ demonstrate alcohol abstinence for twelve months, participate in Alcoholics Anonymous (AA), SMART Recovery,⁶ or another relapse

³ The Individual told the DOE Psychiatrist that he consumed 6–8 12-ounce Coors light beers in 8–10 hours prior to his DWI. Ex. 11 at 75.

⁴ According to the Report,

PEth is a marker of alcohol exposure to the body. PEth does not occur naturally in the body so elevated PEth levels are evidence of alcohol exposure. Alcohol binds to the red blood cell membrane creating PEth. PEth declines as red blood cells degrade and by enzymatic action, so PEth reflects the average use of alcohol over the previous 28-30 days. The PEth assay relies on a liquid chromatography assessment followed by two independent mass spectrometry assessments that must agree within 20%. A MedTox, PEth result exceeding 20 ng/mL is evidence of “moderate to heavy ethanol consumption.”

Ex. 11 at 76.

⁵ At the hearing, the DOE Psychiatrist explained that at time he was writing his Report, he was unaware that an employee could not request to be enrolled in the FFD program. Tr. at 87

⁶ SMART stands for Self-Management and Recovery Training. According to its website,

prevention program for one year by attending three meetings per week while showing progress in the program, and provide monthly PEth tests. *Id.* at 80. The DOE Psychiatrist also recommended that if the Individual cannot maintain sobriety while in the recommended FFD program or receives a positive PEth test, he should complete a twelve-to-sixteen-week intensive outpatient program (IOP). *Id.*

The Individual provided six letters of recommendation from current and former coworkers and supervisors that offered their view that the Individual is trustworthy and a hard worker. Ex. A. The Individual also submitted a single test result that showed his urine had tested negative for alcohol in April 2024. Ex. B. The Individual included in his exhibits documentation that he had completed his Employee Assistance Program's (EAP) alcohol awareness and education program in August 2023 and a class about maintaining the changes made in alcohol use course in May 2024. Ex. C; Ex. D. He also provided attendance records showing that he had attended twelve SMART Recovery meetings between April 2024 and July 2024.⁷ Ex. E.

The Individual's significant other testified that she has known the Individual for around ten years. Tr. at 13. They have lived together for the majority of that time period, except for a period from April 2023 to April 2024 when they took a break from their relationship. *Id.* She stated that in the time she has known the Individual, she has never had any concerns about his alcohol use, and she cannot recall the last time that she saw him consume alcohol. *Id.* at 14. She also said that there is not any alcohol currently in their home. *Id.* at 15. The significant other testified that since she and the Individual resumed their relationship, she has not seen him under the influence of alcohol. *Id.* at 18. Since the Individual began attending therapy and classes regarding his alcohol use, the significant other testified that he is an "amazing father, an amazing spouse, an amazing provider, a very hard worker."⁸ *Id.* at 15. She continued that they "try to stay active with our kids, . . . so our free time when we're not working is usually with our kids doing stuff." *Id.* at 16. She believes that the perspective that the Individual gained from counseling was a factor in the two of them working things out in their relationship and getting back together. *Id.* at 17.

The Individual's EAP counselor testified that she met the Individual when he joined the alcohol awareness and education group that she runs. *Id.* at 21–22. She also met with him three times for individual counseling, and he later joined the maintaining changes group that she runs. *Id.* The

SMART [program] is an evidenced-based recovery method grounded in Rational Emotive Behavioral Therapy (REBT) and Cognitive Behavioral Therapy (CBT), that supports people with substance dependencies or problem behaviors to:

1. Build and maintain motivation
2. Cope with urges and cravings
3. Manage thoughts, feelings and behaviors
4. Lead a balanced life

What is SMART Recovery?, SMART Recovery, <https://smartrecovery.org/what-is-smart-recovery> (last visited Jun. 20, 2024).

⁷ The dates he attended were April 8 and 9, 2024; June 6, 19, 19, 20, and 26, 2024; and July 10, 13, 23, and 24, 2024. Ex. E.

⁸ The significant other testified that the Individual was her spouse, but she admitted that they are not legally married. Tr. at 13.

alcohol awareness and education group that he attended was a six-week program, and the maintaining changes group is a twelve-week program with the option to continue attending. *Id.* at 22–23. At some point during his treatment with the EAP counselor, the Individual told her that he enjoyed sobriety and “he would like to be sober.” *Id.* at 23, 25. From her conversations with the Individual, she believes that in the course of his treatment he went from wanting to be a “low-risk” drinker to wanting to achieve sobriety. *Id.* at 25. She felt that the Individual put in good effort in both the group sessions and individual counseling sessions. *Id.* at 31.

The EAP counselor also testified about the Individual’s counseling sessions. *Id.* at 27–29. At the first session in March 2024, they discussed the Individual’s DWI and the suspension of his clearance. *Id.* at 27. At the next session in May 2024, the Individual told the EAP counselor about his attendance at SMART Recovery and explained that he had taken two PEth tests.⁹ *Id.* at 28. He also told her that he was enjoying the dynamic of attending the EAP group and that being sober was contributing to many positive things in his life. *Id.* The EAP counselor testified that the Individual increased his alcohol consumption following his father’s death, partially because he blamed himself for that death, because the Individual drove his father to the hospital for a procedure following which he died. *Id.* At the final EAP session in July 2024, the Individual told the EAP counselor that he had last consumed alcohol in November 2023, after he had already completed the alcohol awareness and education group. *Id.* at 28–29.

At the hearing, the Individual testified that he did not feel that he has an issue with alcohol. *Id.* at 44. He went on to say that he did not consume any alcohol from June 2023 to November 2023. *Id.* at 46. On November 11, 2023, the Individual consumed “three beers.” *Id.* at 45–46. He said that he has not consumed any alcohol since November 11, 2023. *Id.* at 46. The Individual stated that he had been attending SMART Recovery meetings in line with the DOE Psychiatrist’s recommendations even though the documentation that he provided did not show he was attending enough meetings each week to satisfy the DOE Psychiatrist’s recommendation. *Id.* at 51. He also testified that in the alcohol awareness and education group, he learned that he wanted to stop consuming alcohol and he expressed that “it is nice to talk. If . . . something is going on, personal issues, something at work . . . it’s better to get it off your chest. It’s like a relief.” *Id.* at 60. The Individual does not intend to consume alcohol again and said that he does not ever crave alcohol. *Id.* at 63–64.

When asked why his December 2023 PEth test showed that he was drinking despite his testimony that he had not consumed any alcohol that month, the Individual posited that it was possible his test was positive because he had consumed a large amount of Nyquil in the days prior to his evaluation.¹⁰ *Id.* at 56.

The DOE Psychiatrist testified that he evaluated the Individual on December 8, 2023. *Id.* at 77. The DOE Psychiatrist stated that the Individual had partially complied with the recommendations that

⁹ The Individual later clarified in his testimony that he had completed “drug and alcohol testing.” Tr. at 48. He did not complete any PEth tests other than the one given to him at the time of his psychiatric evaluation. *Id.* at 48–49.

¹⁰ The DOE Psychiatrist testified that the amount of Nyquil that the Individual testified he consumed, *i.e.*, a bottle-and-a-half in the three days prior to his evaluation, would be the equivalent of consuming approximately one beer each of the three days before the evaluation. Tr. at 57, 82. He went on to explain consuming that much Nyquil alone would not cause a positive PEth test. *Id.* at 82.

he provided in his Report. *Id.* at 83. He stated that he felt that the Individual's involvement with the alcohol education and maintaining changes courses showed positive effort that was in line with his treatment recommendations. *Id.* He also said that he believes that combining those classes with the Individual's self-reported attendance at SMART Recovery meetings met the treatment recommendation of three sessions per week. *Id.* However, despite the DOE Psychiatrist's treatment recommendations, the Individual had not undergone any additional PEth tests to provide laboratory proof of his abstinence from alcohol. *Id.* He also claimed that the laboratory tests that the Individual submitted do not cover alcohol use¹¹ and, therefore, are not a sufficient substitute for PEth tests. *Id.* The DOE Psychiatrist gave the Individual a "cautiously positive" prognosis, saying that he felt the Individual was putting in good effort and his voluntary participation in treatment was favorable, but the Individual's failure to attempt to obtain objective data like a PEth test was unfavorable. *Id.* at 85.

V. ANALYSIS

An individual may be able to mitigate security concerns under Guideline G though the following conditions:

- 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 maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified alcohol 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.

Regarding factor (a), the Individual's behavior, his alcohol consumption prior to the DWI charge occurred at a party, which would not be considered an unusual event. I cannot say the behavior regarding his DWI was unusual or happened under circumstances that it is unlikely to recur. As such, I find that the Individual has not mitigated the security concerns under factor (a).

¹¹ The one test that the Individual did submit, dated April 8, 2024, does appear to test for alcohol use. Ex. B. The DOE Psychiatrist was not questioned about his claim that it does not cover alcohol use, because the Individual only submitted one test result, and that test result was not a PEth test, and as such it would not have been sufficient to satisfy the DOE Psychiatrist's recommendation even supposing it did test for alcohol.

Regarding factor (b), the Individual testified that he did not believe that he had an issue with alcohol. Further, the single negative urinalysis from April 2024 is insufficient to show he has abstained from consuming alcohol in accordance with treatment recommendations. Without evidence beyond his own testimony and that of his significant other, the Individual cannot demonstrate a clear and established pattern of abstinence. Even if I believe that he has been abstinent since November 2023, he has only been abstinent for 9 months, less than the 12 months the DOE Psychiatrist recommended. Therefore, I find that the Individual has not mitigated the security concerns under factor (b).

Regarding factor (c), the Individual testified at the hearing that he relapsed in November of 2023 after completing his EAP program in August of 2023. Because he has a history of relapse, including after he completed the FFD, I cannot find that the Individual has mitigated the security concerns under factor (c).

Regarding factor (d), while the Individual has completed two EAP programs related to alcohol use and attended 12 SMART Recovery sessions, as noted above, he has not provided sufficient objective evidence that shows he has abstained from consuming alcohol in accordance with treatment recommendations. I find the Individual has not mitigated the security concerns under factor (d).

Accordingly, I find that none of the mitigating conditions have been satisfied, and that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline G of the Adjudicative Guidelines. After considering all the relevant information, 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 the Individual has not 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 not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals