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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 30, 2024	)	Case No.: PSH-24-0114
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Issued: August 19, 2024

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**Administrative Judge Decision**

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Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (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 or Eligibility to Hold a Sensitive Position.”<sup>1</sup> For the reasons set forth below, I conclude that the Individual’s access authorization should not be restored.

**I. BACKGROUND**

The Individual is employed with a DOE Contractor, in a position which requires that he hold a security clearance. On July 10, 2023, the Individual was selected for a random Breath Alcohol Test (BAT) and was notified by his employer that he had “two hours from 8:30 p.m. to report to the testing facility.” Exhibit (Ex.) 6 at 22. The Individual reported for his BAT at 10:32 p.m., two minutes past his reporting deadline, and told his employer he was late because he went to the gym at 9:45 p.m., to work out for 20 minutes.<sup>2</sup> *Id.* The Individual’s employer determined the Individual did not have supervisor approval to exercise at his employer’s gym before reporting to his BAT and was given an official warning for “Misuse or abuse of Company time, including loafing or exceeding specified meal or rest periods.” *Id.*

After learning that the Individual reported late to a random BAT, the Local Security Office (LSO) issued a Letter of Interrogatory (LOI) to the Individual, which sought additional information about the incident. Ex. 8. On December 5, 2023 (December 5th LOI), the Individual reported to the LSO that the day before the BAT he consumed “about three or four drinks to get ready for bed.” *Id.* at 30, 33. On December 13, 2023, the Individual completed a second LOI (December 13th LOI), which sought additional information about his alcohol consumption. Ex. 7.

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<sup>1</sup> 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.

<sup>2</sup> The Individual’s BAT was “.008 g/210L,” which was “below the .02 g/210L alcohol level that is the threshold of significance” at the Individual’s employer. Ex. 3 at 36.

Due to the security concerns raised by the Individual's LOI responses, the LSO referred the Individual for an evaluation by a DOE consultant psychologist (DOE Psychologist), which occurred in January 2024. Ex. 9. As part of his evaluation, the Individual underwent alcohol testing, in the form of a Phosphatidylethanol (PEth)<sup>3</sup> test, which was positive at a level of 138 ng/mL, which according to the DOE Psychologist's report, indicated "a rather high level of alcohol consumption." *Id.* at 42. Based on his evaluation and his review of the results of the Individual's alcohol testing, the DOE Psychologist opined that the Individual met the diagnostic criteria in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR)*, for "Moderate (but likely Severe) Alcohol Use Disorder, not in remission," and without adequate evidence of rehabilitation or reformation. *Id.* at 44. In April 2024, 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 testified on his own behalf. The LSO presented the testimony of the DOE Psychologist. *See* Transcript of Hearing, OHA Case No. PSH-24-0114 (hereinafter cited as "Tr."). The LSO submitted 11 exhibits, marked as Exhibits 1 through 11 (hereinafter cited as "Ex."). The Individual submitted five exhibits, marked as Exhibits A through E.

## 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

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<sup>3</sup> 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.*

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 accompanying the Notification Letter, the LSO cited the following information:

- A. On January 16, 2024, [the DOE Psychologist] evaluated the Individual. In his reported dated January 27, 2024, [the DOE Psychologist] concluded that [the Individual] has been a habitual drinker for quite some time and meets the *Diagnostic and Statistical Manual of Mental Disorders, 5th edition, Text Revision* (DSM-5-TR) criteria for a diagnosis of Alcohol Use Disorder, moderate (but likely severe), not in remission, and without adequate evidence [of] rehabilitation or reformation.
- B. DOE is in possession of the following information regarding [the Individual's] consumption of alcohol and alcohol-related incident.
  - 1. During a clinical interview with [the DOE Psychologist] on January 16, 2024, his Phosphatidylethanol (PEth) test was positive at a level of 138 [ng/mL] which suggests a rather high level of alcohol consumption.
  - 2. On July 10, 2023<sup>4</sup>, [the Individual] was issued a written warning for Misuse or Abuse of Company time, including loafing or exceeding meal or rest periods after he was notified of a random [BAT] and reported two minutes late to the testing facility. He admitted to consuming three or four whiskeys the day before the test.

Ex. 1 at 5. Accordingly, the LSO's security concerns under Guideline G are justified.

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<sup>4</sup> The SSC's reference to July 10, 2023, as the date the Individual was issued a written warning by his employer is an error. Ex. 1 at 5. The Individual was notified to appear for a BAT on July 10, 2023, and was later issued a written warning for reporting late for the BAT, on September 7, 2023. Ex. 6 at 22.

### 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 July 10, 2023, the Individual was randomly selected to undergo a BAT as part of his employer's workplace substance abuse program. Ex. 6 at 22. The Individual was notified that he had "two hours from 8:30 pm to report to the testing facility." *Id.* The Individual reported for his BAT at 10:32 p.m., two minutes past his reporting time, and claimed he was late because at 9:45 p.m., he went to his employer's gym to exercise for about 20 minutes "during his break and lunch times." *Id.* On September 7, 2023, the Individual's employer notified the Individual that he did not have his supervisor's approval to exercise at the gym at that time, his breaks were only ten minutes, and he was "not yet eligible for a lunch as [he] had been on duty less than two-hours." *Id.* The Individual was issued an Official Warning for "Misuse or abuse of Company time, including loafing or exceeding specified meal or rest periods." *Id.*

In the December 5th LOI, the Individual reported that the day before the BAT, he consumed "about three or four drinks to get ready for bed. It took me about three hours to have those drinks." Ex. 8 at 30. He reported that the results of his BAT were positive at a level of ".008." *Id.* at 31. In the December 13th LOI, the Individual reported he consumed whiskey the night before the BAT. Ex. 7 at 24. He also reported that he no longer drinks alcohol and he "quit drinking entirely" the week after his late BAT. *Id.* at 24-25. He also reported that before he quit drinking, "3 or 4 [alcoholic drinks] would be enough to become intoxicate[d]," and the last time he drank to intoxication was "about 6 months ago." *Id.* at 25. Finally, the Individual reported that he received alcohol treatment "about 6 years" before the LOI, but he could not remember the details. *Id.* at 27.

On December 20, 2023, the LSO found that the Individual was previously ordered to attend alcohol counseling by a state child protective services agency after the mother of his child told the agency the Individual “drank too much.” Ex. 4 at 16. The Individual was “diagnosed as being a mild alcoholic,” began counseling, and later “stopped attending counseling because he did not think it was fair.” *Id.*

On January 16, 2024, the Individual was evaluated by the DOE Psychologist, who issued a report of his findings (Report). Ex. 9. The Report indicates that during the evaluation, the Individual acknowledged that he was “aware of both the BAC [(Blood Alcohol Concentration)] threshold (.02 g/210L) and the restriction on drinking in the eight hours before reporting for work.” *Id.* at 38. The DOE Psychologist found that the Individual’s BAT result of .008 g/210L was “significantly below the legal definition of intoxication” and “below the .02 g/210L alcohol level that is the threshold of significance” at the Individual’s employer, but the Individual’s “acknowledged use of alcohol noted in his [LOI] was of concern and support[ed] the continuation of further assessment of possible alcohol related problems.” *Id.* at 36, 38.

When asked how often he drinks alcohol, the Individual told the DOE Psychologist, “[c]urrently, not much, on a rare date (dinner dates from time to time) – three drinks.” *Id.* at 39. The DOE Psychologist found this response was “in sharp contrast to his answers to alcohol related LOI questions,” which included “[c]urrently I no longer drink alcohol,” and “I have quit drinking entirely.” Ex. 9 at 39; Ex. 7 at 24. The Individual also reported that before the BAT test, he typically consumed alcohol “two or three times per week,” depending on the circumstances, and he kept a half-gallon of alcohol in his home, which lasts approximately three weeks. Ex. 9 at 39. The Individual reported that the last time he consumed alcohol was seven days before the evaluation, on January 9, 2024, at which time his drinks were “doubles or possibly triples” of what he typically consumed. *Id.* The Individual also reported that he previously enrolled in alcohol treatment, at the encouragement of his ex-wife, but later “dropped out feeling that it was not for him and that it was not of significant value.” *Id.* at 41. The Individual could not recall the names of the treatment providers or the facilities. *Id.* The Individual also reported that after getting arrested for cannabis possession, he attended “one or two 12-Step meeting[s] before dropping out.” *Id.*

On January 16, 2024, as part of the psychological evaluation, the Individual underwent PEth testing, to provide evidence of his alcohol consumption. Ex. 9 at 59. The Individual’s PEth test was positive at a level of 138 ng/mL. *Id.* The Report includes a letter from a medical doctor, who interpreted the Individual’s PEth test results. *Id.* at 57–58. In the letter, the medical doctor opined that the Individual’s PEth test result was “consistent with his self-report of a recent history of heavy drinking and is not consistent with his LOI report that he does not drink anymore.” *Id.* at 58. 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 “Moderate (but likely Severe) Alcohol Use Disorder, not in remission, and without evidence of rehabilitation or reformation.” *Id.* at 44. To demonstrate adequate evidence of rehabilitation, the DOE Psychologist recommended the Individual “actively engage and complete an intensive outpatient treatment program (IOP) of six, preferably eight weeks duration.” *Id.* at 45. Upon successful completion of the IOP, the DOE Psychologist recommended the Individual “take advantage of any available aftercare program, continuing in that for six months minimal, preferably for a full year.” *Id.* The DOE Psychologist also opined that the Individual “should also consider again trying an AA program, engaging in meetings at least twice per week while in the aftercare program and perhaps three times a week if

he drops out of aftercare before the end of the year.” *Id.* Finally, the DOE Psychologist “strongly recommended” that the Individual abstain from alcohol consumption for “a full one-year period,” which should be supported through “a series of negative PEth tests taken every three to four weeks.” *Id.*

At the hearing, the Individual testified that he worked out and ate lunch before the BAT because there was no one at the testing facility when he arrived. Tr. at 12. He testified that the medical officer on duty did not arrive until about five minutes before his testing window closed. *Id.* The Individual testified that he had used the restroom right before being told to report for the BAT, so he went to the gym to “[try] to get my fluids going.” *Id.* at 14. The day of the BAT, he consumed three or four drinks, which he testified were larger than standard drinks, after finishing work. *Id.* at 12. He testified that he stopped drinking that day very close to eight hours before his next shift began and that he had drunk to intoxication.<sup>5</sup> *Id.* at 12–13, 15.

The Individual testified that he received the DOE Psychologist’s Report in late January or early February. Tr. at 18. He entered a month-long IOP for alcohol use in April 2024 and graduated in June. Ex. B; Ex. C. He testified that he learned that a good support system and having activities to replace drinking would help him abstain. *Id.* at 16. To avoid drinking he would attend group therapy sessions, maintain the animals and garden on his property, play music, and spend time with his family. *Id.* at 25.

The Individual testified that the IOP had been “a pretty easy process for me. I don’t think I have a large issue like some other people do.” Tr. at 16. He admitted that he did have a problem with alcohol and that his evaluation by the DOE Psychologist and the IOP had helped him realize that he had normalized his alcohol use. *Id.* at 17, 20. He testified that he attended aftercare therapy groups once weekly and individual therapy sessions monthly. *Id.* at 23, 29. He testified that he was too busy to attend AA meetings. *Id.* at 24. The Individual testified that he was “going to stick with sobriety as long as I can.” *Id.* He was open to responsible alcohol consumption in the future. *Id.* at 32.

The Individual testified that after the BAT he abstained from alcohol for a “long period.” Tr. at 15. He testified that he drank three or four large drinks while on a date the week prior to his evaluation by the DOE Psychologist. *Id.* at 21. He submitted into evidence the results of PEth tests taken in early May 2024, late May 2024, June 2024, and July 2024, each of which returned a result that did not detect alcohol byproducts. Ex. A.

At the hearing, the DOE Psychologist calculated, based on metabolic averages, that the Individual’s BAC would have been at around .04 at the time he was originally asked to take the BAT. Tr. at 28. He acknowledged that the Individual had at least four months of sobriety but testified that the Individual had not been able to document the recommended twelve months of sobriety. *Id.* at 41. The DOE Psychologist testified that the Individual was “not as intensive in his individual work as I would hope at this point, nor is he—has he been able to take care of the supportive group piece of this.” *Id.* at 40. He also noted the Individual’s hesitance to commit to permanent abstinence. *Id.* at 41. He testified that the Individual was not rehabilitated or reformed. *Id.*

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<sup>5</sup> The Individual worked night shifts. References to “the day before the BAT” are understood to mean the hours after the Individual’s prior night shift that occurred in the morning of the calendar day of the BAT.

## 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. None of the conditions apply in this case.

The Individual admitted to consuming alcohol less than seven months prior to the hearing, and his period of abstinence documented by laboratory testing did not begin until about three months later. Additionally, the Individual has a history of downplaying his alcohol consumption, which leaves doubt as to whether he consumed alcohol during the unmonitored period. His last admitted alcohol consumption was at the same amount as he typically consumed before the BAT, leaving doubt as to whether he stopped, or even slowed, his alcohol consumption in the time between the BAT and his psychological evaluation. I cannot find that a significant amount of time has passed since the

Individual last consumed alcohol to excess, and doubt remains as to the Individual's honesty in that regard. Therefore, condition (a) does not apply.

The Individual acknowledges that he has an alcohol problem but minimized its severity and indicated that he may return to alcohol use after completing the recommended year of abstinence. While the Individual did attend an IOP, he did not complete the DOE Psychologist's treatment recommendations, including AA (or similar program) attendance, stating that he was too busy to do so, and six months of aftercare. I cannot find that his pattern of abstinence in accordance with treatment recommendations is established or that he has overcome his alcohol issues. Therefore, conditions (b) and (d) do not apply.

The Individual has a history of alcohol treatment, as well as a history of prematurely quitting alcohol treatment and returning to alcohol use. Moreover, the Individual's testimony describes his return to alcohol after a period of abstinence in the wake of the BAT. Therefore, condition (c) does not apply.

## **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 not succeeded in fully resolving those concerns. Therefore, I cannot 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 not 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