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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-24-0117
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Issued: July 30, 2024

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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. In late October 2023, after reporting to work, the Individual submitted to two random Blood Alcohol Tests (BAT) at the behest of his employer, the results of which were .041 and .036. Exhibit (Ex.) 6 at 23; Ex. 7 at 28, 30–31. Accordingly, the Individual was denied access to the worksite, and he was placed on administrative leave the same day. Ex. 6 at 25, 34, 36; Ex. 7 at 28.

The Individual was subsequently asked to complete a Letter of Interrogatory (LOI), which he signed and submitted in December 2023. Ex. 8. Following the submission of the LOI, the LSO requested that the Individual undergo a psychological evaluation with a DOE-consultant psychologist (DOE Psychologist). Ex. 9. The Individual underwent a Phosphatidylethanol (PEth) test, which provides an indication of recent alcohol consumption, in conjunction with the psychological evaluation. *Id.* at 47. As part of the evaluation, the DOE Psychologist reviewed, among other things, the Individual's personnel file, conducted a clinical interview of the Individual, reviewed the Individual's PEth test results, and consulted the *Diagnostic and Statistical*

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.

Manual of Mental Disorders – Fifth Edition, Text Revision (DSM-5-TR). *Id.* The Individual underwent said evaluation in January 2024, and the DOE Psychologist compiled a report (the Report) of his findings the same month. *Id.* at 45. In the Report, the DOE Psychologist concluded that the Individual is “a habitual drinker and may well meet criteria for Alcohol Use Disorder (AUD).” *Id.* at 54. He also concluded that there was no adequate evidence of rehabilitation or reformation. *Id.*

The LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created a substantial doubt regarding his continued eligibility for access authorization. In a 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 Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge 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 Director of OHA appointed me as 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 and presented the testimony of one witness. *See* Transcript of Hearing, OHA Case No. PSH-24-0117 (hereinafter cited as “Tr.”). The Individual also submitted six exhibits, marked Exhibits A through F. The DOE Counsel submitted eleven exhibits marked as Exhibits 1 through 11 and presented the testimony of the DOE Psychologist.

II. Notification Letter

Under Guideline G, “[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines at ¶ 21. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are the “[h]abitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder[,]” and “[a]lcohol-related incidents at work[.]” *Id.* at ¶ 22(b), (c). Under Guideline G, the LSO alleged that the DOE Psychologist diagnosed the Individual with AUD, without adequate evidence of rehabilitation or reformation, and concluded that the Individual “habitually consumes alcohol[.]”² Ex. 1 at 5. The LSO also alleged that the PEth test results of 27 ng/mL indicated that the Individual “consumes alcohol at a moderate to heavy level.” *Id.* The LSO additionally cited that the Individual “failed two random employer administered . . . BAT[s,] yielding results of .041 and .036” in late October 2023, after consuming “a six-pack of beer over a period of three and a half hours the night prior to reporting for work.” *Id.* The LSO’s invocation of Guideline G is justified.

III. Regulatory Standards

² A reading of the Report indicates that although the DOE Psychologist determined that the Individual habitually consumes alcohol, he could not confirm that the Individual meets the diagnostic criteria for AUD. Ex. 9 at 54. Accordingly, this decision shall only consider the DOE Psychologist’s determination that the Individual habitually consumes alcohol.

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 so as 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 and Hearing Testimony

The Individual indicated in his LOI response that he consumed alcohol from 7:00 pm to 10:00 pm the night before he produced two positive BATs at work. Ex. 8 at 38–39. He consumed a “six pack” of beer over the course of those three hours. *Id.* at 38. He also explained in the LOI response that he typically consumes one six pack of beer every week, and that a six pack of beer consumed in a three-hour period will cause him to become intoxicated. *Id.* at 38–39. He estimated that he consumes alcohol to intoxication “[t]wice a month[,] maybe.” *Id.* at 40.

During the psychological evaluation, the Individual provided the DOE Psychologist with the same account of his average alcohol consumption as he provided in the LOI response. Ex. 9 at 48. The DOE Psychologist noted that this pattern of consumption “is suggestive of likely habitual alcohol consumption.” *Id.* However, the Individual “denied the presence of an actual pattern of consumption and reported that he drinks when ‘he feels like it.’” *Id.* He admitted that he was intoxicated the night before he submitted to the BATs at work. *Id.*

The DOE Psychologist noted that the Individual's account of his alcohol consumption since October 2023 was “difficult to follow and not fully definitive.” *Id.* The Report indicates that the Individual told the DOE Psychologist that at the time of the evaluation, he consumed alcohol “very rarely[,]” and that he did not consume any alcohol from late October 2023 to January 1, 2024. *Id.* The Report then stated that the Individual subsequently consumed four beers in January 2024. *Id.* The Report also indicated that when the Individual was asked about “his usual consumption of alcohol,” the Individual provided the aforementioned estimate of one six pack per week. *Id.* He noted that his consumption takes place when he is “off work” and that he “sometimes drink[s] as many as three or four beers on an occasion.” *Id.* When asked how often he consumes six beers “in one setting,” he indicated that he consumes that much “maybe once a month[,]” and that he last

consumed this amount of alcohol the day before the positive BATs. *Id.* at 48–49. The DOE Psychologist attempted to determine the last time the Individual consumed alcohol, but noted in the Report that the information the Individual provided was “unclear.” *Id.* at 49. The Report indicated that the Individual stated that “he can stop drinking at will,” and that he “never struggled to stop his consumption after one or two drinks.” *Id.* He described himself as “a normal drinker[.]” *Id.* Although the Individual admitted that he reported to work in a hungover state on one previous occasion while with a prior employer, he denied any alcohol-related consequences at the hands of an employer outside of the October 2023 incident. *Id.* The result of the PEth test the Individual underwent in connection with the DOE Psychologist’s evaluation was positive at 27 ng/mL, “indicating at least moderate alcohol consumption in the recent weeks leading up to the date of his evaluation.” *Id.* at 52.

The Report indicated that the Individual met with his employer’s Occupational Medicine (Occ Med) psychologist and was referred out to a clinician for an “alcohol assessment and possible treatment.”³ *Id.* at 50. The Individual told the DOE Psychologist that he had not participated in Alcoholics Anonymous (AA) or any formal treatment. *Id.* The DOE Psychologist concluded that the Individual habitually or binge consumes alcohol to the point of impaired judgment, but whether the Individual meets the criteria for AUD “remains in doubt and should be further explored in the context of any treatment that he might undergo moving forward.” *Id.* at 54. The DOE Psychologist did not find any evidence of rehabilitation or reformation and recommended that the Individual complete an intensive outpatient treatment program (IOP) “that is rich in alcohol education as well as counseling to include both individual and group therapies.” *Id.* The DOE Psychologist recommended that the Individual participate in aftercare for a minimum of ten months, and that he participate in AA or a similar program on a weekly basis and obtain a sponsor. *Id.* The DOE Psychologist recommended that the Individual abstain from alcohol for at least ten months and submit to PEth tests “every three to four weeks[.]” for a total of nine PEth tests. *Id.* “After five months of demonstrated negative PEth results, testing can be reduced to five or six week intervals[.]” and the Individual should participate in counseling during this period. *Id.*

At the hearing, the Individual testified that he began participating in an IOP in April 2024 as soon as he received a copy of the Report, and that he had another two weeks to complete the program. Tr. at 16–17. The IOP mostly consists of group meetings, and although the program suggests that participants attend AA every Friday, the Individual only attended one AA meeting.⁴ *Id.* at 17, 36. The IOP that the Individual has joined is a Twelve Step “bible based program[.]” the treatment model used by AA.⁵ *Id.* at 23. To comply with the recommendations in the Report, the Individual

³ The DOE Psychologist reached out to the clinician to whom the Individual was referred. Ex. 9 at 53. The clinician told the DOE Psychologist that the Individual had not yet “completed” an alcohol assessment, but that psychological testing was administered, and “no indication of defensiveness or serious pathology” was found in the Individual. *Id.* The clinician noted that he “perceived that there [wa]s an alcohol related issue . . . , and his preliminary impression [wa]s that he will recommend that [the Individual] participate in treatment, most likely an intensive outpatient program (IOP).” *Id.*

⁴ The Individual attends IOP sessions Monday through Friday from 6:00 pm through 9:00 pm. Tr. at 34. He also participates in one weekly one-on-one therapy session. *Id.* at 34–35.

⁵ When asked which step he was on, the Individual indicated that although he uses the principles of the steps to help him in his “daily life,” he has “not been working the steps[.]” Tr. at 23–24.

also submitted to four PEth tests, which he took in April, May and June 2024, the results of which were negative. *Id.* at 18; Ex. A; Ex. B; Ex. C; Ex. D. He also testified that he has been subject to regular randomized BATs at work, all of which have been negative. Tr. at 40–41.

When asked whether he believes that he has an “issue” with alcohol, the Individual stated that he does not. *Id.* at 18, 24–25, 27. However, he did testify that he feels that his past alcohol consumption was “excessive[,]” but that he never let it impact his relationships or work life until he tested positive for alcohol in October 2023. *Id.* at 41. He also stated that he could understand the DOE Psychologist’s determination that he is a habitual drinker. *Id.* at 25. He indicated that he last consumed alcohol in February 2024, drinking “a couple glasses of wine” in the span of approximately two hours. *Id.* at 19, 38. The Individual stated he continued consuming alcohol after the October 2023 incident because he believed that “so long as [he was not] getting drunk[,]” then his consumption would not be cause for concern. *Id.* at 19–20. He stated that the importance of abstaining from alcohol did not fully occur to him until February 2024, following a number of meetings with the Occ Med psychologist. *Id.* at 20, 43. Although his girlfriend keeps alcohol in their home, he has no intention of consuming alcohol in the future and his girlfriend is supportive of his abstinence. *Id.* at 20–21, 27, 41–42. He does not feel any “temptation[] to consume alcohol.” *Id.* at 21–23. Instead of consuming alcohol with friends after work, the Individual now spends his free time completing projects around the house and spending time with loved ones. *Id.* at 21–22, 37. The Individual believes that he has a strong support system comprised of “a couple of the guys in the [IOP] class[,]” as well as his girlfriend and several coworkers. *Id.* at 35–36.

The Individual’s IOP therapist, who is also a part owner of the IOP as well as the clinical director, testified that he had seen the Report, and that he diagnosed the Individual with Substance Use Disorder, uncomplicated, mild, but he only made this diagnosis for insurance purposes.⁶ *Id.* at 45–46, 54. He testified that the Individual does not meet the diagnostic criteria for AUD. *Id.* at 47. He indicated that the Individual’s participation in the program has been “excellent[,]” and that the Individual contributes to the group without being prompted.⁷ *Id.* at 47, 50. He testified that the Individual has “complied with all . . . requested treatment protocols.” *Id.* at 51. Regarding the treatment program, the IOP therapist explained that the IOP is a twelve-week program based on the AA Twelve Step program and that it incorporates biblical principles. *Id.* at 48. He stated that at the time of the hearing, the Individual’s group was working on Step Five of the Twelve Steps. *Id.* at 49. He indicated that the Individual has submitted to eleven random urine tests, all of which have been negative. *Id.* at 51. The Individual is scheduled to complete the program in mid-July 2024, and the clinic offers aftercare, which consists of an “alumni program” and continued one-on-one therapy if the graduate so desires. *Id.* at 50, 52, 55–56. The IOP therapist also noted that the program encourages participants to find a sponsor and to “start step work with those sponsors.” *Id.* at 49, 52, 55. Finally, the IOP therapist agreed with the DOE Psychologist’s assessment that the Individual habitually uses alcohol and that he needs to demonstrate ten months of continued abstinence. *Id.* at 53–55. He testified that the Individual’s prognosis is “very good.” *Id.* at 56.

⁶ The Individual’s IOP therapist has a background in marriage and family therapy. Tr. at 9; Ex. F. The IOP therapist co-founded a substance use disorder intensive outpatient clinic in 2016. Ex. F at 1.

⁷ The IOP therapist also submitted a letter dated early July 2024, indicating that he sees the Individual on a weekly basis at “group sessions to work on coping skills and spiritual enrichment.” Ex. E. He indicated that the Individual has “a curious nature to the programming” and “exhibited the effort needed to learn about addiction and the problems it creates[.]” *Id.*

The DOE Psychologist testified that although the Individual is participating in an IOP, the Individual does not yet demonstrated ten months of continued abstinence in compliance with the recommendations contained in the Report. *Id.* at 59–60. He observed that the Individual seems to have a positive attitude and is committed, but the DOE Psychologist would have preferred to see the Individual continue to show evidence of his abstinence over a longer period of time, as it is indicative of a better long-term outcome. *Id.* at 60–61. The DOE Psychologist did not find adequate evidence of rehabilitation or reformation at the time of the hearing. *Id.* at 61–62.

V. Analysis

The Adjudicative Guidelines provide that 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.

While I understand that the Individual understood the DOE Psychologist's determination that he would habitually consume alcohol and that he has made lifestyle changes and enrolled in an IOP to address his problematic alcohol consumption, I nonetheless cannot conclude that the Individual has mitigated the stated concerns. The DOE Psychologist recommended that the Individual complete an IOP, participate in aftercare, and remain abstinent for ten months, an assessment with which the IOP therapist agreed. Although the Individual submitted PEth test results to corroborate his claim that he had been abstinent for approximately five months, he could not demonstrate that he had been abstinent for a full ten months at the time of the hearing. It is for this reason that the DOE Psychologist could not conclude that the Individual had shown adequate evidence of rehabilitation or reformation.

As the Individual tested positive for alcohol while at work less than one year ago, and as the Individual was a habitual user of alcohol and tested positive on a normal workday, I cannot

conclude that that enough time has passed, that the behavior was infrequent, or that it happened under such unusual circumstances so as to indicate that the incident is unlikely to recur and does not cast doubt on the Individual's reliability, trustworthiness, or judgment. The Individual has failed to mitigate the stated concerns pursuant to mitigating factor (a).

Although the Individual has submitted evidence of actions taken to overcome his past habitual alcohol consumption, I cannot conclude that he has established a pattern of modified consumption or abstinence in accordance with treatment recommendations. To do so, as the Report indicated and as the DOE Psychologist testified, the Individual would need to remain abstinent for ten months. This was an assessment with which the IOP therapist agreed. At the time of the hearing, I only had evidence of approximately five months of abstinence. Accordingly, the Individual failed to mitigate the stated concerns pursuant to mitigating factor (b).

While the Individual is participating in an IOP, which was confirmed by the IOP therapist, I cannot conclude that the Individual mitigated the stated concerns pursuant to mitigating factor (c). Although the IOP therapist indicated that the Individual's prognosis is good and that he actively participates in the program, I am concerned by the fact that the Individual could not state which step his group was on in the Twelve Step program. As the Twelve Step program underpins the treatment, I harbor some doubts regarding the progress the Individual is making after he testified that he was "not working on a specific step[.]" Tr. at 24. The program also recommends that participants attend AA meetings, which the Individual has failed to attend on a regular basis. Further, as indicated by the IOP therapist, the program encourages participants to secure sponsors to help participants work the steps, and based on the information before me, I have no evidence that the Individual has secured a sponsor or similar mentor. Accordingly, based on the testimony, I have concerns as to whether the Individual's progress is satisfactory.

At the time of the hearing, the Individual had not yet completed the IOP and had not yet undertaken any aftercare. Accordingly, he has failed to mitigate the stated concerns pursuant to mitigating factor (d).

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G of the Adjudicative Guidelines. After considering all the evidence, 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 concerns set forth in the SSC. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, I find 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.

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals