

**\*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.**

**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing )  
 )  
Filing Date: March 22, 2024 ) Case No.: PSH-24-0085  
 )  
 )  
\_\_\_\_\_ )

Issued: September 10, 2024

**Administrative Judge Decision**

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.”<sup>1</sup> For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored.

**I. BACKGROUND**

The Individual is employed by a DOE Contractor in a position that requires a security clearance. The Individual reported information to DOE that raised questions regarding his eligibility to hold a security clearance. The Local Security Office (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 continue holding 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 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 the testimony of two witnesses and testified on his own behalf. The LSO presented the testimony of a DOE psychologist (the Psychologist) who had evaluated the Individual. *See* Transcript of Hearing, OHA Case No. PSH-24-0085 (hereinafter cited as “Tr.”). The LSO submitted eleven exhibits, marked as Exhibits 1 through 11 (hereinafter cited as “Ex.”). The Individual submitted eighteen exhibits, marked as Exhibits A through R.

<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.

## II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, 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 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 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.

The LSO alleges that on May 16, 2023, the Individual was arrested and charged with Driving Under the Influence (DUI) and Open Container, and that the Individual admitted to consuming a bottle of liquor in the parking lot at his workplace. The LSO also alleges that on November 8, 2023, a DOE-consultant psychologist (the Psychologist) diagnosed the Individual with Alcohol Use Disorder, Moderate, in early remission, without adequate evidence of rehabilitation or reformation. 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 of 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 the 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 May 16, 2023, the Individual was in his car—which was parked in the lot near his work site—and poured a single serving bottle of alcohol into his coffee to drink on the drive home, which typically took about two hours. Ex. 7 at 1; Tr. at 21–22. He was pulled over for a faded license plate shortly after beginning his drive. Ex. 7 at 1. When asked if he had been drinking, he showed the officer the empty liquor bottle. *Id.* He had only consumed a small amount of the alcohol-coffee drink before being pulled over, and his Blood Alcohol Concentration registered at zero. *Id.*; Ex. 6 at 7. He was arrested and charged with misdemeanor DUI and Driving with an Open Container. Ex. 7 at 1; Ex. 6 at 2. On May 18, 2023, the Individual reported his arrest to his employer. Ex. 6 at 1.

On August 21, 2023, the Individual certified his responses to a letter of interrogatory (LOI) sent to him by the DOE. Ex. 6 at 10. In his responses, the Individual listed that he had been arrested for Driving While Intoxicated (DWI) in 1980, 2003, and 2006. *Id.* at 3. He also wrote that he had not consumed alcohol since the day of his DUI; that the last time he was intoxicated was the weekend before his DUI; and that before his DUI, he would consume alcohol to intoxication every other week. *Id.* at 4–5. He also reported that he had recently enrolled in a fourteen-week Intensive

Outpatient Program (IOP) to treat his alcohol use. *Id.* at 4. The Individual completed the IOP on September 25, 2023. Ex. F.

The DOE referred the Individual to the Psychologist for an evaluation. Ex. 3 at 1. In November 2023, the Psychologist evaluated the Individual and sent him for a Phosphatidylethanol (PEth) test, which measures alcohol byproduct in the blood and can detect alcohol use in the month preceding the test. Ex. 8 at 7. The Individual's PEth test was negative for alcohol use. *Id.* During his evaluation, the Individual disclosed that he had completed an IOP in 2008 as part of the court requirements from his 2006 DWI. *Id.* at 6. The Psychologist also spoke with the provider from the Individual's most recent IOP and learned that the Individual had successfully completed the IOP about two months prior but had not attended any aftercare support sessions. *Id.* at 7. The Psychologist released a report of his evaluation, in which he discussed the Individual's history of alcohol use, three prior DWIs, attempts to conceal his alcohol use, failure to control his alcohol use and increased consumption over time, alcohol use while driving, alcohol cravings, and high alcohol usage despite being encouraged by his doctor to limit his alcohol consumption. *Id.* at 6–9. The report stated that the Individual realized his alcohol use was “out of control” when he began putting alcohol, typically two single shot bottles, into his coffee on the drive home from work. *Id.* at 6. It further stated that the Individual reported drinking three to four beers per night by 2019; by 2023 the Individual added liquor to his daily alcohol consumption. *Id.* The report stated that the Individual said he last consumed alcohol on the day of his DUI. Ex. 7 at 5. The report stated that the Individual experienced alcohol cravings after starting to abstain after his DUI. *Id.* The Psychologist diagnosed the Individual with Alcohol Use Disorder, moderate severity, in early remission, and noted that he did not see evidence that the Individual was rehabilitated or reformed. *Id.* at 9. He wrote that in order to show rehabilitation, the Individual should engage in his IOP's aftercare therapy for one year after finishing the program and submit monthly negative PEth test results. *Id.* at 10. He wrote that in order to show reformation, the Individual should remain abstinent for two years, documented by monthly negative PEth test results. *Id.* The Individual received the Psychologist's report in December 2023. Tr. at 41.

At the hearing, the Individual presented the testimony of his supervisor and his friend and testified on his own behalf.

The Individual testified that his 2023 DUI charges were ultimately dismissed. Tr. at 27; Ex. C at 1 (showing dismissal on August 3, 2023). During the legal process, he did not consume alcohol pursuant to a court order to abstain. Tr. at 27–28. He testified that during that time, he realized that abstaining from alcohol had positively impacted his health. *Id.* at 28. He participated in his worksite's six-week fitness for duty alcohol awareness program and realized he could benefit from the IOP. *Id.* at 29, 39. His IOP was online only, and consisted of two hour-long sessions, three days per week. *Id.* at 30–31. He testified that he believed some other participants' substance abuse issues were more serious than his because they had been addicted longer or had been in jail in the past. *Id.* at 31. The Individual testified that he did not recall his IOP recommending aftercare, though he acknowledged that the notes from the IOP stated that the program had been recommended. *Id.* at 40. He later testified that his IOP provider had verbally recommended aftercare, but he did not get a weblink to the program until the end of January 2024. *Id.* at 44–45. Since that time, he attended aftercare support group meetings online once per week. *Id.* at 45. He testified that he had been attending Alcoholics Anonymous (AA) on the same day of the week as

aftercare, starting in February 2024, and described that day as his “self-care day.” *Id.* at 49–50. He testified that he considered himself an alcoholic, that he did not have a sponsor, and that he was doing the 12 Steps out of order. *Id.* at 50–51. Outside of the support groups, he testified, he had one friend (who testified at the hearing) who he could call for help with his sobriety. *Id.* at 74–75. He testified that his relapse prevention plan was to use aftercare and AA to focus on staying sober. *Id.* at 74.

The Individual submitted into evidence the results of PEth tests taken monthly from February 2024 through July 2024, all of which returned a negative result. Ex. M. The Individual admitted to drinking a vodka mixed drink at a sporting event around October 14, 2023, stating that it was the last time he consumed alcohol. Tr. at 48, 60–61, 78–79. The Individual testified that when he consumed alcohol in October 2023, he was with his son and his son’s family and that his son did not say anything about his choice to consume alcohol. *Id.* at 89. He further testified that he was sure his son and daughter-in-law would hold him accountable if he asked them to. *Id.* at 89–90. He testified that permanent abstinence was one of the goals of his 2023 IOP, but, when asked why he consumed alcohol within a few days of completing the program, he stated, “I don’t think I thought about it. . . . It just was more impulsive than anything.” *Id.* at 78–79. He testified that he did not specifically recall telling the Psychologist in November 2023 that his last drink of alcohol had been on the day of his arrest in May 2023. *Id.* at 62–63. He testified that he did not tell his aftercare program about his alcohol consumption in October 2023 but stated that he “might have discussed it in AA.” *Id.* at 83. In a brief the Individual submitted prior to the hearing, it was asserted that the Individual “last consumed alcohol on or before May 2023.” Individual’s Brief at 4. The Individual’s attorney, who authored the brief, represented on the record at the hearing that the Individual had not informed him of the October 2023 alcohol consumption. Tr. at 83. The Individual did not at any time before the hearing correct his submissions stating that his last alcohol consumption was in May 2023. When asked if he had told anyone about the October 2023 alcohol consumption, the Individual stated that his son and daughter-in-law were with him at the time. *Id.* When asked why he did not tell people about his October 2023 alcohol consumption, the Individual stated, “I don’t know. When I met with [the Psychologist], I just didn’t think about it. I kind of put it out of my mind.” Tr. at 87. However, he testified that he was sure he would remember if there had been other occasions on which he consumed alcohol after May 2023. *Id.* at 88.

The Individual submitted into evidence the results of weekly urine and breath tests for alcohol administered by his worksite’s fitness for duty program from June 2023 through January 2024. Ex. K. During this period, the program required him to abstain from all alcohol consumption, including while not at work. Ex. R at 15 (Fitness for duty program requirements). The Individual testified that he did not inform the fitness for duty program of his relapse in October 2023. Tr. at 90. Exhibit K did not include test results from the second or third weeks of October, but the Individual confirmed that there was no lapse in testing. Tr. at 84–85. He was not able to explain why the testing records around the time he consumed alcohol were missing. *Id.* at 85–86. He testified that he did not have testing following a surgery in November but began testing again in December. *Id.* at 86.

The Individual testified that before his DUI, he had typically consumed alcohol to relax after work. Tr. at 35. He testified that after being sober for several years after his 2006 DWI, he eventually began drinking “a can or two” of beer after work. *Id.* at 35, 57. He testified that his tolerance

increased quickly, and he began drinking vodka after work. *Id.* at 35. By the time of his 2023 DUI, the Individual was consuming one or two beers and a vodka mixed drink every day and would typically consume the vodka during his commute home. *Id.* at 36.

The Individual had known his supervisor for about 10 years. Tr. at 16. She was two levels of management above the Individual but had worked closely with him from 2016 to 2018. *Id.* at 96–98. She testified that when he transferred back into her group in 2023, she was shocked to learn that he had an alcohol issue. *Id.* at 97. She testified that when she worked closely with the Individual, she had never noticed anything physically or in his demeanor that would have led her to believe he had an alcohol issue. *Id.* at 101–02.

The Individual’s friend had known him for about four years. Tr. at 105. They communicated several times per week and saw each other in person several times per month. *Id.* at 106–07. She testified that she was surprised by the behavior leading to the Individual’s DUI and that she had never seen him behave like that. *Id.* at 108. She testified that she had not seen the Individual drink alcohol since his DUI and that the Individual had told her that he had not consumed alcohol since his DUI. *Id.* at 112.

The Psychologist testified to his opinion that, as of the date of the hearing, the Individual was still not rehabilitated or reformed from his alcohol use disorder. In support of this opinion, the Psychologist stated that the Individual had not been in aftercare for a year, that the Individual did not appear to have internalized the lessons from his treatment programs, that the Individual had a long gap between finishing the IOP and starting aftercare and AA, and that the Individual did not appear committed to the 12 Step process he was participating in because he was not working the program in the recommended order. *Id.* at 118–20. He also noted that there was a gap in alcohol testing for which the Individual could not account; that the Individual consumed alcohol after finishing the IOP; and that the Individual concealed his October 2023 alcohol use after finishing the IOP from his friend, the Psychologist, and the fitness for duty testing program. *Id.* at 120–21. He expressed concern that the Individual’s family had not questioned his decision to drink alcohol in October 2023. *Id.* The Psychologist was also concerned that the Individual had returned to alcohol in the past after a years-long period of abstinence. *Id.* at 123. He opined that the Individual’s risk of relapse was fair. *Id.* at 124.

The Psychologist testified that consuming one drink a couple weeks before a PEth test would not cause a positive result because PEth testing “will pick up consistent alcohol use.” *Id.* at 127–28. He testified that a person could have one or two drinks per week and not have enough byproduct in their blood to meet the threshold for a positive PEth result. *Id.* at 128.

The Psychologist considered the Individual’s alcohol use in October 2023 to be a relapse because, he testified, given the Individual’s history, any alcohol consumption was enough to be considered a relapse. Tr. at 124, 131. He contrasted this with the Individual’s candor regarding the rest of his alcohol use. *Id.* He also noted that in the evaluation, the Individual reporting drinking two single-serving bottles of alcohol on his typical commute home, but in the hearing had reported drinking only one. *Id.*

## 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 this 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.

Conditions that may mitigate Guideline G concerns 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.

Regarding condition (a), the Individual's DUI is his fourth alcohol-related offense and occurred nearly 20 years after his most recent DWI. When viewed in conjunction with the Individual's return to alcohol consumption after an extended period of abstinence and the fact that he is not rehabilitated or reformed from his Alcohol Use Disorder, I cannot say that he is unlikely to drive while drinking or resume problematic patterns of alcohol consumption in the future. Doubt still exists as to his judgment and reliability. Therefore, condition (a) does not apply.

Regarding condition (b), the Individual acknowledged his maladaptive alcohol use, but he has not demonstrated a clear and established pattern of abstinence as recommended by the Psychologist because on at least one occasion, he consumed alcohol while claiming to be abstinent. The Individual immediately recalled his October 2023 alcohol use when asked at the hearing about the last time he drank, making less credible his testimony that he forgot the incident during his psychological evaluation about two weeks after it happened. His decision to hide his alcohol use in October 2023 is evidence that he has not overcome his problem. It is also evidence that the Individual has not completed a year of abstinence from alcohol as recommended by the Psychologist. Therefore, condition (b) does not apply.

Regarding condition (c), the Individual has a history of treatment and relapse. In 2008, the Individual completed an IOP and remained sober for several years before returning to regular alcohol use that increased over time. Therefore, condition (c) does not apply.

Regarding condition (d), the Individual has not completed a year of aftercare and abstinence as recommended by the Psychologist. As previously stated, his pattern of abstinence is not currently clear or established because the Individual's relapse—and the fact that he did not disclose it to the Psychologist, his attorney, and the fitness for duty program—indicates that I cannot be certain beyond doubt that the Individual has not consumed alcohol since October 2023. Moreover, the Individual has not completed the year-long period of aftercare recommended by the Psychologist and had a significant gap between finishing the IOP and starting aftercare. Therefore, condition (d) does not apply.

The Individual's October 2023 relapse is directly related to the Psychologist's testimony that someone could consume low levels of alcohol, such as a single drink occasionally at a sports game, with some frequency and have a PEth level too low to trigger a positive result. The Individual's unexplained gap in testing in October 2023 creates doubt about whether the Individual has been honest about his alcohol use. It is worth noting that when he consumed alcohol in October 2023, he was under an obligation to abstain from alcohol as a part of his fitness for duty program at work. Moreover, the Psychologist credibly testified to his expert opinion that the Individual was not rehabilitated or reformed. The Individual's lack of candor regarding when he last consumed alcohol introduces doubt in the Individual's other claims of abstinence. His lack of candor in not reporting his alcohol use to the fitness for duty program indicates that the Individual cannot be trusted to take accountability for his actions. I cannot find that, considering the whole person concept, 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 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