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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: June 27, 2024 ) Case No.: PSH-24-0145  
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Issued: November 20, 2024

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**Administrative Judge Decision**  
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Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, as set forth at 10 C.F.R. Part 710, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”<sup>1</sup> 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 be restored.

**I. Background**

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In April 2006, the Individual was arrested and charged with Driving While Intoxicated (DWI). Exhibit (Ex.) 14 at 156–57.<sup>2</sup> In December 2023, the Individual reported that he had been hospitalized for three days following Thanksgiving for “Alcohol Treatment.” Ex. 6 at 42–43. Specifically, the Individual reported that he had a seizure that led to hospitalization.<sup>3</sup> *Id.* at 43. The Individual noted that he last consumed alcohol on November 25, 2023, and in the time since had been “refraining from drinking” and “taking classes” through the Employee Concerns Program (ECP) at his worksite. *Id.*

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<sup>1</sup> 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.

<sup>2</sup> The exhibits submitted by DOE were Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to exhibits submitted by DOE.

<sup>3</sup> The Individual’s medical records reveal that he was diagnosed with “Alcohol withdrawal seizure without complication.” Ex. 11 at 76.

The Individual subsequently underwent a psychological evaluation with a DOE consultant psychologist (DOE Psychologist) in March 2024. Ex. 12. Following the evaluation, the DOE Psychologist issued a report (Report) in which he diagnosed the Individual with Alcohol Use Disorder, Moderate, in Early Remission, pursuant to the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR)*. *Id.* at 99. He also concluded that there was inadequate evidence of rehabilitation and reformation. *Id.*

The Local Security Office (LSO) informed the Individual in a Notification Letter that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. Ex. 1 at 7–9. In the 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 at 6.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted sixteen numbered exhibits (Ex. 1–16) into the record and presented the testimony of the DOE Psychologist. The Individual submitted nine exhibits (Ex. A–I) into the record, and he presented his own testimony as well as that of his EAP Counselor and his Supervisor. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

## **II. Regulatory Standard**

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 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.

## **III. Notification Letter and Associated Security Concerns**

As previously mentioned, the Notification Letter included the SSC, which sets forth the derogatory information that raised concerns about the Individual's eligibility for access authorization. The SSC specifically cites Guideline G. Ex. 1. Guideline G 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 Psychologist's diagnosis of Alcohol Use Disorder, Moderate, in Early Remission, and his opinion that there was inadequate evidence of rehabilitation or reformation. Ex. 1 at 6. The LSO also cited the Individual's 2006 DWI arrest as well as his November 2024 alcohol-related hospitalization. *Id.* The LSO's allegations justify its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (d).

#### **IV. Findings of Fact**

According to the Report, the Individual was arrested and charged with DWI in 2006 after "he consumed seven to eight beers . . . and shots of whiskey over the course of six to eight hours." Ex. 12 at 95–96. As a result of the arrest, the Individual was court-ordered to attend an approximately one-month long workshop for "alcohol counseling/education," which he successfully completed. *Id.* at 96. Following the arrest, the Individual reportedly remained abstinent until the fall of 2007, when he resumed his alcohol consumption, drinking two to three times per week and "occasionally" reaching the point of intoxication. *Id.*

The Individual told the DOE Psychologist that around the spring of 2020, his mother's health was declining and the COVID lockdowns were beginning, at which time, his alcohol use slowly began to increase to daily consumption of two to three beers on weekdays and three to five beers on weekends. *Id.* The Individual maintained that this pattern continued until November 2023. *Id.*

The Individual reported that on November 22, he began consuming craft beers and continued to drink until November 25. *Id.* During that period, the Individual estimated that he consumed two twelve packs of 5.6% alcohol by volume (ABV) beers and one twelve pack of 4.7% ABV beers. *Id.* Following this period of consumption, the Individual abstained from alcohol on November 26 and returned to work on November 27. *Id.* When he was preparing to leave work for the day on November 27, a coworker became concerned for the Individual's wellbeing and called for an ambulance. *Id.* The Individual was hospitalized for three days due to an alcohol withdrawal related seizure. *Id.* at 97.

In December 2023, the Individual was submitted for a Fitness for Duty (FFD) evaluation at his worksite. *Id.*; Ex. 4. In March 2024, the DOE Psychologist spoke with the psychologist who evaluated the Individual for the FFD (FFD Psychologist). Ex. 12 at 97 She reported to the DOE Psychologist that the Individual had complied with the requirements for the FFD program, including three phosphatidylethanol (PEth) tests,<sup>4</sup> ethyl glucuronide (EtG) tests, and alcohol breath

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<sup>4</sup> According to the Report, the PEth "test detects any significant alcohol use over the past three to four weeks." Ex. 12 at 98.

tests, all of which were negative.<sup>5</sup> *Id.* The FFD Psychologist stated that she met with the Individual on five occasions and felt that the Individual “demonstrated good insights into his drinking behavior.” *Id.* She confirmed that the Individual completed the requirements of the FFD program.<sup>6</sup> *Id.*

The DOE Psychologist also noted in his Report that he spoke with the Individual’s EAP Counselor, who reported that the Individual had completed her six-week Alcohol Awareness and Education course and was attending her twelve-week Maintaining Changes course.<sup>7</sup> *Id.* The EAP Counselor found the Individual to be an active participant in the group course and felt that he appeared “to be honest in discussing the pros and cons of alcohol consumption and navigating his current sober living.” *Id.*

The Individual told the DOE Psychologist that, along with the FFD program and EAP classes, he had started attending a SMART Recovery<sup>8</sup> support group. *Id.* At the time of the evaluation, the Individual had attended two sessions and intended to continue. *Id.* He maintained that he had been abstinent from alcohol since November 25, 2023. *Id.* at 99. As part of the evaluation, the DOE Psychologist ordered a PEth test which was negative. *Id.* at 98. The DOE Psychologist opined that the PEth test results were consistent with the Individual’s self-report of abstinence. *Id.* at 98–99.

The DOE Psychologist ultimately determined that the Individual met sufficient criteria for a diagnosis of Alcohol Use Disorder, Moderate, in Early Remission without adequate evidence of rehabilitation or reformation. *Id.* at 99. In order to establish adequate evidence of rehabilitation and reformation, the DOE Psychologist recommended that the Individual continue to attend SMART Recovery twice per week and find a sponsor. *Id.* He also recommended that the Individual document his attendance through a sign-in sheet. *Id.* He recommended that that Individual remain abstinent and engage in twice weekly SMART Recovery meetings for a period of one year, documenting his abstinence with PEth tests at least once every four to six weeks over the course of twelve months. *Id.* at 99–100.

## V. Hearing Testimony

At the hearing, the Individual’s Supervisor testified on his behalf. Tr. at 37. The Supervisor testified that he has known the Individual for approximately twenty years and currently sees him approximately once or twice per week. *Id.* at 37, 39. The Supervisor stated that the Individual is one of his top performers, and he was unaware that the Individual had an alcohol problem prior to his clearance being suspended. *Id.* at 40. The Supervisor opined that COVID “was a big hit” to the Individual “because it impacted what he was able to do with his social life.” *Id.* He testified that

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<sup>5</sup> The Report noted that the Individual’s first PEth test was positive due to its proximity to the Individual’s alcohol consumption over the Thanksgiving holiday. Ex. 12 at 97.

<sup>6</sup> Although the FFD Psychologist submitted a letter of support on behalf of the Individual, it is not clear from the record exactly what the requirements of the FFD program were. *See* Ex. C; Ex. 12 at 97.

<sup>7</sup> The Individual submitted a Certificate of Completion for both the Alcohol Awareness and Education course as well as the Maintaining Changes in Alcohol Use course. Ex. C; Ex. D; Ex. E.

<sup>8</sup> SMART Recovery is an “evidence-based treatment approach.” Ex. 12 at 99.

although he knew the Individual was consuming alcohol outside of work hours, there was no indication that the Individual “had a drinking problem.” *Id.* The Supervisor stated that since losing his clearance, the Individual shared that he was “drinking a lot more than [the Supervisor] was aware of[.]” but since having the seizure, the Individual has been abstinent from alcohol. *Id.* at 42.

The EAP Counselor testified on the Individual’s behalf and stated that the Individual first reached out for EAP services in early December 2023. *Id.* at 16. She testified that the Individual completed both her six-week Alcohol Awareness class as well as her twelve-week Maintaining Changes class, and the Individual was “was always alert and attentive.”<sup>9</sup> *Id.* at 18–19, 22. She also testified that she saw the Individual for ten individual counseling sessions, and she felt that the Individual had been “open and honest regarding abstaining, his sobriety, what he’s been doing.” *Id.* at 20. She elaborated, stating that the Individual had shared “the journey in navigating abstaining from alcohol, the journey of sobriety, the pros and cons of drinking, of not drinking.” *Id.* The EAP Counselor testified that, to her knowledge, the Individual had not consumed alcohol since the weekend prior to his seizure, and he intended to remain abstinent. *Id.* at 18, 24–25. She stated that she is optimistic about the Individual’s continued sobriety “as long as he continues to reach out and stay connected” to his support systems. *Id.* at 28.

The Individual also testified during the hearing and stated that he last consumed alcohol on November 25, 2023, prior to the seizure.<sup>10</sup> *Id.* at 48. The Individual testified that after he completed the FFD program, he started attending SMART Recovery in late February 2024 per the FFD Psychologist’s recommendation. *Id.* at 55, 59–60. The Individual testified that the FFD Psychologist felt that SMART Recovery would provide a good resource for him to “connect with other people that are also navigating recovery[.]” *Id.* at 60. He stated that SMART Recovery also offers tools for managing triggers and “navigating situations where you might feel you would compromise your sobriety[.]” *Id.* He testified that when he first started attending SMART Recovery, he would go once per week on Thursdays. *Id.* Then in June 2024, he began attending a Monday group as well.<sup>11</sup> *Id.* The Individual testified that he plans on continuing to attend SMART Recovery meetings for the foreseeable future. *Id.* at 68.

The Individual noted that SMART Recovery does not have sponsors, but he stated that he has become close to the group facilitators and has their phones numbers should he need help. *Id.* at

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<sup>9</sup> The EAP Counselor testified that the Individual continues to attend the Maintaining Changes classes. Tr. at 23.

<sup>10</sup> To support his claims of abstinence, the Individual submitted nine negative PEth tests dated: March 5, 2024; April 5, 2024; May 3, 2024; May 31, 2024; June 28, 2024; July 24, 2024; August 20, 2024; September 13, 2024; and October 7, 2024. Ex. I at 27–44. This exhibit does not include the two negative PEth tests he underwent as part of the FFD program on January 16, 2024, and February 12, 2024, and cited by the FFD Psychologist in her letter. Ex. C. It also does not include the negative PEth test that was administered as part of the DOE Psychologist’s evaluation. Ex. 12 at 98.

<sup>11</sup> The Individual submitted his notes for each dated session from his Monday SMART Recovery sessions from February 2024 through the end of May 2024, corroborating his testimony. Ex. G. He additionally submitted SMART Recovery sign-in sheets for both the Monday and Thursday groups from late May 2024 through mid-October 2024, corroborating his testimony. Ex. H. The Individual testified that he did not become aware of the sign-in sheets until he had been participating in the group for some time, which is why he was unable to submit formal sign-in sheets corroborating his attendance prior to late May 2024. Tr. at 61.

62–63. He also stated that he is a member of the group text chain where group members can share articles, helpful links, or reach out for help. *Id.* at 64.

Regarding his EAP classes, the Individual testified that after he completed the Maintaining Changes class, he chose to continue attending beyond the twelve weeks because he found it helpful as it made him feel that he was not “the only person dealing with this kind of situation.” *Id.* at 57–58. He stated that he wants to continue attending until another EAP class addressing trauma begins. *Id.* at 59. At that point, he would like to alternate the weeks on which he attends the trauma class and the Maintaining Changes class. *Id.*

The Individual testified that he realizes that his previous alcohol consumption was problematic, but maintaining his sobriety has not been as difficult as he expected. *Id.* at 69, 83. He stated that he is able to be in situations where people are consuming alcohol, and he does not have an urge to drink. *Id.* He noted that he sometimes feels “a little left out” in social situations where people are consuming alcohol, but he does not experience cravings. *Id.* at 70. The Individual testified that he frequents “a non-alcohol bar” in order to “get out of the house and talk to people.” *Id.* at 74.

After hearing the testimony of the witnesses, the DOE Psychologist testified that although the Individual had only been abstinent from alcohol for approximately eleven months at the time of the hearing and had not quite reached the recommended one year of abstinence, the Individual had nonetheless established adequate evidence of rehabilitation and reformation from the Alcohol Use Disorder as the Individual was able to successfully “continue on the path” of abstinence and recovery that he had already started when the DOE Psychologist initially evaluated him. *Id.* at 89. He further added that the Individual’s prognosis for sustained sobriety was “good” as the Individual was engaged in the treatment process and appeared to have a willingness and desire to gain further insight into his recovery. *Id.* at 90–91.

## **VI. Analysis**

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses during the hearing. In resolving the question of the Individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual has mitigated the security concerns cited by the LSO under Guideline G of the Adjudicative Guidelines. Therefore, I find that the Individual’s access authorization should be restored. The specific findings that I make in support of this decision are discussed below.

Conditions that may 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 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.

At the time of the hearing, the Individual had: (1) recognized that he previously had a problem with alcohol, (2) completed the FFD program, (3) completed two EAP alcohol classes and continued to participate as of the hearing date, (4) attended individual counseling through EAP, and (4) engaged regularly and consistently in SMART Recovery meetings. Additionally, he underwent twelve PEth tests over the course of ten months, all of which were negative for the presence of alcohol. Furthermore, the DOE Psychologist opined that the Individual had established rehabilitation and reformation from the Alcohol Use Disorder with a good prognosis. As such, the Individual has demonstrated a clear and established pattern of abstinence from alcohol, in accordance with treatment recommendations, and continues to participate in recovery through his EAP classes and SMART Recovery meetings. Accordingly, I find that the Individual has established the applicability of mitigating factor (b). *Id.* at ¶ 23(b). For the forgoing reasons, I find that the Individual has mitigated the Guideline G security concerns raised in the SSC.

## **VII. Conclusion**

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has brought forth sufficient evidence to resolve the security concerns associated with Guideline G. Accordingly, I have determined that the Individual's access authorization should be restored. This Decision may be appealed in accordance with the procedures set forth in 10 C.F.R. § 710.28.

Katie Quintana  
Administrative Judge  
Office of Hearings and Appeals