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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: August 8, 2024) Case No.: PSH-24-0173
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Issued: December 23, 2024

Administrative Judge Decision

Brenda Balzon, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material or Eligibility to Hold a Sensitive Position."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 granted.

I. BACKGROUND

In November 2020, the Individual began employment with a DOE contractor in a position requiring him to hold access authorization. DOE Exhibit (DOE Ex.) 7 at 39.² Prior to his employment, the Individual applied for access authorization in October 2020. DOE Ex. 14 at 244. During the application process, he disclosed that, in 2002, police charged him with Driving While Intoxicated (DWI) for driving an all-terrain vehicle (ATV) with a blood-alcohol content (BAC) of .10. *Id.* at 232, 47.

On December 9, 2022, police cited the Individual with Failed to Drive Within Single Lane Resulting in a Crash. DOE Ex. 9 at 45. The DOE Contractor shared the police report for the incident with the Local Security Office (LSO) on February 23, 2023, attached to a Personnel

¹ The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as "access authorization" or "security clearance."

² The DOE submitted a PDF exhibit notebook with all its exhibits 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.

Security Information Report (PSIR). DOE Ex. 6 at 30. Thereafter, on February 27, 2023, the DOE Contractor interviewed the Individual who admitted to drinking alcohol prior to the accident. DOE Ex. 7 at 38–39. On March 1, 2023, the documentation generated in connection with the interview was provided to the LSO attached to a PSIR. DOE Ex. 7 at 37. The LSO also issued a Letter of Interrogatory (LOI) to the Individual, to which he provided a response on February 12, 2024; in his LOI response, the Individual admitted to drinking three beers and one mixed drink before the accident. DOE Ex. 9 at 45.

On March 12, 2024, the Individual met with a DOE-contracted psychiatrist (DOE Psychiatrist) for a psychiatric evaluation. DOE Ex. 10 at 63. As part of the evaluation, the Individual submitted to a phosphatidylethanol (PEth) test, which was quantitatively positive at 152 ng/mL.³ *Id.* at 68. On April 3, 2024, the DOE Psychiatrist issued a report of the evaluation (Report), in which he opined that the Individual met sufficient criteria for a diagnosis of Alcohol Use Disorder, Moderate under the *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*, and that there was “no evidence of adequate rehabilitation or reformation” *Id.* at 72–73.

The LSO issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. DOE Ex. 1 at 6–8. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline G of the Adjudicative Guidelines. *Id.* at 5.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. DOE Ex. 2 at 10–11. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative hearing. Prior to the hearing, the LSO submitted fourteen numbered exhibits (DOE Ex. 1–14), and the Individual submitted five lettered exhibits (Ex. A–E). At the hearing, the Individual testified on his own behalf and offered the testimony of his physician (Physician). Transcript of Hearing, OHA Case No. PSH-24-0173 (Tr.) at 3. The LSO offered the testimony of the DOE Psychiatrist. *Id.* After the hearing, the Individual submitted two affidavits as Exhibits 1 and 2 from the Physician and himself respectively (Indiv. Ex. 1–2). Individual’s Exhibit 2 also included two additional attachments. (Indiv. Ex. 2A–2B).⁴

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

³ “PEth is a marker of alcohol exposure to the body. PEth does not occur naturally in the body so elevated PEth levels are evidence of alcohol exposure.” DOE Ex. 10 at 68. PEth can be used to detect the average use of alcohol up to 28–30 days prior to sample collection. *Id.* “A [], PEth result exceeding 20 ng/mL is evidence of “moderate to heavy ethanol consumption.” *Id.*

⁴ The Individual submitted his Exhibits 1, 2, 2A, and 2B as a single PDF accompanied by a cover letter. This Decision will pincite to the page numbers in the order in which they appear in the PDF regardless of internal pagination.

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the basis for its substantial doubt regarding the Individual's eligibility for access authorization. DOE Ex. 1 at 5. "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 (1) the DOE Psychiatrist's diagnosis of Alcohol Use Disorder, Moderate with no adequate evidence of rehabilitation or reformation; (2) the Individual's quantitatively positive PEth test result at 152 ng/mL; (3) the Individual's 2022 traffic accident, before which he consumed three beers and one mixed drink; (4) and the Individual's 2002 DWI involving the ATV. DOE Ex. 1 at 5. The LSO's allegations justify its invocation of Guideline G. Adjudicative Guidelines at ¶ 21.

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 regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

An individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). An individual is afforded a full opportunity to present evidence supporting their 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

a. 2002 DWI and 2022 Traffic Citation

During an enhanced subject interview (ESI) conducted prior to obtaining his clearance, the Individual admitted that in 2002, at around 22 years old, he consumed approximately five beers prior to operating and crashing an ATV. DOE Ex. 14 at 247. He disclosed that he ended up in a hospital that determined that his BAC was .10.⁵ *Id.* The Individual was charged with a DWI, though the charge was dropped and eventually expunged. *Id.*

⁵ Regarding the 2002 ATV DWI, the Individual provided testimony at hearing agreeing that he was probably impaired. Tr. at 67.

The Individual worked as a first responder until he started his current employment with a DOE Contractor in November 2020. DOE Ex. 14 at 215–19; *see also* Tr. at 45. In December 2022, the Individual was having dinner and drinking with friends starting at around 6:00 or 7:00 p.m. DOE Ex. 7 at 39. In his February 2024 response to the LOI, the Individual answered that he had three beers and one mixed drink; he was “unsure of the exact time . . .” he stopped drinking but approximated that he stopped at “approximately 1130pm-12 [sic][.]” DOE Ex. 9 at 45. Thereafter, Individual drove his vehicle home. DOE Ex. 7 at 39; DOE Ex. 9 at 46.

During the drive, the Individual “swerved to avoid” an oncoming car “and struck a pole.” DOE Ex. 7 at 39 (February 2023 interview with the DOE Contractor); *see also* DOE Ex. 9 at 45 (responding to the LOI that he had “swerved to avoid [a] vehicle and ran off the road, striking fixed objects).

The Individual told the responding police officers that his friend had been driving and that the friend had fled prior to the arrival of law enforcement at the scene. DOE Ex. 6 at 33; DOE Ex. 7 at 40; Ex. E at 2. However, the police report indicates that the next day, he admitted to an officer, via telephone, that he had been the one driving the vehicle at the time of the accident. DOE Ex. 6 at 34. The Individual explained that he had originally provided inaccurate information to the police because he was “extremely embarrassed” and that he corrected his false statement to the police “because it was the right thing to do.” DOE Ex. 9 at 55.

b. DOE Psychiatrist’s Report

On March 21, 2024, the Individual met with the DOE Psychiatrist for an evaluation. DOE Ex. 10 at 64. The evaluation consisted of, *inter alia*, a psychiatric interview and PEth test. *Id.* During the evaluation, the Individual disclosed the 2002 alcohol related ATV accident and the 2022 car crash. *Id.* at 66–68. Regarding the 2022 accident, the Individual told the DOE Psychiatrist that he had “fib[bed]” and had “made a bad judgment call . . .” *Id.* at 67. According to the Report, the Individual self-reported consuming an average of 15 to 20 drinks per month⁶ and that, “[t]he most alcohol he consumed at [] one sitting was 5-6 beers over 5-6 hours” a “level of consumption” at which “[h]e did not feel intoxicated . . .” *Id.* at 67.

The PEth test returned a quantitatively positive result at 152 ng/mL, which is “well into the ‘medium’ level of drinking (averaging 2-4 drinks[] per day[,] several days [per] week).” *Id.* at 68. The DOE Psychiatrist concluded that the PEth result indicated a level of alcohol consumption “higher than” the Individual’s self-reported consumption. *Id.* Furthermore, the DOE Psychiatrist noted that the Individual self-reported being “able to drink 5 or 6 drinks at [] one sitting ‘without feeling intoxicated’ a few times per month[,]” which “indicate[d] a binge drinking pattern or at the very least a significant alcohol tolerance.” *Id.* In his Report, the DOE Psychiatrist diagnosed the Individual with Alcohol Use Disorder, Moderate, pursuant to the DSM-5. *Id.* at 72.

⁶ The DOE Psychiatrist relied in part upon the information provided by the Individual in his February 2024, response to the LOI, wherein he disclosed that he drank approximately “1-2 mixed drinks . . . [,] typically 2 times [per] week [or] maybe 3 times [per] week [] .” DOE Ex. 9 at 47. In his February 2024 response, he indicated that his current pattern of alcohol consumption had been “typical . . . for approximately 15-20 years.” *Id.*

In the Report, the DOE Psychiatrist also opined that there was “no evidence of adequate rehabilitation or reformation as [the Individual] continue[d] to consume alcohol.” *Id.* at 73. The DOE Psychiatrist opined that the Individual could demonstrate adequate rehabilitation by: (1) abstaining from alcohol use for twelve months; (2) participating in Alcoholics Anonymous (AA), SMART recovery, or a similar mutual support group for one year with a minimum of three meetings per week, documented attendance, and evidence of working through steps with a sponsor or following SMART recovery guidelines; (3) if returned to employment with the DOE Contractor, involvement with the DOE Contractor’s Employment Assistance Program (EAP), including abstinence support services and random BAC tests; and (4) obtaining four PEth tests at three months, six months, nine months, and twelve months to support sobriety. *Id.* at 73.

V. HEARING TESTIMONY

a. *Testimony of the Individual and his Physician*

The Individual testified to working in law enforcement before starting employment with the DOE contractor in November 2020. Tr. at 45–47. Regarding the December 2022 traffic accident, he testified that he had three beers and a mixed drink that night between approximately 5:30 p.m. and 10:30p.m.⁷ *Id.* at 60. *Id.* at 60. The accident occurred at 2:00 a.m. *Id.* The Individual again admitted that, when the police officers arrived on the scene of the accident, he informed them that his friend had been driving his vehicle. *Id.* at 63–65. He testified that he was not trying to avoid accountability for the accident but instead was “shaken up[,]” had “hit [his] head . . . [,]” and was “embarrassed about crashing” and “being out at 2:00 in the morning . . .” *Id.* at 64. The Individual maintains that he was not impaired when he was driving. *Id.* at 66. The Individual was unsure if his drinking pattern changed after the December 2022 traffic incident. *Id.* at 68.

The Individual testified that he underwent an evaluation with the DOE Psychiatrist. Tr. at 50. Upon first reading the DOE Psychiatrist’s Report in July 2024, the Individual testified that he was surprised and in denial regarding the DOE Psychiatrist’s conclusion that he had an issue with alcohol. Tr. at 51, 59, 71–72. However, the Individual testified to taking the Report and its recommendations “to heart” shortly after reading the Report. *Id.* at 51. He also admitted that “clearly alcohol has had a negative impact on [his] life” and stated that he knew had to “make some changes.” *Id.* at 51–52.

Regarding the DOE Psychiatrist’s recommendation for abstinence, the Individual testified to abstaining from alcohol consumption starting in July 2024, a few days after receiving the Report. *Id.* at 52–54, 72. As to the DOE Psychiatrist’s recommendation regarding PEth testing, the Individual indicated that he was obtaining monthly PEth tests as a means of documenting and remaining accountable to his abstinence. *Id.* at 53–54. The Physician indicated that the Individual had been meeting with him monthly and providing the PEth results to him during these meetings.

⁷ In his February 2024 response to the LOI, the Individual indicated he had his last alcoholic drink at around “1130pm [sic]-12[.]” DOE Ex. 9 at 45.

Id. at 26–27. The Physician reviewed three⁸ PEth tests from the Individual, which all came back negative. *Id.* at 31. This corroborated the Individual’s testimony that he had abstained from alcohol consumption., *Id.* at 74–75; *see also* Ex. B (negative PEth test on August 30, 2024); Ex. C (negative PEth test on September 27, 2024); Ex. D (negative PEth test on October 29, 2024).

In July 2024, the Individual approached the Physician because of their pre-existing relationship. *Id.* at 22–23, 32 (Physician’s testimony that the two met in 2021, serving as a youth sports teams’ coach and doctor), 55–56. The two met formally in the Physician’s office in early August 2024, and the Physician thereafter became the Individual’s treating physician. *Id.* at 23–24. According to the Physician, during the August 2024 meeting, the Individual acknowledged the Alcohol Use Disorder diagnosis from the DOE Psychiatrist, appeared sincerely concerned about his alcohol use, and expressed his goal of abstaining from alcohol. *Id.* at 23, 43. The Physician reviewed the Report, and, while he agreed with the DOE Psychiatrist’s findings and treatment recommendations—specifically that the Individual maintain abstinence and that the Individual attend AA or another similar program—the Physician wanted to first ensure that the Individual was medically stable and that there were no “withdrawal issues.” *Id.* at 23, 25, 29–30. The Physician performed some “initial baseline lab work” which “looked healthy” and showed no “signs of secondary issues from alcohol use.” *Id.* at 24, 26.

Regarding their monthly meetings, the Physician answered “yes” when asked whether his treatment was focused on the “medical management of . . . the effects abuse, versus counseling of substance abuse[.]” *Id.* at 36. The Physician clarified that the monthly meetings with the Individual were to ensure “there was no detox or other . . . medical ramifications of the sort [from] abrupt cessation of alcohol use[.]” *Id.* The two did not discuss “any cravings or any issues related to stopping using alcohol[.]” and the Physician did not “refer [the Individual] to a mental health provider” *Id.* The Physician further testified that, while many of his patients have substance abuse issues, he has no certifications in substance abuse treatment. *Id.* at 35.

Regarding the DOE Psychiatrist’s recommendation that the Individual attend AA or a similar mutual support group, the Physician testified that, after “making sure the lab work was okay . . . [.]” their plan was to, “within a five- to six-month period[,] . . . find [the Individual] a program that” would support “continual monitoring and help him maintain abstinence in the future.” *Id.* at 27–28; *see also id.* at 56–57 (Individual’s testimony that he and the Physician discussed selecting a suitable group program after approximately six months of doing one-on-one meetings). However, at the hearing, the Physician testified he had no “particular reason” for recommending that the Individual wait several months before joining AA or a similar program. *Id.* at 37. Early after receiving the Report, the Individual testified to contacting different programs and being told that there were waitlists for enrollment. *Id.* at 52, 80. He was discouraged and “didn’t really know where to go or what [his] next steps [were] to find help.” *Id.* at 52. He, however, did not place himself on any of these waitlists. *Id.* at 80–81.

⁸ While the Physician has testified to reviewing four negative PEth test from the Individual, the record only contains documentary evidence of three negative PEth tests. Tr. at 31. The Individual clarified that he only completed three PEth tests and that the Physician “misspoke.” *Id.* at 74–75.

As of the date of the hearing, the Physician indicated that they were still working on identifying a program that included mutual support groups, in accordance with the DOE Psychiatrist's recommendation, but that they have been meeting regularly in the interim. *Id.* at 28, 30. The Physician testified that the Individual appeared to have no resistance to going to AA or a similar program though the Individual appeared "unsure of where to start looking . . ." and "concern[ed] with [the] comfort level of what those groups would be like . . ." *Id.* at 37–38.

Similarly, the Individual testified that, while he was not reluctant to attend group sessions, he was still addressing some feelings of embarrassment. *Id.* at 83. Furthermore, he testified that he has not attended AA or similar group programs because of his background as a first responder and level of discomfort with attending an AA meeting with a group of strangers. *Id.* at 78. The Individual wanted to find a "program that [he] fe[lt] comfortable with" and "looked into some programs . . . directed [towards] first responders . . ." *Id.* at 54. He explained that because of his background as a first responder he "s[aw] things that most people shouldn't see . . . on a daily basis." *Id.* at 83. Thus, the Individual wanted to ensure that concurrent with addressing his alcohol use, "if there [] are other things [he] needs to address[,] he addresses them." *Id.* At the hearing, however, the Individual did not know if he specifically spoke with his Physician about identifying a group program where there would be other first responders. *Id.* at 98–99.

At the hearing, the Individual identified one such program (First Responder Program) that he believes is "most suitable for [him]." *Id.* at 54, 57. The Individual indicated that he had spoken with one social worker from the First Responder Program a couple of months before the hearing and was "working on getting enrolled in the program" which would involve both "one-on-one counseling" and "group sessions . . . with other first responders." *Id.* at 54–55, 57–58, 81. As of the hearing date, he had not yet enrolled in the program or scheduled an intake appointment. *Id.* at 55, 92. He testified that he was "waiting to hear back from the clinical director there" but had no exact date of when he would start attending the program. *Id.* at 58.

Regarding the DOE Psychiatrist's recommendation that the Individual attend his DOE Contractor's EAP program, the Physician agreed that this would be beneficial to the Individual's abstinence. *Id.* at 30–31. The Individual also indicated he would follow this recommendation and would enroll upon return to work if his clearance is granted. *Id.* at 58–59.

Since becoming abstinent, the Individual shared that he had been in fewer social settings but is now "getting back into being okay in those settings . . . , where other people are drinking." *Id.* at 75. In those settings, the Individual now orders a soda and lime. *Id.* He at first avoided social settings where others were drinking, as he did not want to have to "go into a big explanation" for his sobriety. *Id.* at 75–76. He has since, however, told his friends, another coach, and his son about his sobriety. *Id.* at 76–77. The Individual reported having "more mental clarity" since becoming sober. *Id.* at 77. He reads, goes for walks to reflect, and spends more time with his son. *Id.* at 86–87. He also identified stressors that triggered his drinking, specifically work. *Id.* at 87.

The testified that he has "no desire to drink alcohol again." *Id.* at 59, 88. The Individual did not immediately clear his house of alcohol as a means of "self-control" and "discipline." *Id.* at 73. However, as of the date of the hearing, he had given away most of his alcohol. *Id.* at 73–74. He

testified that he keeps an unopened bottle of bourbon that a close friend gifted him, for sentimental purposes. *Id.*

If he were inclined to drink again, the Individual indicated that he could contact the Physician for support.⁹ *Id.* at 55–56, 90–91. Additionally, he testified that he could also reach out to his son, who is supportive of his abstinence; his ex-wife; or even his son’s stepdad. *Id.* at 90–91. He has been dating someone for “quite some time” who also does not drink and is supportive of his abstinence. *Id.* at 89–90. He has several other family members who are supportive of his sobriety. *Id.* at 90.

b. Testimony of the DOE Psychiatrist

During the hearing, the DOE Psychiatrist explained the bases for diagnosing the Individual with Alcohol Use Disorder, Moderate. Tr. at 101–04. Regarding the recommendation that the Individual remain abstinent for one year, the DOE Psychiatrist explained that because “alcohol is a central nervous system depressant” the period of sobriety was to allow the Individual “to fully recover their cognitive faculties and their motivation . . .” *Id.* at 105. Regarding his recommendation that the Individual attend AA or a group program three times per week, the DOE Psychiatrist explained that the this was to “equip [the Individual] with the skills and the resilience . . . to maintain his . . . abstinence.” *Id.* at 106. In particular, group programs would help with abstinence maintenance and accountability since group programs have “documentation of [] meetings” and facilitate engagement with a “sponsor” and “support system.” *Id.* Regarding the recommended PEth testing, the DOE Psychiatrist indicated that he believed that the PEth would serve as “a backup” to validate his sobriety if he were “involved in AA or SMART Recovery” or a similar group program. *Id.* Regarding his recommendation that the Individual attend EAP upon returning to employment with the DOE Contractor, the DOE Psychiatrist testified that this would help maintain abstinence through “continued . . . breath tests randomly at work.” *Id.* at 107.

When asked to opine on the three negative PEth tests provided by the Individual, the DOE Psychiatrist testified that they do not conclusively prove that the Individual has not engaged in any alcohol use. *Id.* He explained that a “PEth test is considered negative when the PEth level is 20 nanograms per milliliter or less” which “generally corresponds to, in men, less than two drinks per day, per week” or “four drinks any one time during the week.” *Id.* at 107–08. The DOE Psychiatrist did acknowledge that “if somebody doesn’t drink anything at all, the test will [also] be negative[.]” *Id.* at 108.

The DOE Psychiatrist testified that, while helpful and supportive, the Individual’s monthly, one-on-one meetings with his Physician “do not fulfill or replace the requirement for AA or [other group programming]” because the meetings with his Physician are “too infrequent” compared to the recommended three times per week and because the meetings “do not fulfill the reformation . . . or [] rehabilitation element.” *Id.* at 108. Additionally, after hearing the Individual’s testimony, the DOE Psychiatrist observed that the Individual was using “a lot of, ‘I’m going to do this’ . . .

⁹ The Physician also testified that he sees the Individual in non-clinical, social settings due to their involvement in their youth sports team. Tr. at 28. The Physician testified that he has not seen the Individual drink in these settings. *Id.* However, the Physician also admitted that, prior to beginning a formal treatment relationship with the Individual in August 2024, he had not seen the Individual drink alcohol. *Id.* at 32–33.

language” and, based on the Individual’s testimony and the “time lapse” since the clinical interview and issuance of the Report, the DOE Psychiatrist believed that the Individual found attending the group program “potentially quite embarrassing . . .” and had “some kind of resistance.” *Id.* at 109–10. The DOE Psychiatrist noted that “AA meetings” and other similar group programs had “meetings [] available . . . as a stopgap immediately . . .” and that “there is no bar . . . for [the Individual] to immediately start one of these online meetings until he works through something with [the First Responder Program] . . .” *Id.* at 110. He noted that AA or a similar group program was an “important support that’s not family, or not good friends, for maintaining sobriety.” *Id.*

The DOE Psychiatrist updated his diagnosis, as of the date of the hearing, to Alcohol Use Disorder, Moderate, with early sustained recovery given that he has at least three months of documented sobriety. *Id.* at 118. The DOE Psychiatrist opined that the Individual had at least demonstrated “reformation” since the Individual had “recognize[d] that [he] ha[s] a problem with alcohol and then s[ought] and bec[ame] abstinent.” *Id.* at 112. The DOE Psychiatrist also opined that the Individual’s prognosis was “cautiously optimistic” or “good”¹⁰ since the Individual had (1) stopped drinking, (2) made his commitment known publicly, and (3) had developed a relationship with his Physician to assist in navigating his sobriety. *Id.* at 113.

However, the DOE Psychiatrist clarified that the Individual had only “started[] but [] ha[d] not competed [] rehabilitation . . .” *Id.* at 112. The DOE Psychiatrist explained that, while the Individual’s PEth tests corroborate sobriety since August 2024, the Individual had not “attended group support meetings . . . [,] an extremely important element to helping him maintain sobriety . . .” that provides “the behavioral element that will continue to give him coping techniques.” *Id.* at 112. The DOE Psychiatrist re-iterated that “at some point, [the Individual] needs to step over the line and just start attending meetings . . .” *Id.* at 113. The DOE Psychiatrist explained “usin[g] a [sports] metaphor” that the Individual “hasn’t taken the shot yet on the net . . . [,]” the “net” being “group meetings in AA . . .” or a similar program *Id.* at 123. Instead, the Individual had only been “[t]alking about being near the net” and “around the net . . .” *Id.*

VI. POST-HEARING EVIDENCE

In December 2024, more than four weeks after the Individual’s hearing, the Individual submitted additional affidavits from both his Physician and himself. *Indiv. Ex.* 1–2. The Individual’s Physician re-iterated that he “absolutely agreed with each of the [DOE Psychiatrist’s] recommendations . . .” for the Individual—including the recommendation that the Individual attend AA or a similar group three times per week for a year. *Indiv. Ex.* 1 at 4. The Physician further affirmed that his treatment plan for the Individual incorporated the DOE Psychiatrist’s treatment plan by recommending that the Individual first establish a pattern of abstinence while attending “one-on-one meetings” and that “after a sustained period of success . . . [the Individual] would transition to participation in an AA (or similar mutual support group) . . .” *Id.* at 4–5. The Physician explained that the treatment plan “was not directed at . . . getting his clearance

¹⁰ The DOE Psychiatrist indicated that he had a “three-point scale” for prognoses: “[p]oor, good, and excellent.” *Tr.* at 122. He explained that “[p]oor would mean that the person is at high risk to return to alcohol; good is the broad middle; and then excellent are for people who have checked all the boxes and are stable . . .” *Id.*

reinstated”; “did not take into account [the Individual’s] DOE hearing regarding the issue of his eligibility for access authorization . . .”; and “did not take into account the time sensitive nature of the[] [DOE Psychiatrist’s] recommendations, given the timing of the [] [h]earing.” *Id.* at 4. The Physician noted that he “sincerely hope[s] and request[s] that [the Individual’s] [c]learance [] not in any way [be] compromised by his adherence to [the Physician’s] advice” *Id.* at 5.

Both the Physician and the Individual affirm that, after the November hearing, the Individual started attending AA three days per week for five weeks; continued to attend monthly meetings with the Physician; and completed another negative PEth test. *Id.* at 5; *Indiv. Ex. 2* at 7–8. The Individual provided, as supporting documentation, AA Attendance Verification demonstrating that he attended a total of eighteen AA sessions after the November hearing, over a five-week period and at least three times per week. *Indiv. Ex. 2A* at 10. He also submitted a negative PEth test from a sample collected after the hearing on November 25, 2024. *Indiv. Ex. 2B* at 12.

VII. ANALYSIS

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; 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.

The Individual’s problematic alcohol use cannot be said to have occurred so far in the past, been infrequent, or happened under unusual circumstances. In his February 2024 response to the LOI, the Individual certified that he had been using alcohol in a similar fashion for the past fifteen to twenty years. The Individual testified to abstaining from alcohol use since July 2024; however, he only has corroborating documented evidence of abstention starting in August 2024. Even accepting that he was sober starting in July 2024, his period of abstinence is too brief in light of his fifteen-to-twenty-year history of problematic alcohol consumption for me to conclude that he will not return to problematic alcohol consumption in the future based on the passage of time alone.

Therefore, I cannot find that the alcohol consumption is unlikely to recur or that the substantial doubt as to his judgment has been assuaged. Accordingly, I find the first mitigating condition inapplicable. *Id.* at ¶ 23(a).

Regarding the second mitigating condition, the Individual has admitted that his alcohol use was problematic. At the hearing, the Individual provided some evidence of actions taken to overcome the problem insofar as he began a period of sobriety, was attending monthly one-on-one meetings with his Physician, obtained monthly PEth tests starting in August 2024 to corroborate his sobriety, and shared his sobriety with friends and family. However, the Individual's abstinence is not clear and established, as specifically provided by the DOE Psychiatrist or by a professional specializing in substance abuse treatment. As stated above, the Individual has only testified to starting sobriety in July 2024 and corroborated this abstinence with negative PEth tests from August to November 2024. The DOE Psychiatrist, at the hearing, indicated that the Individual had demonstrated reformation by abstaining from alcohol use and obtaining PEth tests; however, as of the date of the hearing, the DOE Psychiatrist opined that the Individual was not rehabilitated, and there was no dispute that the Individual had simply not participated in a mutual support group in accordance with the DOE Psychiatrist's recommendations. Given the DOE Psychiatrist's recommendation of twelve months of abstinence, approximately five months of sobriety, without participating in a mutual support group as of the date of the hearing, is insufficient to demonstrate a clear and established pattern of abstinence in accordance with treatment recommendations.

Although the Individual submitted post-hearing evidence that he has attended eighteen AA meetings over a five-week period, he did not begin attending AA until after the hearing despite his and the Physician's agreement with the DOE Psychiatrist's recommendations.¹¹ Furthermore, the Individual's post-hearing affidavit is silent on what, if any benefits, he received in his short time with AA, and there has been a lack of opportunity to develop the record further with testimony and cross-examination. Even considering the post-hearing submission, the short period of abstinence combined with the even shorter period that the Individual attended AA sessions hardly demonstrates a "clear and established pattern of . . . abstinence in accordance with treatment recommendations[.]" Adjudicative Guidelines at ¶ 23(b).

Regarding mitigating condition (c), the Individual is participating in his Physician's treatment plan. However, I cannot credit the Physician's treatment plan as "counseling or a treatment program." As stated above, the Individual's Physician is not certified in substance abuse treatment, and the Physician's treatment is limited to ensuring the Individual does not face adverse physical symptoms related to abstinence and is not, specifically, alcohol-related counseling or a substance abuse program. The Physician and the Individual testified that they would like to enroll the Individual in a program that includes one-on-one counseling and group programs; however, as of the date of the hearing, the Individual was not enrolled in any such program.¹² Furthermore, while the Individual has provided some post-hearing proof of AA attendance, it cannot be said that he has made "satisfactory progress" given that he has only attended the program for five weeks and,

¹¹ Regarding the post-hearing affidavits, I cannot afford them substantial weight due to the lateness of the submissions and the lack of an opportunity to cross examine the witnesses on the information included therein.

¹² I note also that the Individual turned down opportunities to place himself on available waitlists for treatment programs he had explored.

as stated above, the record lacks specificity as to what benefits and tools he obtained from his short-lived participation. Accordingly, I find the third mitigating condition inapplicable. Adjudicative Guidelines at ¶ 23(c).

As the Individual has not completed any alcohol-related counseling and treatment, the fourth mitigating condition is likewise inapplicable. *Id.* at ¶ 23(d).

For the aforementioned reasons, I find that the Individual has not resolved the security concerns alleged by the LSO under Guideline G.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines G of the Adjudicative Guidelines. After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns under Guidelines G. Accordingly, I have determined that the Individual's access authorization should not be granted.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Brenda B. Balzon
Administrative Judge
Office of Hearings and Appeals