

*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: August 16, 2024) Case No.: PSH-24-0182
)
)
_____)

Issued: January 31, 2024

Administrative Judge Decision

Janet R. H. Fishman, 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."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 be restored.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires him to hold an access authorization. Exhibit (Ex.) 1. In February 2024, the Individual was charged with Driving Under the Influence of Alcohol (DUI). *Id.* at 5.² As a result of the February 2024 criminal charge, the Local Security Office (LSO) issued the Individual a Letter of Interrogatory (LOI) concerning the incident, which the Individual answered in April 2024. Ex. 6. After receipt of his response, the LSO requested that the Individual undergo a psychiatric evaluation in May 2024, by a DOE-consultant psychiatrist (DOE Psychiatrist), which resulted in a finding that the Individual met sufficient *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition – Text Revision (DSM-5-TR)* criteria for a diagnosis of Alcohol Use Disorder (AUD), mild, without adequate evidence of rehabilitation or reformation. Ex. 8 at 66.

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 Local Security Office's (LSO) exhibits were combined and submitted in a single, 292-page PDF workbook. References to the LSO's exhibits are to the exhibit number and the Bates number located in the top right corner of each exhibit page.

The LSO subsequently issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1 at 5. 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.*

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. 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. The LSO submitted ten exhibits (Ex. 1–10). The Individual submitted five exhibits (Ex. A–E). The Individual testified on his own behalf and offered the testimony of one additional witness. Hearing Transcript, OHA Case No. PSH-24-0182 (Tr.) at 12, 65. The LSO called the DOE Psychiatrist to testify. *Id.* at 105.

II. THE SECURITY CONCERNS

Guideline G, under which the LSO raised the security concerns, 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 Psychiatrist’s May 2024 diagnosis that the Individual suffered from AUD, mild. Ex. 1 at 5. The LSO also cited the Individual’s February 2024 arrest for DUI, his .15g/210L blood alcohol concentration (BAC) at the time of the arrest, and his April 2024 LOI admission that he had “consumed [fifty-five] ounces of beer at one bar, and [four-to-five] twelve-ounce beers at another bar prior to his arrest.” *Id.* I find that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline G of the Adjudicative Guidelines.

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The 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 his or her 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.* at

§ 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

In February 2024, the Individual was arrested for DUI. Ex. 7 at 47. The Individual provided two breath test samples at the time of his arrest, and his BAC registered at 0.16 and 0.15 g/210L, respectively. *Id.* at 51. In his LOI response, the Individual stated that between 7:00 and 10:00pm on the night of his arrest, he consumed approximately fifty-five ounces of beer at one bar, then over the course of the next four hours, consumed “around [four] or [five]” twelve-ounce beers at a second bar.³ Ex. 6 at 30. He further stated that as a result of a medical diagnosis he received in October 2023, he “has limited [his] alcohol consumption,” and he drinks “beer only.” *Id.* He further represented that the February 2024 incident was the last time he consumed alcohol, and he has since “made a decision to leave alcohol out of his life.” *Id.* at 34, 36. The Individual reported that, as part of an agreement with the court, he would participate in a diversion program and attend weekly therapy sessions. *Id.* at 32. He represented that once the “requirements [of the diversion program were] met,” his DUI charge would be dismissed. *Id.*

In the psychiatric report (Report) issued after the evaluation, the DOE Psychiatrist stated that the Individual had informed him that in the twelve months prior to the February 2024 incident, he would typically consume between six and nine beers during one day of the weekend while watching football or at the lake with his family. Ex. 8 at 61, 65. The DOE Psychiatrist also noted that the Individual reported drinking twelve beers in eight or nine hours “when at the lake” on one occasion. *Id.* at 61. The DOE Psychiatrist diagnosed the Individual with AUD, mild, in early remission. *Id.* at 65. He indicated that the Individual met two of the diagnostic factors for AUD: (1) the “use of alcohol in situations which are physically hazardous” (citing the Individual’s February 2024 DUI in support); and (2) “tolerance such as increased amount or diminished effect” (citing the Individual’s history of drinking between six and twelve beers on any one occasion during one day over the weekend in support). *Id.* at 66, 68.

The Individual also underwent a Phosphatidylethanol (PEth)⁴ test as a part of the DOE Psychiatrist’s evaluation. *Id.* at 76. The Individual’s PEth test was negative, a result which the DOE Psychiatrist opined was “consistent with no alcohol consumption or average alcohol consumption of less than [two] beers/day or [fourteen] beers/week for men.” *Id.* at 63.

³At the time of his arrest, the Individual informed law enforcement that he consumed approximately “three beers” prior to driving. Ex. 7 at 50.

⁴ According to the Report,

PEth does not occur naturally in the body so elevated PEth levels are evidence of alcohol exposure. Alcohol binds to the red blood cell membrane creating PEth. PEth declines as red blood cells degrade and by enzymatic action, so PEth reflects the average use of alcohol over the previous 28-30 days. The PEth assay relies on a liquid chromatography assessment followed by two independent mass spectrometry assessments that must agree within 20%. A MedTox, PEth result exceeding 20 ng/mL is evidence of “moderate to heavy ethanol consumption.”

Ex. 8 at 62.

The DOE Psychiatrist recommended that to demonstrate rehabilitation or reformation from his AUD, the Individual should continue to attend the weekly diversion program therapy sessions and successfully complete the program, which at the time the Report was issued, was expected to last another nine-to-fifteen months. *Id.* at 66. The DOE Psychiatrist further indicated that the Individual should attend “mentorship meetings” through the court-mandated therapy program and, over the next twelve months, submit to PEth testing once every three months. *Id.* at 66–67. The DOE Psychiatrist additionally stated that, as a substitute for the therapy mentorship meetings, the Individual could alternatively attend two documented Alcoholics Anonymous (AA) meetings per week and obtain an AA sponsor. *Id.* at 67.

In anticipation of the hearing, the Individual met with a psychologist (Psychologist) for a psychological evaluation in August 2024. Ex. E at 91. During the evaluation, the Individual reported that he last consumed alcohol in February 2024, and before this, he would typically drink “a few beers” on the weekend. *Id.* at 93–94. In a report issued that same month, the Psychologist concluded that the Individual did not meet sufficient *DSM-5-TR* criteria for a diagnosis of AUD and recommended that the Individual complete the diversion program. *Id.* at 94. The Individual also met with a licensed professional counselor (Counselor) in August 2024 for a psychological evaluation. *Id.* at 89. During the evaluation, the Individual reported the details of his DUI and represented that he “usually only drinks on Saturdays in his own backyard.” *Id.* In a letter issued that same month, the Counselor concluded that the Individual did not meet sufficient *DSM-5-TR* criteria for a diagnosis of AUD. *Id.* at 89–90.

At the hearing, the Individual’s diversion program therapist (Therapist), a licensed clinical social worker, testified that the Individual had attended twenty-two weekly sessions to date. Tr. at 13, 21. He stated that based on his assessment, the Individual, a veteran, “was struggling more with a social issue and military culture issue as opposed to [] an alcohol-based issue.” *Id.* at 15. The Therapist, a veteran himself, testified that “military culture . . . is really steeped in alcohol consumption” with a “social construct of . . . keep[ing] up with everybody else based on the number of drinks that you’re drinking.”⁵ *Id.* at 17. The Therapist stated that he did not believe the Individual met the criteria for a diagnosis of AUD as the Individual’s “root cause was not a chemical need or chemical addiction,” but was a desire to “fit into a group that he already belonged to.” *Id.* at 35, 37. He stated that the Individual “was attempting to be effectively socially polite and keep up with what he saw as the cultural norm,” but “this idea of group thinking” doesn’t always “actually align with who we are.” *Id.* at 35. The Therapist also noted his belief that the Individual should avoid attending AA meetings because that “program would actually enhance his shame triggers.” *Id.* at 59.

Regarding the Individual’s AUD diagnosis, the Therapist testified that he did not “uncover[] any previous [alcohol-related] treatment” on the part of the Individual, and he “didn’t see anything that would suggest that [the Individual] had an increased tolerance of alcohol.” *Id.* at 21, 43. The Therapist testified that he “would not consider [the Individual’s alcohol] use hazardous” as the Individual’s drinking was “always a social base,” but acknowledged that the Individual made a “bad decision” by consuming alcohol and driving. *Id.* at 44. He also explained that the Individual’s prior habit of drinking a “six-pack-ish” of beer while watching a football game on the weekend was “socially appropriate.” *Id.* at 50. The Therapist testified that the Individual self-reported his

⁵ The Individual’s Therapist also submitted a declaration and letter prior to the hearing stating his opinion that the Individual “does not meet the criteria for alcohol dependence or addiction.” Ex. E at 85, 87.

abstinence but as of “about six weeks ago,” the Therapist “stopped checking on that” as he is “not a fan of abstinence.”⁶ *Id.* at 52–53.

The Therapist further stated that alcohol is a “symptom” for the Individual, and therapy “treat[s] the root cause . . . [so that] the symptom goes away.” *Id.* at 46. He testified that the Individual has made “incredible strides in his own self[-]discovery” and has reviewed literature related to shame and guilt, with a focus on the “practice of authenticity and vulnerability.” *Id.* at 16. He stated the Individual always provides “substantial thought in his writings and [] homework” and has never “phoned in” an assignment. *Id.* at 21. The Therapist testified that the Individual is “making progress faster than [ninety] percent of the [other] clients [his] agency serves” and “all things being equal, [he] would have already discharged him.” *Id.* at 18, 60. He noted that the diversion program typically lasts for eighteen months, however, his professional recommendation to the judge overseeing the Individual’s DUI case would be to discharge the case at the court’s earliest convenience.⁷ *Id.* at 62.

The Individual testified that he has not consumed alcohol since the night of his DUI in February 2024. *Id.* at 69, 86–87. He noted that prior to that night, his “alcohol consumption [had actually] reduced dramatically” as he was diagnosed with celiac disease in October 2023.⁸ *Id.* at 70. On the night of his DUI, he noted that he was attending an “alcohol[-]charged” happy hour dinner with coworkers. *Id.* at 72. He stated that he “felt like [he] needed to fit in[,]” which “over[rode] [his] . . . better judgment.” *Id.* The Individual testified that he is “not the same person” now and is “in a better position mental[-]wise [and] emotional[-]wise.” *Id.* at 69. The Individual explained that his DUI “was a huge wake-up call that [he] needed to change his lifestyle” and quit drinking. *Id.* at 87. He also testified that he called each member of his team at work individually to let them know about his DUI and stated that the “whole team [has been] very supportive.”⁹

Through the weekly therapy sessions, the Individual stated that he has learned more about “self-discipline, self-improvement, and . . . living an authentic life.” *Id.* at 74. He testified that therapy

⁶ The Individual’s Therapist testified that he did not recommend that the Individual submit to PEth testing as “[t]hose would be medical recommendations, which would be outside [his] scope.” Tr. at 49.

⁷ The Individual submitted letters from the judge overseeing his diversion program status and the attorney representing him in that case. Ex. D at 61–62, 82. In his letter, the judge explained that the Therapist has reported that the Individual “has gained critical insights and developed the necessary tools to prevent any recurrence of this issue.” *Id.* The judge further indicated that “based on [his] thorough review of all relevant documentation, as well as [his] interactions with [the Individual], [he is] confident that [the Individual] will successfully complete the military diversion program.” *Id.* In the attorney’s letter, the attorney stated that he anticipated that the Individual would complete the diversion program in early March 2025. *Id.* at 61 He further stated that the Individual “stands out as a true exception [among his clients] because [the Individual] views this experience as an opportunity for growth, using it to learn valuable lessons and become a better person as a result.” *Id.*

⁸ The Individual testified that because of this diagnosis, he “had to be on a gluten-free diet.” Tr. at 70. He noted that there weren’t many gluten-free alcoholic beverages available “at a reasonable price, so [his] consumption was reduced.” *Id.*

⁹ The Individual submitted letters of recommendation from seven colleagues and one supervisor. Ex. D at 56–82. The letters contained positive descriptions of the Individual’s work ethic, his character, and the quality of his work with his employer. *Id.* In the letters, the colleagues and supervisor also stated their belief that the Individual’s DUI was an isolated incident that is unlikely to recur again. *Id.*

has allowed him to build a set of twenty rules, such as respecting himself, treating others with respect, being authentic, and making better choices, which has “made [him] a better person.” *Id.* at 94. The Individual also noted several books which he has read that have “made [him] become a better leader.” *Id.*

The Individual stated that he is “living definitely a better life, a healthier life” and indicated that alcohol is “not important in [his] life right now.” *Id.* He testified that in October 2024, the judge overseeing his diversion program status asked if he wanted to “cut back [on therapy] and go on a monthly basis[.]” but he indicated that he would “still like to continue going on a weekly basis.” *Id.* at 97. The Individual testified that he still intends on meeting with the Therapist even after the diversion program is completed, however, he may eventually “cut down from a weekly basis . . . to [] every two weeks.” *Id.* at 96, 98. He also noted that although he has not attended any group or mentorship meetings yet, the Therapist indicated that these sessions may start in January, and he plans on attending those meetings. *Id.*

Regarding his tolerance, the Individual stated that he “never drank to get intoxicated” and would typically consume “six or seven beers” while watching football in “[his] garage or [his] backyard, never anywhere else.”¹⁰ *Id.* at 76. The Individual indicated that on the night of his DUI, he “felt very good” and never thought about whether he was intoxicated or not at the time. *Id.* at 83. The Individual indicated that at no point prior to his DUI did any friends or family members tell him that he had a problem with alcohol. *Id.* at 100–01. Noting a “strong, healthy [twenty-five year] . . . married relationship with [his] wife,” the Individual stated that, other than his DUI, alcohol has not caused any problems in his life. *Id.* at 82.

When asked why he declined to submit to any additional PEth testing, the Individual stated that he met with the Psychologist and Counselor, both of whom determined that he did not meet sufficient criteria for a diagnosis of AUD and only recommended that he continue meeting with the Therapist; therefore, he did not consider PEth testing. *Id.* at 89–91. The Individual also testified that he would occasionally “go six or seven months without having alcohol,” such as in the past for Lent, but indicated that it was never his intention to stop drinking completely at the time. *Id.* at 92. When asked if he had any intentions of drinking alcohol in the future, the Individual stated that he “can’t say ever,” but noted that “at this point, . . . [he] do[es] not have any intentions.” *Id.* The Individual further testified that certain family members still consume alcohol at his house while watching football games on Saturdays but stated that they are aware of his abstinence and have been “very supportive.” *Id.* at 103–04. He indicated that their alcohol consumption does not tempt him to drink and that “it doesn’t bother [him] at all.” *Id.* at 104.

The DOE Psychiatrist testified that, as he indicated in the Report, the Individual “regularly drank six to [twelve] beers on one day of the weekend[.]” which is an amount that “indicates tolerance.” *Id.* at 110. He further stated that at the time he met with the Individual in May 2024, the Individual had already “fulfilled the arm of reformation . . . [as] he recognized that his alcohol use was

¹⁰ The Individual also testified that he would also occasionally drink “six to [twelve] beers” over a weekend while at a lake with family. Tr. at 76.

maladaptive and had stopped drinking.” *Id.* at 111. Regarding rehabilitation,¹¹ the DOE Psychiatrist stated that based on the testimony of the Individual and Therapist, he believes the Individual’s participation in the diversion program therapy has “been excellent.” *Id.* at 112. He noted that the Individual has “completed everything that’s been asked of him[,]” and has “expressed his desire to continue with [the therapy] treatment sessions, even after [the court] releases him” from that requirement. *Id.* at 112–13. Despite noting the fact that the Individual declined to submit to any additional PEth testing and had not yet attended group/mentorship therapy sessions as recommended in the Report, the DOE Psychiatrist concluded that the Individual was “adequately rehabilitated.”¹² *Id.* at 117–18.

V. ANALYSIS

An individual may be able to mitigate security concerns under Guideline G though the following conditions:

- 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.

I find that ¶ 23(c) applies to resolve the Guideline G concerns. First, the record establishes that the Individual is making satisfactory progress in a treatment program. I find persuasive the Therapist’s testimony that the Individual has made “incredible strides” over the course of twenty-two weekly counseling sessions to treat his alcohol-related issues, which the Therapist believes were caused by a loss of identity/independence in the military, rather than a chemical dependence. Furthermore, as the Therapist explained, the Individual continuously puts “substantial thought” into his assigned readings/writings and has “never once missed a deadline” or “phoned-in” his homework. The Individual also testified that through these counseling sessions, he has learned more about self-

¹¹ The DOE Psychiatrist testified that rehabilitation, as opposed to reformation, “requires a showing that [the Individual] has completed treatment.” Tr. at 111.

¹² The DOE Psychiatrist stated that although the Individual had not submitted any PEth test results to support his abstinence assertion, he nonetheless “believe[d] [the Individual] was asserting truthfulness.” Tr. at 117.

discipline and “being authentic,” which has allowed him to live a much healthier lifestyle. Additionally, the DOE Psychiatrist noted that the Individual’s treatment progress has been “excellent” and opined that the Individual had established rehabilitation and reformation from the AUD.¹³ Finally, I have no evidence before me indicating that the Individual has a previous history of alcohol-related treatment and relapse.¹⁴ Accordingly, I find that the Individual has mitigated the stated Guideline G concerns pursuant to factor (c). *Id.* at ¶ 23(c).

I also find that ¶ 23(b) applies to resolve the Guideline G concerns. As the DOE Psychiatrist stated, the Individual had already acknowledged his maladaptive alcohol use as of May 2024 (the date of the psychiatric evaluation). Furthermore, as explained above, the Individual has provided evidence of the actions that he has taken to overcome his AUD (i.e. counseling sessions) and has demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations. Accordingly, I find that the Individual has mitigated the stated Guideline G concerns pursuant to factor (b). *Id.* at ¶ 23(b).

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline G of the Adjudicative Guidelines. After considering all the relevant information, 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 brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. 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 at 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals

¹³ Although the DOE Psychiatrist noted that the Individual failed to submit the results of a PEth test every three months per his initial recommendations, he also stated that he believed the Individual was being truthful regarding his sobriety since the night of the February 2024 DUI. Tr. at 117.

¹⁴ The Therapist also testified that he was unable to uncover any evidence of prior alcohol-related treatment on the part of the Individual. Tr. at 21.