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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:	May 31, 2017	)	Case No.: PSH-17-0040
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Issued: August 31, 2017

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**Administrative Judge Decision**

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Wade M. Boswell, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> 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 or Special Nuclear Material.” As fully discussed below, after carefully considering the record before me in light of the relevant regulations and the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (Adjudicative Guidelines) (December 29, 2005), I have determined that the individual’s access authorization should be restored.

**I. Background**

The individual is employed by a DOE contractor in a position that requires her to hold DOE access authorization. In September 2016, the individual was arrested and charged with driving under the influence of alcohol (DUI) after her car was observed swerving several times onto the shoulder of the road. This incident was promptly reported to the

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<sup>1</sup> Access authorization is defined 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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

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local security office (LSO). *See* Exhibit 7. The individual's security file revealed that she had been arrested and charged with DUI on three prior occasions – 2006, 2009 and 2013. *See* Exhibit 8, Exhibit 9, Exhibit 10.

As a result of this information, the LSO conducted a personnel security interview (PSI) with the individual in December 2016. *See* Exhibit 14. During the PSI, she stated that she consumed alcohol to cope with anxiety and stress. *See* Exhibit 7. The PSI did not resolve the security concerns arising from the individual's alcohol consumption and raised potential concerns about her psychological condition. Therefore, the LSO referred the individual to a DOE consultant psychologist (DOE psychologist) for an evaluation.

In February 2017, the individual was evaluated by the DOE psychologist. *See* Exhibit 19. Although the psychological evaluation resolved the security concerns with respect to the individual's consumption of alcohol and her psychological condition, security concerns arising from her DUIs and other traffic infractions between 2006 and 2016 remained unresolved. *See* Exhibit 7. Therefore, the LSO informed the individual in a letter dated April 27, 2017 (Notification Letter), that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. In the Notification Letter, the LSO explained that the derogatory information fell within the purview of security concerns under Guideline J (Criminal Conduct) of the Adjudicative Guidelines.<sup>2</sup> *See* Exhibit 1.

Upon her receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. *See* Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO introduced 19 numbered exhibits into the record and presented no witnesses. The individual introduced 11 lettered exhibits (Exhibits A – K) into the record and presented the testimony of six witnesses, including that of herself. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.<sup>3</sup>

## **II. Regulatory Standard**

### **A. Individual's Burden**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or

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<sup>2</sup> See Section III below.

<sup>3</sup> OHA decisions are available on the OHA website at [www.energy.gov/oha](http://www.energy.gov/oha). A decision may be accessed by entering the case number in the search engine at [www.energy.gov/oha](http://www.energy.gov/oha).

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 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

An individual must come forward with evidence to convince the DOE that granting or restoring his or her 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 or her 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). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **B. Basis for the Administrative Judge’s Decision**

In personnel security cases arising under Part 710, it is my role 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). I am instructed by the regulations to resolve any doubt as to a person’s access authorization eligibility in favor of the national security. *Id.*

### **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, the LSO cited Guideline J as the basis for suspending the individual’s security clearance.

Guideline J relates to security risks associated with criminal conduct. Criminal activity creates doubt about a person’s judgment, reliability and trustworthiness because, by its very nature, such conduct calls into question a person’s ability or willing to comply with laws, rules, and regulations. See *Adjudicative Guidelines at Guideline J ¶ 30*. With respect to Guideline J, the LSO cited five instances of criminal conduct: (1) the individual’s four arrests for DUI between 2006 and 2016; and (2) the individual being cited for driving approximately 10 miles per hour in excess of the speed limit in 2016. Ex. 1 at 1.

In light of the information available to the LSO, the LSO properly invoked Guideline J.

### **IV. Findings of Fact and Analysis**

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at 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)<sup>4</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. I find that restoring the individual's DOE security clearance will not endanger the common defense and security, and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

#### **A. Mitigating Evidence**

The individual accepts as factually accurate the matters set forth in the Notification Letter, with the exception of the date of the speeding citation. Ex. 2 at Encl. 1; Tr. at 95-96. With respect to her 2006 arrest for DUI, she notes that the charges were dismissed by the court based on insufficient evidence that her blood alcohol concentration (BAC) was in excess of the legal limit. Ex. 2 at Encl. 1. Additionally, she argues that the counseling and treatment that she has received subsequent to her 2016 arrest for DUI sufficiently mitigates the security concerns raised by the LSO under Guideline J. Since her 2016 arrest, the individual has completed an intensive outpatient program (IOP) for alcohol treatment and has renewed her participation in Alcoholic Anonymous (AA), which she consistently attends five times each week. She stated that her intent is to remain abstinent from alcohol indefinitely. Ex. 2 at Encl. 1 and Encl. 2; Tr. at 103. Additionally, she stated that she believes that in the past she has resorted to alcohol to alleviate anxiety and, having identified anxiety as an underlying trigger for her alcohol misuse, she has sought and obtained counseling focused on the management and reduction of anxiety. Ex. 2 at Encl. 1; Tr. at 75-77.

#### **B. Administrative Judge Evaluation of Evidence and Findings of Facts**

In the Notification Letter, the LSO raised security concerns under Guideline J based on the individual having been arrested and charged on four occasions between 2006 and 2016 for DUI and related traffic violations<sup>5</sup> and cited on a separate occasion in 2016 for driving approximately 10 miles per hour in excess of the speed limit. Ex. 1 at 1. The individual notes that her first DUI was dismissed by the court for there being insufficient evidence that her BAC exceeded the legal limit. Ex. 2 at Encl. 1. Even accepting the argument that the individual did not in 2006 violate criminal statutes prohibiting driving while

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<sup>4</sup> Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

<sup>5</sup> The charges in 2006 included Failure to Keep in Lane; in 2009, Lane Use Improper; in 2013, Driving Without Headlights; and in 2016, Failure to Maintain Lane and having an Open Container [of alcohol]. Ex. 1 at 1. The individual has acknowledged the factual accuracy of these allegations. Tr. at 95-96.

intoxicated,<sup>6</sup> the individual acknowledges that she was arrested, charged, and faced sanctions for alcohol-related driving offenses in 2009, 2013 and 2016. Tr. at 95-96. Even a single instance of driving while legally intoxicated raises serious, legitimate security concerns under Guideline J, as such conduct reflects an unwillingness or inability to comply with laws, rules and regulations. *See* Adjudicative Guidelines at Guideline J ¶ 31(a). The individual engaged in such conduct on at least three occasions.

A determination that an individual's past conduct raises security concerns is not a bar to a person having access authorization under the Adjudicative Guidelines and the Part 710 regulations. Rather, having reached such a determination, an evaluation is required to assess whether, in light of such past conduct, the individual's future conduct will endanger national security.

Administrative Judges regularly hear cases in which a local security office raises security concerns under Guideline J with respect to alcohol or drug related offenses and also raise additional security concerns under Guidelines G (Alcohol) or H (Drug Involvement). In those cases, if the individual resolves the alcohol or drug related security concern through evidence of adequate reformation and rehabilitation of the substance disorder, the related criminal behavior is often found to be unlikely to recur in light of the individual's reformation and rehabilitation of the underlying substance concerns. *See Personnel Security Hearing*, Case No. PSH-17-0028 (2017); *Personnel Security Hearing*, Case No. PSH-15-0009.

In this case, the LSO sent the individual to a DOE psychologist for a psychological evaluation, which was conducted in February 2017, approximately five months after the individual's most recent DUI. Ex. 3 at 1. The DOE psychologist concluded that the individual met the diagnostic criteria set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association, IVth Edition, Text Revision (DSM-IV-TR)*, for alcohol abuse, in sustained partial remission; however, he further opined that the individual had evidenced adequate rehabilitation and reformation of her alcohol abuse, and that she did not have any emotional, mental or personality disorder that could impair her judgment, reliability or trustworthiness. Ex. 19 at 10-11. Based on the psychological evaluation, the LSO found the individual had sufficiently mitigated the Guideline G security concerns and such concerns were, therefore, not set forth in the Notification Letter. Ex. 3 at 1-2.

Subsequent to the individual's most recent DUI, she has completed an IOP and returned to AA, attending meetings five times per week. Ex. 2 at Encl.1 and Encl. 2. She testified that her intent is to abstain from alcohol consumption indefinitely. Tr. at 103. This treatment and progress would typically be sufficient to resolve security concerns arising from alcohol-related criminal conduct. However, in this case, the individual has had repeated alcohol-related criminal conduct over a number of years and, after each instance, has

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<sup>6</sup> Under the Adjudicative Guidelines, criminal conduct can raise security concerns regardless of whether a person is formally charged, formally prosecuted or convicted. *See* Adjudicative Guidelines at Guideline J ¶ 31(b). The court's determination that there was legally insufficient evidence that the individual's BAC exceeded the legal limit in 2006 is *not* a determination that the individual's BAC was below the legal limit.

completed alcohol-related treatment, participated in AA and maintained abstinence for substantial periods of time (typically two to three years). Ex. 2 at Encl. 1; Tr. at 67-87. In light of her episodic relapsing into alcohol-related criminal conduct, the issue is whether she can avoid such relapses in the future.

The record reflects that the individual also shares the concern that she not relapse and has pursued treatment to avoid such relapses. While she clearly is motivated by her desire to maintain access authorization, her primary motivation appears to be her desire to be present for herself and her family, and to avoid physical harm to others. *Id.* at 92-93. Three members of her home AA meeting testified that since her 2016 DUI she has not only returned to AA meetings, but has additionally exhibited a sense of commitment and community that they had not previously seen. *Id.* at 41-65.

More importantly, the individual credibly testified that she realized that she was never alcohol dependent but that she used alcohol in order to cope with stress and anxiety. *Id.* at 71, 92. She identified anxiety as a trigger for her DUIs. *Id.* at 84, 99. At the suggestion of a sibling, she underwent medical tests to ascertain a possible genetic basis for her anxiety.<sup>7</sup> *Id.* at 80-81. Her conclusions with respect to the role of anxiety in her alcohol misuse is reinforced by the views of various mental health professionals. The DOE psychologist stated in his written discussion with respect to the individual's rehabilitation and reformation of her alcohol abuse that he "encouraged [the individual] to follow up in regard to treatment for anxiety ... which she verbalized an intent to do once she completed [her IOP]." Ex. 19 at 10. Her IOP treatment counselor wrote that he had worked with the individual on mindfulness practices for her anxiety issues and believed that these issues were partially responsible for her alcohol-related offenses. Ex. 2 at Encl. 3. At the conclusion of her IOP, her treatment counselor referred her to a counselor who specialized in treatment of anxiety. Tr. at 74-75. The individual continued to be in treatment with that counselor as of the hearing. The counselor opined that it was her "clinical opinion that [the individual]'s alcohol use was an attempt to mitigate her severe and persistent anxiety." Ex. G at 1. At the hearing, the individual was able to describe the treatment she was receiving for anxiety and to clearly articulate her understanding of the physiological manifestations of her anxiety and the role of the therapeutic interventions she is receiving in addressing it. Tr. at 75, 78-79, 85-86, 100-101, 105-106, 108.

In light of the treatment the individual has received for alcohol, supplemented by her treatment for anxiety which appears to be an underlying trigger for her alcohol misuse, I find that she has demonstrated rehabilitation of her alcohol-related criminal conduct and that such conduct is unlikely to recur. *See* Adjudicative Guidelines at Guideline J ¶ 32(a) and (d).

In addition to the alcohol-related criminal conduct, the LSO raised Guideline J security concerns with respect to a traffic citation issued to the individual in 2016 for driving approximately 10 miles per hour in excess of the speed limit, for which she was assessed

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<sup>7</sup> While the individual offered testimony on the results of such medical tests, the record does not include any documentation of these tests or expert evaluation of the meaning of these tests and, therefore, I have given minimal weight to the individual's testimony with respect to the genetic basis for her anxiety.

and paid a \$130 fine. Ex. 1 at 1; Ex. 2 at Encl. 1. The individual credibly testified that she had received no traffic citations other than those specified in the Notification Letter. Tr. at 99. A single traffic citation on which the fine was \$130 is not a significant violation of criminal laws, as is reflected by the DOE security regulations which exempt minor traffic violations from the requirement to report legal infractions. DOE Order 472.2, Attach. 4 at 1. *Cf.* Adjudicative Guidelines at Guideline J ¶ 31(a);

For the reasons set forth above, I find that the individual has resolved the security concerns associated with Guideline J.

## **V. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under the Guideline J. After considering all of 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 have found that the individual has brought forth sufficient evidence to resolve the security concerns associated with Guideline J. Accordingly, I have determined that the individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Wade M. Boswell  
Administrative Judge  
Office of Hearings and Appeals

Date: August 31, 2017