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

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| In the Matter of: Personnel Security Hearing | ) |                       |
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| Filing Date: March 1, 2018                   | ) | Case No.: PSH-18-0021 |
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Issued: June 8, 2018

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**Administrative Judge Decision**

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Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” 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 2017, the individual reported that he had entered an outpatient alcohol treatment program. Ex. 5. As a result, the local security office (LSO) called the individual to a Personnel Security Interview (PSI) in July 2017. Ex. 9. In response to information gathered from the PSI and background investigation, a DOE consulting psychologist evaluated the individual. Ex. 6.

As the PSI and the psychologist’s evaluation both raised unresolved security concerns, the LSO informed the individual, in a Notification Letter dated January 9, 2018 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under “Guideline G: Alcohol Consumption.” Ex. 1.

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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.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting 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 LSO introduced 10 numbered exhibits (Exhibits 1-10) into the record and presented the testimony of the DOE psychologist. The individual introduced 10 lettered exhibits (Exhibits A-J) into the record and presented the testimony of six witnesses, including himself. 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.

## **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 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 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), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

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

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual’s eligibility for access authorization. The information in the letter specifically cites Guideline G of the Adjudicative Guidelines. Guideline G relates to security risks arising from 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. Guideline G at ¶ 21. In citing Guideline G, the LSO stated that it relied upon the October 2017 written evaluation by the DOE psychologist, which concluded that the individual met the *Diagnostic and Statistical Manual, Fifth Edition* (DSM-V) criteria for a diagnosis of Alcohol Use Disorder, Severe, without adequate evidence of rehabilitation or reform. Ex. 1. The LSO additionally cited the psychologist’s conclusion that the

individual habitually uses alcohol to excess, as well as additional information regarding the individual's alcohol consumption. *Id.*

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

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

The individual does not dispute the facts alleged in the Notification Letter. Ex. 2. The individual does, however, assert that: as of November 21, 2017, he enrolled in and completed an Intensive Outpatient Treatment (IOP) program; he has been attending Aftercare meetings and meeting with a counselor; he has been participating in Alcoholics Anonymous (AA); and he has been practicing abstinence from alcohol. *Id.*

The LSO interviewed the individual in a July 2017 PSI and discussed his alcohol consumption. During the PSI, the individual admitted that, beginning in 2015, he would consume a half pint of bourbon on a daily basis. He also admitted that, from 2016 to April 2017, he consumed three quarters of a pint of bourbon on a daily basis, becoming intoxicated. Ex. 1 and 9. The individual further stated that, in April 2017, he entered an outpatient alcohol treatment program because he felt that he was drinking too much. However, despite this, he admitted that he was asked to leave the program after he had two positive alcohol tests approximately three and six weeks into the program. *Id.* The individual admitted that he had consumed a pint of bourbon on each occasion. *Id.* Despite seeking alcohol treatment in April 2017, the individual admitted that he drank to intoxication on July 3, 2017, after consuming a pint of bourbon, and on July 15, 2017, after consuming three shots of bourbon. *Id.* Finally, he admitted that he consumed a portion of a half pint of bourbon on July 17, 2017, the day prior to his PSI. *Id.*

In October 2017, the individual underwent an evaluation performed by the DOE psychologist. During the evaluation, the individual acknowledged that he was asked to withdraw from an IOP in 2017 because he continued to drink. He informed the psychologist that it was very difficult for him to stop drinking at that time because he was under intense stress related to his duties at work. Ex. 6 at 3. With respect to the individual's alcohol usage, the psychologist noted that the individual's consumption of alcohol gradually increased from becoming intoxicated once every few months in 2015 to becoming intoxicated nearly daily in 2016 and 2017. *Id.* at 5. However, he noted that within the four months prior to the evaluation, the individual had reduced his intoxication to once or twice a week. *Id.* Utilizing the DSM-V, and identifying six criteria of alcohol use disorder, the psychologist diagnosed the individual with Alcohol Use Disorder, Severe. *Id.*<sup>2</sup> Additionally, the psychologist found that the individual's ability to stop his consumption of alcohol was greatly impaired by his then-current stressful circumstances, but that his alcohol use disorder existed prior to that period of time. *Id.* He stated that the individual "has apparently relied on alcohol to help him cope with his unhappy life and tendency to not talk to others about his feelings." *Id.* As such, the psychologist determined that the individual had not demonstrated

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<sup>2</sup> As part of the evaluation, the psychologist ordered a phosphatidylethanol (PEth) test, which indicates alcohol consumption within a 30-day window prior to the test. The individual's test was positive at a level of 283 ng/ml (the detection limit is 20 ng/mL). *Id.* at 4. The DOE psychologist stated that his laboratory result indicated that the individual was, in fact, drinking very heavily. *Id.*

adequate evidence of rehabilitation or reformation as he continued to drink despite some treatment. *Id.* at 6.

The psychologist concluded that the individual “could demonstrate control over his cravings for and excessive use of alcohol by documenting his alcohol abstinence for 12 months.” *Id.* He further concluded that, to be convincing, documentation should include frequent but random EtG tests as well as PEth tests taken at least every 12 weeks. *Id.* The psychologist noted that the individual’s commitment to sobriety would also be shown if he attended an IOP that met four or more times a week, and if he faithfully attended aftercare. *Id.* He stated that the individual’s very scattered counseling and then-current IOP attendance would need to change to regular, documented attendance. *Id.* Finally, the psychologist added that the individual should “engage a therapist or counselor that can help him develop more ways of mitigating his bottled-up emotions other than his reliance on alcohol.” *Id.* at 7.

## V. Hearing Testimony

At the hearing, the individual acknowledged that his drinking has increased over the years. Tr. at 96. He stated that, around 2012, he started noticing his consumption increasing when his daughter moved away to college. *Id.* at 97. The individual testified that he would “go from a couple of beers to a six pack . . . to a 30-pack in a couple of weeks.” *Id.* He stated that he then switched from beer to hard liquor, going from a half pint of alcohol to a pint of alcohol nightly. *Id.* The individual testified that he first realized he had a problem with alcohol when his stress level became high at work, and he noticed he was consuming more alcohol than he normally did. *Id.* at 95. He stated that he “self-reported” and enrolled in an IOP in April 2017 to seek help. *Id.* According to the individual, the people who ran the program did not have strict guidelines about drinking, so he continued to consume alcohol. *Id.* The individual testified that he was asked to leave this IOP after he had two positive alcohol tests three to six weeks into the program. *Id.* at 99. He testified that he did not know that it was a requirement to remain abstinent in the program, and acknowledged that he was not ready to quit alcohol at that point in time. *Id.* at 100. The individual stated that he felt like he was being “sort of forced” to quit to appease his wife and to save his marriage. *Id.* at 101.

The individual explained that he enrolled in a seven-day detox program on November 21, 2017, because he “got tired of drinking” and decided that he needed to make a life change. *Id.* at 103. He testified that he was prescribed medication to help him to stop drinking and to sleep. *Id.* at 104. After completing the detox program, the individual enrolled in a three-days-a-week, 13-week IOP. *Id.* at 106. He testified that he learned a great deal from the program, particularly how to cope and deal with stressors and triggers in his life. *Id.* at 106, 107. The individual graduated from the IOP on March 7, 2018, and subsequently entered an aftercare program which he attends once a week. *Id.* at 108. He testified that, after graduating from the IOP, he began attending Alcoholics Anonymous (AA) meetings at least four times a week, and meets with his sponsor at least once a week. *Id.* at 110, 112. He is currently working on Step three of the 12 step AA program. *Id.* at 117. According to the individual, in April 2018, he began to chair AA meetings. *Id.* at 112. He stated that serving in this role has helped his own recovery by making him more attentive and accountable. *Id.* at 113. The individual testified that he has a good support group of friends, family, co-workers and members of his IOP group. *Id.* 115, 116.

The individual further testified that he intends to continue with aftercare at least another six months and meet with his counselor for at least a year. *Id.* at 120, 121. He testified that he does not plan to ever drink again in the future, including socially, because he understands that “alcohol is a disease.” *Id.* at 123. When asked about the changes in his life after participating in treatment and abstaining from alcohol, the individual stated that he feels healthier, that his mind is clearer and that he sleeps better. *Id.* at 124. He testified that AA and fly fishing have replaced alcohol in his life. *Id.* Although he stated that he feels good about his ability to remain abstinent, he acknowledged the need to continue with AA and counseling. *Id.* at 125.

The individual’s IOP counselor testified that he met the individual in December 2017, and that the individual attended 32 counseling sessions which included seven individual therapy sessions. *Id.* at 36, 37. He testified that the individual never missed a counseling session. *Id.* at 37. He testified that he currently sees the individual twice a week, once a week for an aftercare group session and another day each week for an individual session. *Id.* at 38. The IOP counselor opined that the individual is “really invested” in group counseling sessions, shares with other participants, and goes above and beyond what is required of him. *Id.* at 40, 41. According to the IOP counselor, the individual stated that he does not intend to resume drinking, and that he enjoys his new life. *Id.* at 45. The IOP counselor believes that the individual has an excellent prognosis because “he’s hitting everything on the checklist: regular weekly, multiple times a week meeting attendance; introspection, some desire to look inside of himself and change his behaviors; a willingness to deal with problems differently; positive social support; and a desire to share and help other people.” *Id.* at 49.

Additionally, the individual’s AA sponsor testified on his behalf. He testified that the individual approached him in January 2018 to be his sponsor. *Id.* at 63. The AA sponsor stated that the individual has been an active participant in meetings, and has taken on the responsibility of chairing meetings. *Id.* at 63, 64. He added that he has seen profound changes in the individual, particularly his ability to deal with challenges in his life. *Id.* at 69. The AA sponsor believes that the individual’s future intention is to remain abstinent. *Id.* at 71.

After listening to the hearing testimony, the DOE psychologist testified that he did not hear any inconsistencies regarding the individual’s alcohol use. *Id.* at 135. He noted, however, that based on his discussions with the psychiatrist from the individual’s first IOP (in April 2017), he did not believe the program was a sound program. *Id.* He stated that he is more familiar with the individual’s current program described by the individual’s counselor at the hearing, and considers it to be sound. *Id.* at 136.

The DOE psychologist further testified that he provided four recommendations for the individual at the time of his evaluation in October 2017: that the individual remain abstinent for twelve months; that he document his abstinence with random EtG and PEth testing; that he get a sponsor; and that he engage a therapist. *Id.* at 137. He testified that the individual has completed random EtG tests which were all negative, has obtained a sponsor and is working with a therapist. *Id.* He noted that the individual’s abstinence is the only recommendation not implemented, in that the individual has been abstinent for only 6 months, and not the recommended 12 months. *Id.* at 138. He stated that ordinarily he would believe that six months of abstinence is not long enough. *Id.* However, the DOE psychologist opined that his impression in this case is that the individual has a very good prognosis. *Id.* at 138. He stated that “I usually would have problems with . . . somebody

who hasn't been abstinent for longer, and that drank as heavily as he did," but "what he has going for him is that he's honest and . . . I think he's a man of integrity and good character." *Id.* at 138.

He testified that the individual really understands the recovery process, that he understands that he has an issue and that he cannot drink, and that he is not "kind of doing the normal game of 'yeah, I have a problem, and as soon as this is over, I'm going to return to drinking.'" *Id.* at 138, 139. The DOE psychologist further testified that he did not think he would be any more confident about the individual's recovery in another six months. *Id.* at 139. He reiterated that he believes the individual has a good prognosis, at least for the next year or two years, and believes that six months of abstinence in this particular case is adequate. *Id.* He concluded that the individual's risk of relapse is low and that he has provided adequate evidence of rehabilitation and reformation. *Id.* at 143.

## **VI. 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) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's security clearance 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 diagnosis by a duly qualified medical or mental health professional of alcohol use disorder can raise a security concern and may disqualify an individual from continuing to hold a security clearance. *See* Guideline G at ¶ 22(d). Furthermore, habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder can serve as a disqualifying condition. *Id.* at ¶ 22(c). Here, the DOE psychologist initially diagnosed the individual with Alcohol Use Disorder, Severe, not under remission. He additionally opined that the individual had not demonstrated adequate evidence of rehabilitation or reformation. It is clear that the individual was a heavy drinker, consuming at least a half pint of bourbon on a daily basis beginning in 2015, and becoming intoxicated on a daily basis beginning in 2016 and continuing through April 2017. Even after recognizing his issue with alcohol, the individual admitted to continuing to drink to excess. Accordingly, as noted, concerns were properly raised under Guideline G.

The Adjudicative Guidelines describe factors that could mitigate security concerns about alcohol consumption. In relevant part, the Guidelines provide that mitigating conditions include that "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" or "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 with treatment recommendations. Guideline G at ¶ 23 (b) and (d). Here, the individual has completed

a 13-week IOP and has continued to participate in aftercare, is attending AA meetings, is engaging in counseling and has abstained from alcohol for a period of six months. Moreover, after hearing all of the testimony evidence, the DOE psychologist stated that he had revised his opinion, and that he believed that the individual has an excellent prognosis and a low risk for relapse. He stated that ordinarily he would believe that six months of abstinence is not long enough, and that normally he would look for one year without alcohol; however, he determined that the individual is “honest and . . . I think he’s a man of integrity and good character.” He stated his belief that the individual has engaged so fully in rehabilitation, and had demonstrated such understanding and acceptance of his alcohol problem, that the individual has provided evidence of rehabilitation and reformation.

Based on all the evidence of record in this case, I believe that the opinion of the DOE psychologist is consistent with the witness testimony and my observations in this case. Here, the individual has acknowledged his pattern of maladaptive alcohol use, has provided substantial evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of abstinence, pursuant to Guideline G at ¶ 23 (b). Further, he has successfully completed a treatment program along with aftercare, pursuant to Guideline G at ¶ 23 (d). While a period of six months of abstinence is unusually short, I believe that the unique circumstances of this case, where the individual has been so fully engaged in rehabilitation, and has demonstrated good character, warrant a finding that he has met the requirements of mitigation pursuant to Guideline G.

For these reasons, I conclude that the security concerns under Guideline G have been sufficiently resolved.

## **VI. 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 Guideline G. 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 G. 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.

Kimberly Jenkins-Chapman  
Administrative Judge  
Office of Hearings and Appeals