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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:	October 22, 2018	)	Case No.: PSH-18-0075
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Issued: January 17, 2019

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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”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”<sup>1</sup> For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored.

**I. BACKGROUND**

The Individual is employed by a DOE Contractor in a position that requires her to hold a security clearance. In August 2017, the Individual took a sedative, for which she had a valid prescription, before consuming alcohol. Ex. 12 at 3–4. The Individual attempted to drive to a friend’s home, but was pulled over and arrested for DUI. *Id.* at 4. The Individual has no memory of getting in her car and very little memory of her arrest. *Id.* at 4. The Local Security Office (LSO) conducted a Personnel Security Interview of the Individual in November 2017, after which it referred the Individual to a DOE Contractor Psychologist (Psychologist) for evaluation. The Psychologist diagnosed the Individual with Unspecified Alcohol-Related Disorder based upon her hazardous alcohol use and its effects on her life. Ex. 15 at 12. The Psychologist recommended that the Individual abstain from alcohol for a minimum of 12 months, continue her alcohol treatment program, and engage in psychological counseling for at least six months. *Id.* at 15. The Psychologist also opined that the Individual’s diagnosis of Unspecified Alcohol-Related Disorder, by its very nature, compromised the Individual’s ability to think clearly, assess potential consequences, and make choices based on those assessments. *Id.* Accordingly, she opined, the Individual had an illness or mental condition that caused or could cause a significant defect in judgment or reliability. *Id.*

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<sup>1</sup> Under the regulations, “Access authorization” means 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 also be referred to in this Decision as a security clearance.

The LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding her eligibility to continue holding a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on October 22, 2018. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the individual presented the testimony of four witnesses. The LSO presented the testimony of the DOE psychologist who had evaluated the individual. *See* Transcript of Hearing, Case No. PSH-18-0075 (hereinafter cited as "Tr."). The LSO submitted 17 exhibits, marked as Exhibits 1 through 17 (hereinafter cited as "Ex."). The Individual submitted five exhibits, marked as Exhibits A through E.

## **II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for a security clearance. That information pertains to Guidelines G, I, and J of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines).

Guideline G (Alcohol Consumption) states: "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. The conditions set forth in the Guidelines that could raise a disqualifying security concern are alcohol-related incidents, at or away from work, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder; Alcohol Use Disorder diagnosis by a duly qualified medical or mental health professional; failure to follow treatment advice after diagnosis; alcohol consumption that is not in accordance with treatment recommendations after a diagnosis of alcohol use disorder; and failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence. Adjudicative Guidelines at ¶ 22. The LSO alleges that the Individual had been arrested for Driving Under the Influence (DUI) in 2009 and 2017; had been diagnosed with Unspecified Alcohol-Related Disorder in 2016 and 2018; was still consuming alcohol after her most recent DUI arrest; and had abused alcohol by consuming it with another sedating substance in a way that created grave risk and consequences. Accordingly, the LSO's security concerns under Guideline G are justified.

Guideline I (Psychological Conditions) provides that "[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness." Adjudicative Guidelines at ¶ 28. The conditions that could raise a security concern and may be disqualifying include behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline, that may indicate an emotional, mental, or personality condition; an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness; voluntary or involuntary inpatient hospitalization; failure to follow a prescribed treatment plan related to a diagnosed

psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness; and pathological gambling. Adjudicative Guidelines at ¶ 28. The LSO alleges that the Individual had been diagnosed with Unspecified Alcohol-Related Disorder and that the evaluating psychologist opined that the Individual had an illness or mental condition which may cause a significant defect in judgment or reliability. Accordingly, the LSO's security concerns under Guideline I are justified.

Guideline J (Criminal Conduct) provides that “[c]riminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. The conditions that could raise a security concern and may be disqualifying include, among others, a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; evidence of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; and an individual's failure to complete a court-mandated rehabilitation program. Adjudicative Guidelines at ¶ 31. The LSO alleges that the Individual was arrested for—and plead guilty to—DUI, Possession of Marijuana, and Possession of Paraphernalia in 2009; was charged with Criminal Mischief-2<sup>nd</sup> Degree and Disorderly Conduct in 1998 for keying her boss's car; and was arrested for DUI in 2017. Accordingly, the LSO's security concerns under Guideline J are justified.

### **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 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 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). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

#### IV. FINDINGS OF FACT

At the hearing, the Individual presented the testimony of four witnesses: two colleagues with whom the Individual is also close friends and two supervisors. Colleague #1 had known the Individual for about four years and considered her one of her best friends. Tr. at 9–11. She worked under the Individual for about four or five months and, during that time, the colleague never saw any indication that the Individual was suffering from alcohol abuse. *Id.* at 10–11. Colleague #1 has spent significant social time with the Individual outside work as well, and never noticed any issues with the Individual's alcohol use. *Id.* at 11–12. She had never seen the Individual intoxicated. *Id.* at 17. Colleague #1 was very involved with the Individual's legal proceedings and acted as a support for the Individual. *Id.* at 12–13. She testified that the Individual attends weekly alcohol classes and monthly individual counseling sessions. *Id.* She also testified that at their weekly dinners that she and the Individual no longer drink alcohol, as opposed to each having a single drink with dinner before the Individual's recent DUI. *Id.* Colleague #1 considers herself part of the Individual's support system and testified that the Individual has strong support from family and friends. *Id.* at 13–15. She finds the Individual very trustworthy and believes the Individual has excellent judgment. *Id.*

The second colleague had also known the Individual for nearly four years. Tr. at 19. They worked closely together several years ago and the colleague never observed the Individual coming in late or experiencing the effects of alcohol abuse. *Id.* at 19–20. She too considers the Individual to be one of her best friends. *Id.* at 20. Colleague #2 and the Individual spend considerable social time together. *Id.* at 21–22. She testified that she had not seen the Individual consume alcohol in the last 14 or 15 months and that, prior to that time, the Individual consumed minimal alcohol. *Id.* at 22. She also testified that the Individual attends weekly alcohol classes and monthly individual counseling sessions. *Id.* at 23–24. Colleague #2 testified that the Individual has as strong support system through family, friends, and colleagues. *Id.* at 24. She described the Individual as reliable, dependable, and trustworthy. *Id.* at 24–25.

The first supervisor had been the Individual's manager for about a year and half, during which time they interacted daily. Tr. at 28–29. The supervisor had never seen the Individual suffering from the effects of alcohol abuse. *Id.* at 29. He had never seen the Individual have an alcoholic beverage and he had never had to discipline the Individual for any alcohol-related event. *Id.* He testified that the Individual goes to weekly alcohol classes. *Id.* at 30–31. He further testified that the Individual is one of the best administrators he's had in his forty year career. *Id.* at 31. He has never had a question about her judgment. *Id.*

The second supervisor had been the Individual's manager for about a year. Tr. at 35–36. The supervisor had never seen the Individual under the influence of alcohol and had never seen the Individual make a poor choice due to alcohol. *Id.* at 36. He had never had to discipline the Individual for any alcohol-related event. *Id.* at 37. He testified that the Individual goes to weekly alcohol classes. The second supervisor further testified that he never has issues with the Individual's work performance. *Id.* He described the Individual as trustworthy. *Id.* at 38.

The Individual testified that she is not a frequent drinker, that she does not drink to excess, and that her 2017 DUI was the result of an interaction between her medication and one alcoholic beverage. Tr. at 44–48. She has no memory of finishing the drink or anything that happened after that. The Individual further testified that she did not intend to drive that day and would not have consumed

alcohol if she had planned to drive. *Id.* She expressed disbelief that she has a pattern of alcohol abuse, despite her two DUIs, when viewing her entire adult life. *Id.* The Individual testified that her alcohol use around 2009 was, at some level, related to the difficulties in her life at that time. *Id.* at 49.

The Individual's alcohol classes are court-mandated and she does not attend Alcoholics Anonymous (AA) or another kind of support group. Tr. at 49–50. She attends individual therapy sessions roughly every 45 days. The Individual stated that she did not receive any recommendations from the Psychologist during their meeting and that she wished she had known about the recommendations so she could have started documenting abstinence. *Id.* at 50–51. She also expressed that some of the testing recommendations are not financially feasible for her. *Id.* at 65. The Individual testified that the amount of alcohol she had described consuming during a previous meeting with the Psychologist was twice as much as she was consuming when she met with the Psychologist in 2016. *Id.* at 51. She noted that the Psychologist had deemed the previous amount of consumption to be healthy and questioned how half that amount could be abusive. *Id.* The Individual described having a strong support system of family and friends. *Id.* at 52–53. She last consumed alcohol at a celebratory dinner with family on the weekend before her hearing, despite having received and read the Psychologist's report by that time. *Id.* at 54. She does not have alcohol cravings. *Id.* The Individual consumes alcohol once or twice per month and has no more than two drinks per sitting. *Id.* at 45, 57. She does not have "intentions" about her alcohol consumption because alcohol is not something she thinks about daily. *Id.* at 54. The Individual was not opposed to the idea of further alcohol education because "it can't hurt" to have that kind of programming. *Id.* at 55. She described herself as reliable and trustworthy. *Id.* at 58. She also admitted that she has made mistakes but stated that she has learned from them and intends to never repeat them again. *Id.* Finally, the Individual testified that she has excellent judgment and that she is constantly striving to be a better person. *Id.* at 59.

The Psychologist had evaluated the Individual in 2016 and 2018. Tr. at 68. In 2016, the Psychologist evaluated the Individual relating to alcohol and financial difficulties. *Id.* She diagnosed the Individual with Unspecified Alcohol-Related Disorder, in sustained remission, at that time. *Id.* at 69. By the time of the 2018 evaluation, the most significant change was the addition of a second legal issue as a result of alcohol use. *Id.* at 71. This constituted a re-emergence of the Unspecified Alcohol-Related Disorder. *Id.* at 72. The Psychologist testified that unintentional hazardous behavior is no less dangerous than intentional hazardous behavior. *Id.* at 73. She testified that she would not change the 2018 diagnosis based on the testimony at the hearing. *Id.* at 73–74. The Psychologist further testified that an alcohol-related diagnosis does not require an excessive amount of alcohol consumption. *Id.* at 74–75. Rather, the diagnosis is based more on continued use of alcohol despite harmful or negative effects of alcohol consumption. *Id.* at 75. The Psychologist testified that, based on the Individual's testimony at the hearing, the Individual is still exhibiting that specific characteristic. *Id.*

The Psychologist testified that the Individual is not yet rehabilitated. *Id.* at 96. She stated that the Individual has demonstrated many strengths, such as reliability and excellent judgment in the workplace. *Id.* at 77. However, there remain risks, such as a lack of 12 Step or other support program attendance, lack of insight by the Individual about her problems with alcohol, and the presence of a co-morbid anxiety disorder. *Id.* at 78–84. She testified that the Individual's anxiety disorder does not itself pose a risk to judgment and reliability. *Id.* at 84. However, when combined with the Unspecified Alcohol-Related Disorder, the Individual's anxiety does create risk that the

Individual will again engage in risky alcohol consumption. *Id.* Furthermore, the Individual had only had seven months of alcohol treatment and no treatment for the anxiety disorder. *Id.* at 86. The Psychologist testified that the Individual will have an excellent prognosis if she follows the treatment recommendations. *Id.* at 98.

## V. ANALYSIS

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a common sense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against restoring security clearances, I must deny restoration if I am not convinced that the LSO’s security concerns have been mitigated such that restoring the Individual’s clearance is not an unacceptable risk to national security.

### A. Guideline G

Guideline G provides that security concerns arising from alcohol consumption can be mitigated when (a) the individual’s alcohol use was so infrequent or so long ago that it is unlikely to recur and does not cast doubt on her current reliability, trustworthiness, or judgment; (b) the individual acknowledges her pattern of alcohol abuse, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence; (c) the individual has no history of relapse and is making satisfactory progress in treatment or counseling; or (d) the individual has successfully completed a treatment program and has established pattern of modified consumption or abstinence. Adjudicative Guidelines at ¶ 23.

Though the Individual’s alcohol-related incidents occurred years apart, the surrounding circumstances follow a pattern. During periods of elevated anxiety, the Individual has a higher likelihood of dangerous alcohol-related behavior. The most recent incident was not very long ago and the behavior continues to cast doubt on the Individual’s judgment, trustworthiness and reliability. Furthermore, the Individual does not acknowledge her maladaptive alcohol use. While she insists that she does not have any issues with alcohol, she chose, with her security clearance at risk, to consume alcohol after receiving the Psychologist’s recommendation of abstinence. The Individual’s continued use of alcohol in the face of severe negative consequences demonstrates that her issues with alcohol are not yet resolved. The Individual has not yet completed her treatment and, while she is making progress, her history of relapse makes successful completion necessary for mitigation.

Finally, the Individual has substantially complied with the requirements of her criminal sentence, but she has not complied with the Psychologist’s recommendations. Though she did not receive them until a few weeks before her hearing, she could have begun implementing the recommendations immediately upon receipt. Instead, she chose to consume alcohol in the days directly preceding her hearing. The Psychologist opined that she is not rehabilitated. This opinion is not dispositive in these cases. However, in light of the Psychologist’s relatively long history with the Individual, I afford her opinion significant weight.

For the foregoing reasons, I cannot find that the Individual has mitigated the Guideline G concerns.

## **B. Guidelines I and J**

Guideline I provides that security concerns arising from psychological conditions can be mitigated when (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan; (b) the individual has voluntarily entered and is currently receiving counseling or treatment program, if the condition is amenable to treatment, and the individual currently has a favorable prognosis by a duly qualified mental health professional; (c) a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government has recently opined that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation; (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and (e) there is no indication of a current problem. Adjudicative Guidelines at ¶29.

Guideline J provides that security concerns arising from criminal conduct can be mitigated when (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; (b) the individual was pressured or coerced into committing the act and those pressures are not prescribed, the pressures are no longer a part of the individual's life, and the abuse has since ended; (c) there is no reliable evidence to support that the individual committed the offense; and (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement. Adjudicative Guidelines at ¶ 32.

The DOE's psychological and criminal conduct concerns about the Individual are inextricably connected to her alcohol use. The concerning psychological condition is her alcohol-related diagnosis and her criminal conduct only occurs in conjunction with alcohol consumption. Until she resolves the DOE's concerns about her alcohol use, I cannot be certain that she will not consume alcohol before driving, nor can I be certain that her Unspecified Alcohol-Related Disorder is under control. Accordingly, I cannot find that the Individual has mitigated the Guideline I or J security concerns.

## **VI. CONCLUSION**

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the individual's eligibility for a security clearance under Guidelines G, I, and J of the Adjudicative Guidelines. I further find that the individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that restoring DOE access authorization to the individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore access authorization to the individual at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman  
Administrative Judge  
Office of Hearings and Appeals