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

In the Matter of: Personnel Security Hearing )  
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Filing Date: August 4, 2020 ) Case No.: PSH-20-0068  
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Issued: September 25, 2020

**Administrative Judge Decision**

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”<sup>1</sup> As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should not be restored.

**I. BACKGROUND**

On June 27, 2019, the Individual was arrested and charged with Driving While Under the Influence of Alcohol (DUI). Ex. 3. The Individual had a history of five previous alcohol-related arrests as a minor: on March 29, 2000; February, 13, 2000; January 11, 1998; March 3, 1997; and December 29, 1996. Ex. 7 at 3–5. As a result, the Local Security Office (LSO) requested that the Individual undergo a psychological evaluation. On December 6, 2019, a DOE-contracted psychologist (the Psychologist) conducted a clinical interview (the Clinical Interview) of the Individual as part of his psychological assessment of the Individual. Ex. 4 at 2. On December 12, 2019, the Psychologist issued a report (Report) in which he concluded that the Individual habitually consumed alcohol to the point of impaired judgement. Ex. 4 at 7-8.

The LSO informed the Individual, in a notification letter dated May 18, 2020, that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. Ex. 2 at 2. In a summary of security concerns (SSC) attached to the notification letter, the LSO explained that the derogatory information raised security concerns under “Guideline G,

<sup>1</sup> 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.

Alcohol Consumption” and “Guideline J, Criminal Conduct” of the Adjudicative Guidelines. *Id.* at 4–5.

The Individual requested a hearing and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). Ex. 1. The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing that I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from three witnesses: the Psychologist, the Individual’s supervisor (the Supervisor), and the Individual. *See* Transcript of Hearing, Case No. PSH-20-0068 (hereinafter cited as “Tr.”). The LSO submitted seven exhibits, marked as Exhibits (Ex.) 1 through 7. The Individual submitted six exhibits marked as Exhibits A through F.<sup>2</sup>

## **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 his eligibility for a security clearance. That information raised security concerns under Guidelines G 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).

Under Guideline G (Alcohol Consumption), the LSO cited the Psychologist’s conclusion that the Individual habitually consumed alcohol to the point of impaired judgement, the Individual’s June 27, 2019, arrest for DUI, and the Individual’s five alcohol-related arrests as a minor as raising a security concern. Ex. 2 at 4–5. These allegations adequately justify the LSO’s invocation of Guideline G. “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 LSO also cited the Individual’s 2019 arrest for DUI as raising a security concern under Guideline J (Criminal Conduct). Ex. 2 at 4. Ex. 2 at 4. “Criminal 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 ¶ 18. The Individual’s June 27, 2019, DUI arrest justifies the LSO’s invocation of Guideline J. Guideline J at ¶ 31(b).

## **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

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<sup>2</sup> The Individual designated two related documents as Exhibit C1 and Exhibit C2. For the purposes of this decision, I refer to the documents as one exhibit.

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. Adjudicative Guidelines at ¶ 22(a), (c)–(d).

#### IV. FINDINGS OF FACT

The Individual has a history of five alcohol-related arrests, as a minor, between 1996 and 2000 (including a 1998 DUI). Ex. 7 at 3–5. On June 27, 2019, the Individual was again arrested and charged with DUI. Ex. 3 at 1. The arresting officer measured the Individual’s breath alcohol content at .185 percent. *Id.* at 2–3.

As a result of this arrest, the LSO requested that the Psychologist evaluate the Individual. The Psychologist conducted the Clinical Interview on December 6, 2019, and issued the Report on December 12, 2019. Ex. 4 at 2, 8. During the Clinical Interview, the Psychologist questioned the Individual about his alcohol consumption pattern. The Individual estimated that he consumes four to six craft beers over two to four hours, twice a weekend. Ex. 4 at 5. Based on the information provided by the Individual, the Psychologist estimated that the Individual’s blood alcohol content would range from .11 percent to .23 percent during a typical night’s consumption. Ex. 4 at 5. The Psychologist indicated that the Individual reported that he became intoxicated one or twice every other weekend. Ex. 4 at 5. The Psychologist opined that his estimates and the Individual’s reports of his consumption were consistent with the results of laboratory tests administered to the Individual at the Psychologist’s behest.<sup>3</sup>

Based on the Individual’s pattern of consuming alcohol to intoxication on an at least a twice-monthly basis, the Psychologist concluded that the Individual habitually consumed alcohol to the point of impaired judgement. *Id.* at 7. The Psychologist recommended that the Individual demonstrate rehabilitation or reformation by participating in an Intensive Outpatient Treatment Program (IOP) of at least nine hours weekly for several months followed by an aftercare program for a total of twelve months of treatment. *Id.* at 8. The Psychologist also recommended that the Individual abstain from alcohol for at least nine months, and document his abstinence by having PEth tests at least every eight weeks during this period. *Id.* The Psychologist opined that the proposed treatment would be ineffective if the Individual failed to recognize that his alcohol consumption was problematic. *Id.*

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<sup>3</sup> The Psychologist requested that the Individual undergo ethyl glucuronide (EtG) and phosphatidylethanol (PEth) laboratory tests to measure his recent alcohol consumption. *Id.* According to the physician who interpreted the laboratory test results, the EtG test was positive for a metabolite of ethyl alcohol, indicating that the Individual had recently consumed alcohol. *Id.* The physician indicated that the PEth test was positive for the PEth biomarker at 162 ng/mL, which was consistent with consuming at least four drinks a day several days a week. *Id.* at 6.

On July 23, 2020, the Individual met with a counselor (the Counselor) for an initial screening. Ex. D at 1. This screening included the administration of a computerized survey known as the Global Appraisal of Individual Needs (GAIN). Ex. D at 1. The Individual has submitted a recommendation and referral summary from the counselor (Counselor's Summary), dated July 31, 2020. Ex. D. The Counselor's Summary indicated that the Counselor found that the Individual had "expressed no internal motivation to remain clean and sober, stating that he only wants to get his clearance back." *Id.* at 5. The Counselor's Summary further stated that the Individual "reported severe substance use problems in the past 90 days." *Id.* at 6. The Counselor's Summary provided numerous recommendations for the Individual to pursue recovery with accompanying target dates for completion. *Id.* at 2–9. However, the Counselor further concluded that the Individual did not meet the "criteria for placement in substance abuse treatment due to his self-report that indicates minimal alcohol use and no use of other substances." Ex. D at 9. However, The Counselor's Summary found that the Individual met the criteria for placement in an educational program. *Id.* The Counselor's Summary concluded by stating: "Client should be monitored for continued use/relapse or further legal, social/work related or family issues that may be caused or exacerbated by continued use and if this occurs, a raise in level of care to outpatient treatment would be appropriate." Ex. D at 9.

### **The Hearing**

The Supervisor testified that he had managed the Individual since October 2015. Tr. at 15. While the Supervisor reported that he interacted with the Individual on a near-daily basis regarding the Individual's work duties prior to the COVID-19 pandemic, and approximately twice weekly by phone since the beginning of the COVID-19 pandemic, he did not socialize with the Individual outside of work, and had no knowledge of the Individual's consumption of alcohol. *Id.* at 17–19. The Supervisor indicated that the Individual disclosed to him that he was arrested for DUI shortly after the fact and that the Individual denied that he had ever been arrested for DUI before. *Id.* at 18–19. The Supervisor testified that he had never suspected the Individual of having any alcohol issues and had always perceived the Individual to be a trustworthy and effective worker. *Id.* at 17–20.

The Individual testified that he realized that alcohol was causing him problems since it was affecting his eligibility for a security clearance, and that he was abstaining from alcohol while working with the Counselor in order to explore whether he used alcohol as a "defense mechanism." *Id.* at 26–27. The Individual reported that he had consumed alcohol on three occasions since the Clinical Interview, and that he consumed two drinks on each of those occasions. *Id.* at 28–29. The Individual testified that his last use of alcohol occurred on July 18, 2020, approximately two months prior to the hearing. Tr. at 29.

The Individual claimed that the Psychologist's Report overstated his alcohol consumption prior to the Clinical Interview. *Id.* at 24. According to the Individual, the drinking habits he reported during the Clinical Interview were his "worst-case" levels of alcohol consumption and that he did not intend to communicate that he always consumed alcohol at that level when he drank. *Id.* The Individual testified that, prior to meeting with the Psychologist, he typically consumed alcohol outside of the home every other weekend. *Id.* at 39–41. The Individual testified that he sometimes felt intoxicated on the occasions when he drank, but he usually did not drink to intoxication because hangovers were too painful at his age and would impair his work and recreational activities. *Id.* at 41–42.

The Individual admitted that he had lacked motivation to address his problems with alcohol when he first met with the Counselor in July 2020, but indicated that he subsequently developed the desire to get to the root of the problems that he had experienced as a result of drinking alcohol and to work on resolving defense mechanisms to improve his personal relationships. Tr. at 32–35. The Individual denied knowledge of why the Counselor’s Summary indicated that he had experienced severe substance abuse problems in the 90 days prior to their first meeting. *Id.* at 31. The Individual admitted that he had not pursued the recovery steps recommended by the Counselor, except for meeting with the Counselor, and contended that the COVID-19 pandemic had impaired his ability to pursue social recovery outlets recommended by the Counselor. *Id.* at 37–39. The Individual admitted that he had only met with the Counselor twice following the initial meeting. *Id.* at 35–36. However, the Individual expressed the intention to meet with the Counselor on a weekly basis in the future. *Id.* at 35. The Individual also reported meeting with an Employee Assistance Program counselor. *Id.* at 36–37; *see also* Ex. E (showing that the Individual inquired about counseling via e-mail).

The Psychologist testified that, based on the Individual’s testimony during the hearing, the Individual had not met the treatment recommendations set forth in his Report and that the opinions he expressed in his Report were unchanged. Tr. at 79–80, 84. The Psychologist opined that it was common for persons with patterns of problematic alcohol consumption to abstain for a short time only to revert to problematic drinking, and that the Individual’s approximately two months of abstinence was insufficient to establish that he could control his alcohol use. *Id.* at 80. The Psychologist stated that he was uncertain about the Individual’s motivation to abstain from alcohol going forward, and that he was not confident that the Individual “had really turned that corner yet.” *Id.* at 78–79. Moreover, the Psychologist opined that, without the Individual’s participation in an IOP, as recommended in his Report, he would not have confidence in the Individual’s ability to avoid returning to problematic drinking. *Id.* at 82. Due to the Individual’s failure to follow his recommendations, the short duration of his abstinence, and the lack of information concerning the Individual’s social support and motivations, the Psychologist expressed that the Individual had a less than a “moderately positive prognosis” for avoiding returning to problematic drinking which he quantified as approximately a forty to fifty percent chance of avoiding a relapse into problematic drinking. *Id.* at 84–85.

## **V. ANALYSIS**

### **A. Guideline G (Alcohol Consumption)**

The Individual’s alcohol-related arrests and citations, and the allegation that he habitually consumed alcohol to the point of impaired judgment, raise security concerns under Guideline G. Adjudicative Guidelines at ¶ 22(a), (c). Before considering potentially mitigating conditions under Guideline G, I will first address the Individual’s contention that the Psychologist overestimated the extent of his drinking. The Report indicated that the PEth test results indicated that the Individual consumed alcohol to intoxication on, at least, a weekly basis. *Supra* p. 4. I find the laboratory test results and the Report’s contemporaneous account of the clinical interview more compelling evidence of the Individual’s prior drinking habits than the Individual’s uncorroborated and self-serving hearing testimony. Moreover, even if the Individual had reported consuming alcohol to intoxication once every two weeks, rather than twice weekly, that pattern of intoxication would be

sufficiently frequent to constitute habitual consumption of alcohol to the point of impaired judgment.

An individual may mitigate security concerns under Guideline G if:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; or,
- (d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23(a)–(d).

In the present case, the Individual's problematic alcohol use continued at least until the December 6, 2019, Clinical Interview. Moreover, it is clear that the Individual's problematic alcohol use constituted an enduring pattern, rather than an unusual occurrence. As discussed above, the Individual has not yet shown that his problematic alcohol use is unlikely to occur, since the Individual admits that he did not fully comply with any of the Psychologist's treatment recommendations. Instead, the Individual testified that he has substantially reduced his alcohol consumption after meeting with the Psychologist, began abstaining from alcohol approximately two months prior to the hearing, and met with a counselor<sup>4</sup> for alcohol-related counseling on three occasions. These actions constitute a far less intensive response to his alcohol problem than was recommended in the Report.<sup>5</sup>

While the Individual has recently begun to acknowledge his pattern of maladaptive alcohol use, and has provided some evidence of actions taken to overcome this problem, as discussed above, that evidence is not sufficient to demonstrate a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations. Until the Individual addresses his problematic drinking through proper treatment, and demonstrates an appropriate period of abstinence from alcohol, his judgement and reliability can be expected to be impaired in the future.

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<sup>4</sup> The Individual's testimony that he substantially reduced his alcohol consumption after meeting with the Psychologist, and began abstaining from alcohol approximately two months prior to the hearing is not supported by any corroborating evidence in the Record, such as the testimony of witnesses familiar with his drinking practices or results from alcohol testing.

<sup>5</sup> Significantly, the Individual's two months of abstinence falls far short of the recommended nine-month period of abstinence. Further, the Individual did not attend an IOP or similar program and his three meetings with the Counselor were too infrequent to establish meaningful treatment progress.

For the aforementioned reasons, none of the mitigating conditions under Guideline G are applicable in this case. Therefore, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

### **B. Guideline J (Criminal Conduct)**

The Individual's arrest for DUI raises security concerns under Guideline J. Adjudicative Guidelines at ¶ 31(b). An individual may mitigate security concerns under Guideline J if:

- (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 no longer present in the person's life;
- (c) 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(a)–(d).

The passage of approximately fifteen months since the Individual's most recent arrest for DUI is insufficient to mitigate the security concerns associated with his alcohol-related offenses, particularly in light of the Psychologist's opinion that the Individual's prognosis for avoiding a relapse into problematic alcohol consumption is less than moderate. The Individual's criminal activity concerns are inextricably linked to his problematic alcohol consumption. Accordingly, until this problem is adequately addressed, the root cause of his criminal activity remains unaddressed. Until the Individual takes appropriate steps to resolve his problematic alcohol consumption through treatment and an appropriate period of abstinence, I cannot find that the Individual's criminal behavior is unlikely to recur. Therefore, the first mitigating condition under Guideline J is inapplicable.

The Individual acknowledged that his operation of a motor vehicle while under the influence of alcohol led to his 2019 DUI, and that this offense was the product of poor judgment on his part. Therefore, the second and third mitigating conditions under Guideline J are inapplicable in this case. *Id.* at ¶ 32(b)–(c). As to the fourth mitigating condition, as noted above, the passage of fifteen months since the Individual's arrest for DUI is insufficient to establish rehabilitation. Moreover, because the Individual has not shown that he has been successfully rehabilitated from the underlying condition which has led to his criminal activity, the fourth mitigating condition under Guideline J is inapplicable. *Id.* at ¶ 32(d).

For the reasons set for above, I find that the Individual has not established the applicability of any of the mitigating conditions under Guideline J in this case. Accordingly, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline J.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE that raised security concerns under Guidelines G and J of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not resolved the security concerns asserted by the LSO. Accordingly, I have determined that the Individual's access authorization should not be restored. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals