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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: June 29, 2021) Case No.: PSH-21-0081
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Issued: November 23, 2021

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should not be restored.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In July 2020, the Individual was arrested and charged with Simple Assault. His conditions of release prohibited the consumption of alcohol. Ex. 8; Ex. 9. In August 2020, the Individual was arrested and charged with Public Intoxication, thus violating the conditions of release. Ex. 8. As a result of these charges, the Individual was evaluated by a DOE consultant psychologist (Psychologist) in October 2020. Ex. 11. The Psychologist diagnosed him with Alcohol Use Disorder, Moderate, and determined that the Individual had not demonstrated adequate evidence of rehabilitation or reformation. Ex. 11 at 9.

Due to unresolved security concerns related to the Individual’s alcohol use and criminal conduct, the Local Security Office (LSO) informed the Individual, in a December 2020 Notification Letter, that it possessed reliable information that created substantial doubt regarding the Individual’s 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) and Guideline J (criminal conduct) of the Adjudicative Guidelines. Ex. 1.

¹ 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 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 DOE Counsel submitted fourteen numbered exhibits (Exhibits 1-14) into the record and presented the testimony of the Psychologist. The Individual introduced three lettered exhibits (Exhibits A-C) into the record, and presented the testimony of four witnesses, including himself. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric 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) (strong presumption against the issuance of a security clearance).

An individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). An individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 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 and Guideline J of the Adjudicative Guidelines. Guideline G relates to security risks arising from excessive alcohol consumption. “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses and can raise questions about an individual’s reliability and trustworthiness.” Guideline G at ¶ 21. Guideline J concerns security risks arising from criminal conduct. “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Guideline J at ¶ 30. It “calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” *Id.*

In citing Guideline J, the LSO reported that, in July 2020, the Individual was arrested and charged with Simple Assault. Ex. 1. The conditions of release on this charge prohibited the Individual from

consuming alcohol. *Id.* However, in August 2020, the Individual was arrested and charged with Public Intoxication. *Id.* As support for citing Guideline G, the LSO relied upon the Psychologist's determination that the Individual met the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), criteria for Alcohol Use Disorder, Moderate, without adequate evidence of rehabilitation or reformation. Ex. 1. In addition, the LSO cited the Individual's August 2020 arrest and charge of Public Intoxication. *Id.*

IV. Findings of Fact

As stated above, due to unresolved security concerns, the Individual underwent a psychological evaluation with the Psychologist in October 2020. Ex. 11. The Psychologist's report (Report) noted that the Individual separated from his wife in January 2020, and the Individual explained that, due to the separation, his alcohol consumption increased in both frequency and quantity. Ex. 11 at 2. He stated that he would go out with his friends to consume alcohol and "blow off steam." *Id.* at 3. In July 2020, the Individual was arrested for Simple Assault following an altercation with his wife. *Id.* at 3; Ex. 9. As part of his conditions of release on the charge, he was prohibited from possessing or consuming alcohol. Ex. 11 at 4.

One month later, in August 2020, the Individual was arrested for Public Intoxication after law enforcement observed him swerving while driving. *Id.* at 4; Ex. 8. The Individual explained that he was arrested for Public Intoxication because his alcohol consumption was a violation of his conditions of release.² Ex. 11 at 4. The Individual asserted that he was unaware of this release condition until a law enforcement officer brought it to his attention. *Id.* The Psychologist noted, however, that the Individual's assertion was inconsistent with information that the Individual previously provided to DOE, in which he "acknowledged making a poor decision to consume alcohol on the date of the [Public Intoxication] charge, and in light of his awareness of the court order to abstain from any alcohol consumption." *Id.* The Psychologist explained that the Individual previously reported that, prior to being arrested for Public Intoxication, he had consumed four beers over the course of two and a half hours. *Id.* However, during the psychological evaluation, the Individual reported that he "drank a few beers at dinner" and then went to a bar, where he consumed two "whiskey drinks." *Id.*

The Report noted that, following the Individual's arrest, his employer required him to meet with a staff psychologist who referred him to a "drug and alcohol professional" (Alcohol Professional). *Id.* at 5. The Alcohol Professional diagnosed him with Alcohol Intoxication, Without Use Disorder, and recommended that the Individual attend weekly, individual counseling and complete 20 hours of in-person 12-step community-based peer recovery support meetings, such as Alcoholics Anonymous (AA). *Id.* The Alcohol Professional recommended that the Individual provide verification of his attendance at counseling and AA by September 2020. *Id.* The Individual told the Psychologist that although he did attend 20 hours of AA, the majority of the meetings were virtual, as opposed to in person, and he was surprised to learn that the Alcohol Professional would not accept them as meeting the AA requirement. *Id.* The Alcohol Professional gave the Individual additional time to meet the requirement, but as of the date of psychological evaluation, the Individual admitted that he had not yet fulfilled the requirement. *Id.*

² The record is absent of any information that would explain why the Individual was arrested for Public Intoxication as opposed to Driving Under the Influence (DUI) or a similar charge.

The Psychologist noted that the Individual claimed that he had not consumed alcohol since August 2020, and although the Individual acknowledged that the AA meetings educated him as to the definition of an alcoholic, he did not believe he met the criteria. *Id.* The Individual explained that he was committed to abstaining from alcohol, but “is not committing to abstinence indefinitely.” *Id.* at 6. He stated that “if I drink, I plan to drink [a] minimum amount and not operate a vehicle after drinking.” *Id.*

As part of the evaluation, the Psychologist ordered a Phosphatidylethanol (PEth) test, which was positive at a level of 263 ng/mL. *Id.* A consulting medical doctor explained that this level was “consistent with very heavy alcohol consumption.” *Id.* at 17. The Psychologist noted that the PEth results were inconsistent with the Individual’s report that he had not consumed alcohol since August 2020. *Id.* at 6.

Ultimately, the Psychologist diagnosed the Individual with Alcohol Use Disorder, Moderate. *Id.* at 7. She explained that the Individual’s “inability and/or unwillingness to abstain, his minimization/denial of the amount he drinks, his non-compliance with some treatment recommendations, and his lack of understanding about what constitutes an alcohol use disorder despite having been in AA are all indication of alcohol being a significant problem.” *Id.* The Psychologist noted that the Individual had not demonstrated adequate evidence of rehabilitation or reformation, and to do so, she recommended that he abstain from alcohol for a period of at least 12 months. *Id.* at 9. She also advised that any random breathalyzers through his employer be supported by random Ethyl Glucuronide (EtG) tests and at least two PEth tests over a 12-month period. *Id.* Finally, the Psychologist added that the Individual should participate in at least one AA session per week, either virtually or in person. *Id.* She noted that proof of attendance should be provided. *Id.*

At the hearing, four witnesses testified on the Individual’s behalf: three friends and the Individual himself. The first witness (Friend A) testified that he had known the Individual for approximately 25 years and saw him around two times per month. Tr. at 14. He explained that he and the Individual had “been doing some business stuff together,” and whenever they got together for business, golf, or watching sports, there was no alcohol involved. *Id.* Friend A stated that he did not know of any of the Individual’s legal trouble and was surprised to learn of that information during the hearing. *Id.* at 17, 25. He noted that the last time he saw the Individual consume alcohol was during a July 4, 2020 golf tournament, but he did not recall how much alcohol the Individual consumed. *Id.* at 18, 21. Friend A testified that approximately three weeks prior to the hearing, the Individual informed him that he was “putting [alcohol] away and bettering himself.” *Id.* at 19-20.

The second witness (Friend B) testified that he had known the Individual for approximately ten years and played golf with him “a couple of times a month.” *Id.* at 29. He explained that the Individual would “occasionally” consume alcohol on the golf course, drinking approximately three beers over four and a half hours; however, he noted that he had not seen the Individual consume alcohol in a “few months.” *Id.* at 31. Similarly, the third witness (Friend C) testified that he had known the Individual for approximately 20-25 years. *Id.* at 41. He explained that he played golf with the Individual on a weekly to biweekly basis and had not seen him consume alcohol in the past few months. *Id.* at 43-44, 46.

The Individual testified, seeking to mitigate the Guideline G and Guideline J security concerns. *Id.* at 67. He explained that, after he was arrested for Simple Assault in July 2020, he did not know that one of his conditions of release was to abstain from alcohol. *Id.* at 93. He acknowledged that he should have read the paperwork he received “a lot better and should have been very clear and aware of that.” *Id.* He also acknowledged that, on the night he was arrested for Public Intoxication in August 2020, he “should not have been behind the wheel.”³ *Id.* at 94. The Individual explained that, following his July 2020 and August 2020 arrests, his employer ordered that he attend 20 hours of AA and attend personal and faith-based psychology sessions. *Id.* at 67-68. The Individual testified that the district attorney prosecuting the criminal charges against him agreed that the AA and psychology sessions were “sufficient to satisfy” the State. *Id.* at 68.

In support of his testimony, the Individual submitted into the record an AA attendance sheet showing 25 in-person sessions, spanning from September 2020 to November 2020. Ex. C. He additionally submitted a letter from a clinical social worker attesting to the Individual’s attendance of seven and a half hours of telephonic therapy from August 2020 to November 2020, as well as a letter from the faith-based therapist documenting eight sessions from August 2020 to November 2020. Ex. B; *see* Tr. at 70. The Individual also provided documentation showing that, upon his completion of the AA and therapy requirements, the State dismissed the charges against him in November 2020. Ex. A.

The Individual explained that he enjoyed the faith-based therapy and felt that he had gained new information about himself and how to better handle situations in his life. Tr. at 71-72. The Individual estimated that approximately 25-30 percent of the faith-based counseling sessions were spent discussing alcohol or other “vices” that the Individual stated that he used as self-medication or distractions. *Id.* at 72. He explained that he had to end his faith-based sessions as they were cost prohibitive, but outside of the court and employer ordered requirements, he attended a church therapy group from June 2021 through September 2021. *Id.* at 73-74. The Individual asserted that he continued his sessions with his personal therapist through March 2021 and had been attending virtual AA sessions since January 2021.⁴ *Id.* at 79, 81. The Individual further asserted that his medical and mental health providers “do not believe that [he is] an alcoholic;” however, he acknowledged that he did not submit any evidence that would support this contention. *Id.* at 83.

In turning to his experience in AA, the Individual testified that, although he introduces himself as an alcoholic, he does not believe that he is an alcoholic. *Id.* at 87. He merely provides that introduction so as not to feel “uncomfortable.” *Id.* The Individual explained that he does not have a sponsor, does not have a sobriety date, and has not received any sobriety coins.⁵ *Id.* at 85-87. He could not recite the first five steps of AA, and he could not specifically pinpoint the AA step on

³ The Individual testified that his wife “set up the police officer” to arrest him.” *Id.* at 94.

⁴ Although the Individual submitted third-party confirmed evidence into the record documenting completion of his court and employer ordered therapy and AA requirements, the documentation that the Individual submitted to support his continuation of therapy and AA outside of those requirements consists solely of a typed list of dates from his own records. *See* Ex. B-C. The Individual claimed that there was no way to obtain a formal record of his attendance in virtual AA, a claim that the Psychologist disputes. Tr. at 81, 162. As such, there is nothing in the record to corroborate his claims of continued AA and therapy attendance.

⁵ An AA sobriety coin is a token given to AA members representing the amount of time the member has remained sober.

which he was working. *Id.*⁶ He explained that the longest stretch of time that he had been abstinent from alcohol was “sort of six months,” in that it was over three months but less than six months. *Id.* at 88. The Individual noted that he last consumed alcohol during a dinner with a friend approximately three weeks prior to the hearing. *Id.* at 109.

In examining the Psychologist’s Report, the Individual admitted that he purposefully provided an incorrect answer regarding the last time he consumed alcohol because he was “fearful of [his] job.” *Id.* at 117. The Individual testified that he feels “like [he has] been pretty successful at” following the Psychologist’s recommendations. *Id.* at 97. The Individual stated that he did have random alcohol breath and urine tests through his employer,⁷ but he did not obtain any PEth testing.⁸ *Id.* at 142-143. He also noted that he was not successful at maintaining the recommended 12 months of abstinence. *Id.* at 144.

The Individual acknowledged that there was a time during which he experienced “a lot of stressors...and [he] would use alcohol as a vice” and as a means to self-medicate. *Id.* at 85, 89. He explained that he has now educated himself and is now self-aware, and his goal, should he choose to consume alcohol in the future, is to be in control of his consumption, classifying his alcohol use as “only socially dependent.” *Id.* at 85, 88-90, 96. The Individual stated that if he encounters future stressors, he would “have no problem with going through long periods of abstinence.” *Id.* at 90.

The Psychologist, after observing the hearing and listening to the testimony offered by the Individual and all other witnesses, testified that she diagnosed the Individual with Alcohol Use Disorder, Moderate, and did not find adequate evidence of rehabilitation or reformation as the Individual was still consuming alcohol and was “lying about how often, how much he was drinking.” *Id.* at 153. She stated that after hearing all the testimony at the hearing, she did not receive any information that would lead her to change her diagnosis. *Id.* at 154-155. When asked about the Individual’s decision to attend AA while at the same time believing that he is not an alcoholic, the Psychologist opined that his attendance is “duplicitous” and resulting from DOE’s scrutiny of his clearance. *Id.* at 164. She clarified that she felt that the Individual was “not taking [AA] seriously” and “he’s not in it for change to his behaviors.” *Id.* at 165. She based this opinion on the fact that the Individual continues to consume alcohol despite AA being an “abstinence-based treatment program,” has not obtained a sponsor, has not learned the steps, and is “making loose interpretations of the steps.” *Id.* at 164-165.

When asked about her opinion regarding the Individual’s intention to potentially engage in controlled alcohol consumption, the Psychologist explained that the reason that she recommends one year of abstinence is to provide an opportunity for individuals to demonstrate that alcohol does not control them, whether they agree with her diagnosis or not. *Id.* at 166. She stated that the

⁶ The Individual testified that “it’s almost impossible for anyone with real knowledge of AA to say I’m at this step” as it may change from week to week. Tr. at 85.

⁷ The Individual acknowledged that he did not provide evidence of this testing, stating that those were not his records but those of his employer. Tr. at 142.

⁸ At this point in his testimony, it should be noted that the Individual began arguing with the Psychologist about the wording of her recommendations, stating at one point that “it would be pointless for me to schedule my own PEth test.” Tr. at 143-144. He noted that the PEth tests were “not on [him] to schedule.” *Id.* at 144.

Individual “is not in control of his alcohol if he cannot follow [her] recommendations when his job is on the line.” *Id.* She further explained that although there is only one alcohol related criminal incident in the record, her diagnosis was additionally informed by the Individual’s “response to the incident in which he was not taking responsibility.” *Id.* at 168. She cited: the Individual’s claim that he was unaware that he could not consume alcohol as part of his conditions of release; his misinterpretation of her recommendations; his failure to obtain evidence of his virtual AA attendance; and his inaccurate reporting of his alcohol consumption during the psychological evaluation. *Id.* at 168-169.

Finally, the Psychologist explained that she observed the Individual, both during the evaluation and in the hearing, to be defensive and agitated. *Id.* at 170. She noted that despite stipulating to her expertise as a Psychologist and acknowledging that he has no expertise in psychology, he had “been challenging [her] expertise [the] entire hearing.” *Id.* at 170. The Psychologist opined that the Individual is minimizing the issues and diminishing her concerns. *Id.* She ultimately stated that the Individual had not met her recommendations. *Id.*

V. 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 has not sufficiently mitigated the security concerns noted by the LSO regarding Guideline G and Guideline J. I cannot 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). Therefore, I have determined that the Individual’s security clearance should not be restored. The specific findings that I make in support of this Decision are discussed below.

Due to the interconnected nature of the Guideline G and Guideline J security concerns, I will analyze them together. Regarding Guideline G, diagnosis of alcohol use disorder by a duly qualified medical or mental health professional, including a clinical psychologist, is a condition that could raise a security concern and may disqualify an individual from holding a security clearance. Guideline G at ¶ 22(d). An Individual’s failure to follow treatment advice once he is diagnosed, or the consumption of alcohol which is not in accordance with a treatment recommendation, after a diagnosis of alcohol use disorder, may disqualify and individual from holding a clearance. *Id.* at ¶ 22(e), (f). Additionally, alcohol-related incidents away from work could raise a disqualifying security concern. *Id.* at ¶ 22(a). If an individual acknowledges the 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, the individual may be able to mitigate the security concern. *Id.* at ¶ 23(b).

Turning to Guideline J, evidence of criminal conduct or a violation or revocation of parole or probation may disqualify an individual from holding a security clearance. Guideline J at ¶ 31(b), (d). An individual may be able to mitigate such a concern if so much time has elapsed since the criminal behavior occurred, 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. *Id.* at ¶ 32(a).

In this case, the Psychologist diagnosed the Individual with Alcohol Use Disorder, Moderate, after law enforcement pulled the Individual over for swerving while driving, which resulted in a charge of Public Intoxication, violating his condition of release on the July 2020 charge. *See* Guideline G at ¶ 22(a), (d); Guideline J at ¶ 31(b), (d). Although the Individual acknowledges that he was irresponsibly using alcohol to self-medicate and cope with stress, he has not demonstrated a clear and established pattern of modified consumption or abstinence in accordance with the treatment recommendations. *Contra id.* at ¶ 23(b). Further, he has not submitted evidence of his dedicated or continued participation in AA. The Individual's virtual attendance records are neither official nor corroborated, and he has not described adherence to the precepts of the program. Additionally, despite receiving the Psychologist's diagnosis, the Individual has not followed her recommendations, demonstrated argumentative behavior regarding her expertise during the hearing, and continues to consume alcohol. *See id.* at ¶ 22(e), (f). As such, I cannot find that the Individual has mitigated the Guideline G security concerns.

Regarding Guideline J, the Individual's most recent incident of criminal conduct centered around his use of alcohol. He was admittedly driving after consuming too much alcohol and in violation of his conditions of release on the July 2020 charge. As he is still consuming alcohol and has not mitigated the Guideline G concerns, I cannot find that the criminal conduct occurred under such unusual circumstances that it is unlikely to recur. Guideline J at ¶ 32(a). Therefore, I find that the Individual has not sufficiently mitigated the Guideline J concerns.

VI. Conclusion

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 have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline G and Guideline J. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I have determined that the Individual's access authorization should not 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.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals