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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: July 21, 2021	)	Case No.: PSH-21-0090
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Issued: November 24, 2021

**Administrative Judge Decision**

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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, “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 should not be granted a access authorization.

**I. BACKGROUND**

A DOE contractor employs the Individual in a position that requires possession of a security clearance. During the course of the Individual’s security clearance investigation, the DOE Local Security Office’s (LSO) learned about the Individual’s history of alcohol-related criminal offenses. As a result, the LSO requested that the Individual be evaluated by a DOE-consultant psychologist (“Psychologist”). Subsequently, the LSO informed the Individual by letter (“Notification Letter”) that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns, the LSO explained that the derogatory information raised security concerns under Guideline G and Guideline J of the Adjudicative Guidelines.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals (OHA) appointed me as the

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<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.

Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. *See* Transcript of Hearing (Tr.). At the hearing, the Individual presented the testimony of his current wife (“wife”) and testified on his own behalf; the LSO presented the testimony of the Psychologist. The Individual submitted five exhibits, marked Exhibits A through E. The LSO submitted ten exhibits, marked Exhibits 1 through 10.<sup>2</sup>

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

As indicated above, the LSO cited Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the basis for concern regarding the Individual’s eligibility to possess a security clearance. Ex. 1.

Guideline G provides that “[e]xcessive 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. Conditions that could raise a security concern include “[a]lcohol-related incidents away from work, such as driving while under the influence,” and “[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist . . .) of alcohol use disorder[.]” *Id.* at ¶ 25(a) and (d). In the Notification Letter, the LSO cited the Psychologist’s conclusion that the Individual met the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, criteria for Alcohol Use Disorder (AUD), in Sustained Remission, without adequate evidence of rehabilitation or reformation, and listed twenty instances of alcohol-related criminal charges that occurred between 1979 and 2018, ranging from trespassing to aggravated driving under the influence (DUI). Ex. 1 at 5-7. The above information justifies the LSO’s invocation of Guideline G.

Under Guideline J, “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Adjudicative Guidelines at ¶ 30. “By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” *Id.* Conditions that could raise a security concern include “[e]vidence (including . . . an admission[] and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted[.]” *Id.* at ¶ 30(b). The LSO cited that the Individual has two outstanding court cases related to his failure to appear in court, the most recent of which is from 2009, and cited twenty-seven separate instances of criminal conduct—repeating the twenty referenced in the preceding section and including several more that are not alcohol related. *Id.* at 7-9. The above information justifies the LSO’s invocation of Guideline J.

## **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

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<sup>2</sup> The LSO’s exhibits were combined and submitted in a single, 395-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This decision will cite to the LSO’s exhibits by reference to the exhibit and page number within the combined workbook where the information is located as opposed to the page number that may be located on the page itself.

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).

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 or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* at § 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**

The record includes the statements that the Individual provided regarding his alcohol use and criminal history as part of his application for access authorization. Regarding his alcohol use, he explained that he grew up in an environment where friends and family consumed alcohol to deal with life’s issues, and he began drinking at a young, unrecalled age. Ex. 10 at 230. He never witnessed his family members suffer any consequences from frequent drinking and driving; consequently, he never thought of it as inappropriate conduct. *Id.* He stated that his alcohol use contributed to his three divorces. *Id.* at 230-31. He also described several periods of sobriety over the years and stated that he permanently stopped consuming alcohol in 2017. *Id.* He reported that, since 2017, he had consumed only one beer, in 2018, and he immediately regretted it. *Id.* at 231. He also reported that he had completed the following court-ordered alcohol treatment: in 2014, one-on-one counseling with weekly urine tests for a month; in 2005, counseling, classes, and group Alcoholics Anonymous (AA) meetings for six months; in 2001, a month-long, in-patient treatment program; and in 1991, weekly counseling for an unspecified period. *Id.* at 230.

Regarding his criminal charges, the Individual provided details around the circumstances of each charge, including twelve DUIs and his most recent charges in 2018 for Trespassing, Nuisance, and Intoxication. *Id.* at 227-28. He explained that the recent charges occurred after he had consumed only one beer with friends at an abandoned building before he was stopped by police for trespassing on private property. *Id.*

The record also includes the Individual’s response to the LSO’s Letter of Interrogatory, which is dated March 2020. Therein, he stated that he had been sober for one year and eight months. Ex. 6 at 33. He again reported that he last consumed alcohol in 2018, but this time he described drinking six beers over three hours instead of only one beer. *Id.* at 34. He also described the circumstances of the two unresolved court cases cited in the Notification Letter. One resulted from alcohol-related

charges for which he had an outstanding warrant for failure to appear in court in 2009. *Id.* at 41. He explained that he stopped addressing the issue due to a lack of money, and, once he learned from the local Department of Motor Vehicles in 2020 that he did not have any warrants, he assumed that the case had been dropped. *Id.* The Individual provided similar explanations for his second unresolved case in which a warrant was issued for his failure to appear in 2008. *Id.* at 41-42. He indicated that he wanted to resolve both warrants. *Id.* at 43.

The record contains the report the Psychologist produced in October 2020 after evaluating the Individual. The report contains the Individual's statements regarding his criminal history, including the various alcohol-related offenses and active cases identified above. Regarding his failure to appear in 2009, he stated that the warrant was canceled in 2013, and he called and discovered the associated fee of thirty dollars had also been cancelled. Ex. 7 at 53. He stated that he learned that the warrant in his 2008 case was also inactive. *Id.* Regarding his alcohol use, the Individual explained that he previously used alcohol to manage life stressor including lack of work, "being terminated, and the multiple legal consequences related to his alcohol-related offenses." *Id.* at 54. The Psychologist noted that the Individual had "repeatedly experienced relapse, typically due to the exacerbation of . . . psychological stressors." *Id.* at 57. The Psychologist stated that, despite the Individual's reported abstinence since 2018, "his long history of severe alcohol abuse indicates that his affinity for alcohol remains an active and serious problem." *Id.* Consequently, the Psychologist concluded that "the continued presence of specific psychosocial stressors (i.e., underemployment, marital stress) and the periodic exacerbation of those stressors in his life increase his vulnerability to relapse." *Id.*

In diagnosing the Individual with AUD, in Sustained Remission, the Psychologist opined that the Individual is "highly vulnerable to return to drinking" based, in part, on his history of relapse. *Id.* To rehabilitate or reform his condition, the Psychologist recommended that the Individual remain permanently abstinent, permanently participate in regularly occurring individual counseling with a certified alcohol counselor, actively attend a minimum of six AA meetings a week for no less than two years, obtain an AA sponsor, and show evidence of working the AA "steps." *Id.* at 58.

At the hearing, the Individual's wife testified that she met the Individual in 2008 and married him in 2009. Tr. at 14. She testified that he unsuccessfully stopped consuming alcohol in 2009 and in 2014. *Id.* at 16. She testified that his relapses occurred during "extremely stressful situation[s]." *Id.* She also testified that the Individual told her that he does not ever intend to consume alcohol again. *Id.* at 17. She stated that he now enjoys his job, and he occupies his time with hobbies. *Id.* She further testified that they no longer spend time with his family members who consume alcohol, *id.* at 17; and, since 2018, the Individual had never been near alcohol in a social setting. *Id.* at 30

The Individual provided the following hearing testimony. He did not dispute the allegations contained in the Notification Letter. *Id.* at 36. He testified that, after evaluating his life in 2018, he began reducing his alcohol use until he finally stopped. *Id.* at 42. He said that his current work environment supports his abstinent lifestyle, and he has matured mentally and spiritually. *Id.* at 44. He also testified that his wife continues to be very supportive of his sobriety. *Id.* at 55. He testified that his longest period of abstinence lasted about twelve years during which he was "involved with

a lot of AA . . . [and] self-help books[.]”<sup>3</sup> *Id.* at 43, 59-60, 66. He also stated that his sobriety was aided by the fact that, at that time, he was involved in a church with strong principles. *Id.* at 45.

The Individual testified that he had not attended AA, despite the Psychologist’s recommendation, due to a lack of time and his four-hour, round-trip commute for work. *Id.* at 46-47, 53. He confirmed that, since the psychological evaluation, he had not participated in any counseling or treatment. *Id.* at 66. However, he testified that the lessons he previously learned in AA were presently helping his sobriety. *Id.* at 47, 54. For example, he found it helpful to apply the AA Twelve Steps to his daily life and to examine and heal his “inner self.” *Id.* at 47. He also stated that he is skeptical of AA sponsors because he found them undependable given their tendency to relapse. *Id.* at 54. He testified that he had completed the AA Twelve Steps “several times” because they must be repeated upon relapse. *Id.* at 67. He also testified that he would continue to remain abstinent from alcohol because he “need[s] to stay sober[.]” and he expressed regret for his history of alcohol use. *Id.* at 48-49.

The Individual testified about his criminal history and the two outstanding warrants cited in the Notification Letter. For the 2009 warrant for failure to appear, and the associated \$1,000 fine, he testified that he learned in 2020 that the warrant may no longer be active, but he must still “ask the Judge to dismiss it” to remove it and the fine from his record. *Id.* at 50, 52, 76. He also testified that the underlying criminal charge may not yet be resolved. *Id.* at 74. Regarding the 2008 warrant, the Individual testified that it was canceled, and he paid the associated thirty-dollar fee. His testimony is supported by a court record that indicates the 2008 case is closed and the fee paid. Ex. E.

The Psychologist testified last at the hearing. The Psychologist stated that, at the time of his original report, he recommended “reasonable steps” that the Individual could take to demonstrate “rehabilitation and reformation.” Tr. at 95. However, the Psychologist testified that the Individual presently had a prognosis of no higher than “fair” because the Individual had maintained his abstinence without the benefit of the accountability that a treatment program such as AA can provide, and the Individual has a history of relapses. *Id.* at 101-03. The Psychologist explained that accountability “is a strong component of people that remain sober[.]” *Id.* at 106. He further stated that a good predictor of long-term sobriety is benefitting from a group of people or a sponsor within the context of counseling. *Id.* at 106-07. The Psychologist reached his conclusion after also considering the Individual’s present age, maturity, and changed work environment. *Id.* at 99.

The Psychologist testified that the Individual’s AUD remained in Sustained Remission, and he further concluded that the Individual had demonstrated reformation but not rehabilitation. *Id.* at 107. To explain the distinction, the Psychologist stated that reformation is when somebody is in the process of reforming something: in this case, alcohol use. *Id.* at 107. Rehabilitation, however, is “[g]etting back to an original state of health.” *Id.* at 108. The Psychologist testified that, to provide a positive or good prognosis, he would have needed to see that the Individual had been “in some type of program” with laboratory monitoring to ensure the accuracy of his stated alcohol consumption. *Id.* at 109. The Psychologist also stated that he may be able to give the Individual a “good prognosis” after an additional two years of sustained abstinence. *Id.* at 109.

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<sup>3</sup> The Individual initially quoted a sixteen-year span but, after questioning, stated that it may have been only twelve years. *Id.* at 44-45, 66.

## V. ANALYSIS

### A. Guideline G Considerations

The following relevant conditions could mitigate security concerns based on alcohol consumption:

(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[.]

Adjudicative Guidelines at ¶ 23.

Based on the record in this case, I conclude that the Individual did not put forth sufficient evidence to resolve the Guideline G security concerns. My rationale equally applies to both ¶ 23(a) and ¶ 23(b). The record demonstrates that the Individual's problematic alcohol use was not infrequent, nor did it occur under unusual circumstances. Rather, the record demonstrates a recurring pattern of alcohol consumption followed by periods of failed sobriety despite court-ordered treatment. While I find that the Individual acknowledged his pattern of maladaptive alcohol use by stating that he regretted his past conduct, I do not find that the Individual has taken sufficient actions to overcome his problem, nor has he established a pattern of abstinence in accordance with treatment recommendations. The Individual's testimony indicates that he has remained abstinent for three years, but he has not complied with the treatment recommendations of the Psychologist, and the Psychologist declined to give the Individual a positive prognosis despite the Individual's actions to maintain his sobriety. Furthermore, the fact that the Individual provided different, detailed accounts regarding how and when he stopped consuming alcohol in 2018 weighs against his credibility within the context of his alcohol use. I therefore remain concerned that the Individual may again relapse. For these reasons, I find that the Individual has not resolved the Guideline G security concerns.

### B. Guideline J Considerations

The follow relevant mitigating condition could apply to resolve security concerns based on criminal conduct:

(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;

...

- (d) There is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, [] job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32.

Based on the record, neither of the above mitigating conditions are applicable. I am not unmindful that more than three years have passed since the Individual's last criminal charge, nor is it insignificant that the Individual changed some of his behaviors, has a very supportive wife, and appears to be performing well at his job, all of which has aided him in sobriety. However, these positive factors are overshadowed by the following two issues. First, I find significant that the record remains unclear whether the Individual resolved the criminal case that precipitated his 2009 warrant that was only purportedly cancelled due to the passage of time and not through effort put forth by the Individual. The Individual maintains that he learned of this outstanding warrant in 2020, but, as of the hearing date, he had not yet acted to finally resolve the case. The uncertainty regarding this criminal case, in turn, leaves me not only uncertain of his status as a fugitive, but also his current reliability and good judgment.<sup>4</sup>

Second, the record demonstrates that the Individual's previous, multi-year stints of avoiding alcohol-related criminal offenses end when his sobriety ends. Based on the conclusions I reached above as to Guideline G, I remain concerned regarding the Individual's alcohol use disorder, and, therefore, I remain concerned regarding the likelihood that he will again engage in the unlawful behavior that typically result from his pattern of alcohol consumption. Accordingly, I find that the Individual has not mitigated the Guideline J security concerns.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline G and Guideline 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 brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual should not be granted access authorization.

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

James P. Thompson III  
Administrative Judge  
Office of Hearings and Appeals

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<sup>4</sup> I note that the record also demonstrates, by contrast, that the Individual took action to resolve his 2008 warrant by remitting the outstanding thirty-dollar fee and obtaining a receipt from the court indicating the case is closed. This demonstrates that the Individual can, when he chooses, take action to address his criminal case and obtain documentation evincing the same.