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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 23, 2021 ) Case No.: PSH-21-0098  
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Issued: December 16, 2021

**Administrative Judge Decision**

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXX XXXX (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.”<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 granted.

**I. Background**

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. Through the course of a security clearance investigation, the Local Security Office (LSO) learned of the Individual’s involvement in numerous alcohol-related criminal incidents. In July 2020, the Individual completed a Letter of Interrogatory (LOI) in which he stated that he had “no intentions of consuming alcohol” in the future. Ex. 6. Subsequently, the Individual was evaluated by a DOE consultant psychiatrist (Psychiatrist) in December 2020. Ex. 7. The Psychiatrist diagnosed him with Alcohol Use Disorder, Moderate, and concluded that the Individual habitually or binge consumes alcohol to the point of impaired judgment. *Id.* The Psychiatrist also determined that the Individual had not demonstrated adequate evidence of rehabilitation or reformation. *Id.*

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 February 2021 Notification Letter, that it possessed reliable information that created substantial doubt regarding the Individual’s

<sup>1</sup> Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

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.

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 13 numbered exhibits (Exhibits 1-13) into the record and presented the testimony of the Psychiatrist. The Individual introduced four lettered exhibits (Exhibits A-D) into the record and presented his own testimony. 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. Ex. 1. 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 cited 24 incidents of criminal conduct, dating back to 1992, which included seven alcohol-related incidents, ten traffic and/or vehicle related offenses, four violent offences, one investigation into a violent offense, and two shoplifting charges. Ex. 1. As support for citing Guideline G, the LSO relied upon the Psychiatrist’s determination that the Individual met the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), criteria for Alcohol Use Disorder without adequate evidence of rehabilitation or reformation and his determination that the Individual habitually or binge consumes alcohol to the point of impaired judgement. Ex. 1. It additionally cited 14 alcohol-related incidents, which included, in relevant part, a:

1. December 2019 arrest and charge of Aggravated Driving While Intoxicated (DWI);
2. November 2017 hospital visit after alcohol consumption;
3. November 2016 arrest and charge of DWI;
4. February 2014 arrest and charge of Threat or Menacing Conduct after alcohol consumption;
5. September 2012 Aggravated DWI;
6. February 2008 domestic dispute after alcohol consumption;
7. September 2007 investigation for Aggravated Battery, Criminal Damage to Private Property, and Falsely Obtaining Services after alcohol consumption;
8. July 2007 physical altercation after alcohol consumption;
9. December 2006 termination from employment after reporting with alcohol on his breath;
10. February 2006 termination from employment after reporting with alcohol on his breath;
11. May 2002 arrest and transportation to jail for alcohol detoxification;
12. May 1998 arrest for suspicion of DWI;
13. December 1996 arrest and charge of DWI;
14. May 1996 charge of Disorderly Conduct, Minors Procuring Alcohol, and Possession of Alcohol.

*Id.*<sup>2</sup>

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

As stated above, due to unresolved security concerns, the Individual underwent an evaluation with the Psychiatrist in December 2020. Ex. 7. The Psychiatrist’s report (Report) noted that he evaluated

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<sup>2</sup> Each of these alcohol-related incidents were also listed as security concerns under Guideline G. Ex. 1.

the Individual eight years prior, in 2012, and diagnosed him with alcohol abuse; however, in the eight years that followed, the Individual did not seek the recommended treatment and continued to consume alcohol. *Id.* at 1. The Psychiatrist noted that, between the 2012 evaluation and the 2020 evaluation, the Individual “had significant alcohol-related relationship problems that have included violence, significant occupational problems that have included termination, and significant legal problems that have included three Aggravated DWIs.” *Id.* During the evaluation, the Individual indicated that he did not believe that he had ever abused alcohol, and he created a “two drink maximum” rule for himself. *Id.* at 7. He estimated that he “typically drinks about two drinks a week, on a Saturday.” *Id.* at 7.

As part of the evaluation, the Psychiatrist ordered a Phosphatidylethanol (PEth) test, which measured the Individual’s PEth at 663 ng/mL, “mak[ing] it medically certain that [the Individual] ha[d] been drinking heavily.” *Id.* at 9-10. The Report also noted that “such a high PEth is markedly discrepant with [the Individual’s] self-report that he ha[d] been consuming about 2 drinks/week.” *Id.* at 10. When asked about his future intentions toward alcohol, the Individual stated that he would be “ramping it down,” and if it was required of him, he could “stop.” *Id.* at 7.

Ultimately, the Psychiatrist diagnosed the Individual with Alcohol Use Disorder, Moderate. *Id.* at 11. He also determined that the Individual binge consumes alcohol to the point of impaired judgment. *Id.* at 12. The Psychiatrist concluded that the Individual did not show adequate evidence of rehabilitation or reformation, and to demonstrate show such evidence, the Individual would need to enter an outpatient treatment program of moderate intensity, which would consist of “Alcoholics Anonymous a few times per week, perhaps with individual counseling as well.” *Id.* The Psychiatrist also recommended that the Individual maintain abstinence from alcohol for a period of two years. *Id.*

At the hearing, the Individual testified on his own behalf. The Individual did not dispute the Summary of Security Concerns (SSC) and sought to provide evidence of mitigation. Tr. at 130. He explained the circumstances surrounding each of the Guideline J incidents listed on the SSC, except for six incidents which he could not remember. *See id.* at 11-66. Specifically, the Individual stated that he “had so many of these petty things” that he did not remember all the incidents. *Id.* at 52. The Individual then explained the circumstances surrounding each of the Guideline G security concerns that had not overlapped with the Guideline J concerns. *See id.* at 67-78. After explaining each of the incidents, the Individual stated that he felt embarrassed after seeing the SSC and acknowledged that there were “a lot of situations where [he] could have made better decisions.” *Id.* at 78-79. The Individual noted that alcohol was a contributing factor to “every bad thing in [his] life.” *Id.* at 75.

Turning to the Psychiatrist’s diagnosis, the Individual stated that the Report was an “eye opener.” *Id.* at 82. Specifically, he stated that meeting with the Psychiatrist “put a lot of things into perspective,” and he had “no choice but to agree with” the Psychiatrist. *Id.* at 71. The Individual explained that, after being arrested in 2019 for DWI, he “was trying to maintain [his] alcohol intake” and was successfully doing so. *Id.* at 82-83. When asked to explain the meaning of “maintaining [his] alcohol intake,” he described that he was “limiting what [he] was drinking” to two to three beers per week. *Id.* at 84. The Individual explained, however, that although he was successfully “maintaining [his] alcohol intake, ... just prior to meeting with” the Psychiatrist, he met a woman who “drinks a little much,” and he “quickly found [himself]...drinking right along

with her.” *Id.* at 83. He testified that he had engaged in binge alcohol consumption with her on the weekend prior to meeting with the Psychiatrist and that fact accounted for his elevated PEth test results. *Id.* at 83-84.

When asked to explain why he was consuming alcohol in late 2020 after he stated in his July 2020 LOI that he had no intention to consume alcohol in the future, he testified that he was challenging himself to “be a responsible drinker.” *Id.* at 85. The Individual testified that he did not think he had a problem with alcohol, but after seeing the SSC, he recognized a “pattern” and decided to attend group therapy starting in May 2021. *Id.* at 103-104; Ex. D. The Individual described the group therapy sessions as “sort of like an [Alcoholics Anonymous] AA meeting.” Tr. at 108. He explained that he had attended three or four AA meetings, and he “may switch to AA” so that he did not have to pay for group therapy. *Id.*

The Individual asserted that he was not “alcohol dependent” and he “could care less about [alcohol].” *Id.* at 105. He testified that, as of approximately 30-40 days prior to the hearing, he had been abstinent from alcohol. *Id.* at 99-100, 111. The Individual maintained that he currently does not have a “problem with alcohol,” but agreed with the Psychiatrist that he previously had an alcohol use disorder. *Id.* at 111-112, 123. When asked about his future intentions toward alcohol, the Individual stated “I want to fulfill my obligation to secure my security clearance. And who knows? At the end of this, I may be so used to...not drinking at all that...I may just not drink anymore at all.” *Id.* at 111.

The Psychiatrist, after observing the hearing and listening to the testimony offered by the Individual, confirmed his diagnosis of Alcohol Use Disorder, Moderate, and his additional finding that the Individual habitually or binge consumed alcohol to the point of impaired judgment. *Id.* at 147. Regarding rehabilitation or reformation, the Psychiatrist noted that this case was “unusual” as he recommended that the Individual be abstinent from alcohol for two years. *Id.* at 148-149. He explained that he usually recommends one year of treatment, but as this was his second evaluation of the Individual and the Individual had three aggravated DWIs since the Psychiatrist first diagnosed him in 2012, he felt that two years was the appropriate period of abstinence. *Id.* at 146, 149.

The Psychiatrist noted that the Individual’s criminal activity was “intertwined with his alcohol problem,” and he felt that if the alcohol problem was treated, the criminal activity would also be addressed. *Id.* at 151. However, the Psychiatrist testified that he did not believe that the Individual’s “alcohol problem [was] getting much better” based upon the Individual’s testimony. *Id.* He expressed concern that the Individual continued to consume alcohol while undergoing treatment in the therapy group, and the Psychiatrist noted that despite being aware of the DOE’s concern about his alcohol consumption since 2012, the Individual had not been able to forgo alcohol. *Id.* at 152-153. The Psychiatrist felt that, although the Individual was in the “early stages of recovery,” he was “still [in] a lot of denial.” *Id.* at 154. Ultimately, the Psychiatrist determined that the Individual had not yet shown “adequate evidence of rehabilitation or reformation from his significant problem of an Alcohol Use Disorder.” *Id.* at 156-157.

## **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 granting 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 granted. 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, a 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 an 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 may disqualify an individual from holding a security clearance. Guideline J at ¶ 31(b). 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 Psychiatrist diagnosed the Individual with Alcohol Use Disorder, Moderate, and habitual or binge consumption of alcohol to the point of impaired judgment in 2020, after being arrested for three Aggravated DWIs since the Psychiatrist first evaluated and diagnosed him in 2012. *See* Guideline G at ¶ 22(a), (d); Guideline J at ¶ 31(b), (d). Although the Individual has sought group therapy and been abstinent for a little over a month, 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). As such, I cannot find that the Individual has mitigated the Guideline G security concerns.

Regarding Guideline J, the Individual's has an approximately 27-year history of criminal conduct, and his most recent incident of criminal conduct centered around his use of alcohol as recent as 2019. Due to his lengthy criminal history, because he had only been abstinent for approximately 40 days, as of the date of the hearing, and as he 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 granting 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 granted. 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