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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 27, 2021 ) Case No.: PSH-21-0111  
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Issued: December 16, 2021

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**Administrative Judge Decision**

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Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (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's access authorization should be restored.

**I. Background**

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. To maintain his security clearance, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) on December 4, 2019. Ex. 9. Although the QNSP asked him to disclose whether he had ever been charged with an offense involving alcohol, the Individual failed to indicate that he had been arrested and charged with Aggravated Driving While Intoxicated (DWI) in 1995 and DWI in 1993. Ex. 9 at 33. Accordingly, the Individual was asked to complete a Letter of Interrogatory, which he signed and submitted on November 19, 2020. Ex. 6. As questions regarding the Individual's fitness to hold a security clearance remained, the LSO directed the Individual to undergo a psychological evaluation, the findings of which were compiled in a March 17, 2021 Psychological Evaluation Report (report).<sup>2</sup>

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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.

<sup>2</sup> In conjunction with the examination, two laboratory tests were performed, a Phosphatidylethanol (PEth) test and an Ethyl Glucuronide (EtG) test. Ex. 7 at 6. The EtG test was negative, "indicating no alcohol consumption for three days prior to the collection of the specimens[.]" Ex. 7 at 6. However, the PEth test was positive at a level of 89 ng/mL, suggesting significant levels of alcohol consumption. Ex. 7 at 6. It was concluded that the Individual's claim that he

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of two other witnesses. *See* Transcript of Hearing, Case No. PSH-21-0111 (hereinafter cited as "Tr."). He also submitted eight exhibits, marked as Exhibits A through H. The DOE Counsel presented the testimony of one witness and submitted fourteen exhibits marked as Exhibits 1 through 9.

## II. Notification Letter and the Associated 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 pertains to Guideline G (Alcohol Consumption) of the Adjudicative Guidelines, which states 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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are "alcohol-related incidents away from work, such as driving while under the influence...regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder[,]" and "[d]iagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder." *Id.* at ¶¶ 22(a), (c)-(d).

With respect to Guideline G, the LSO alleged that: (1) in March 2021, a DOE Psychologist evaluated the Individual and determined that he met the criteria for Alcohol Use Disorder (AUD), Moderate, not in remission, pursuant to the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5), and further, that there was no evidence of adequate rehabilitation or reformation; (2) the Individual was arrested and charged with Aggravated DWI in July 1995; and (3) the Individual was arrested and charged with DWI in July 1993 with a blood alcohol content (BAC) of .15 g/L. Ex. 1 at 1. Accordingly, the LSO's concerns under Guideline G are justified.

## III. Regulatory Standards

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all 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

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had "not consumed alcohol over the last [three-and-a-half] weeks [was] incorrect." Ex. 7 at 7. The Individual submitted three PEth tests from May 2021, August 2021, and October 2021, all of which were negative. Exs. E, F, H.

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 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.

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

In the LOI, the Individual explained that the omission of the 1993 and 1995 DWIs was not purposeful, but rather, a mistake. Ex. 6 at 1. Further, the Individual indicated that he failed to report that he received outpatient treatment for alcohol consumption in January 2019 because he had not been hospitalized, and accordingly, did not believe he was under any duty to report this information. Ex. 6 at 1. The Individual stated that although he completed an outpatient program in August 2019, he began consuming alcohol after a stretch of abstinence. Ex. 6 at 4. From January 2020 to September 2020, the Individual would consume approximately sixteen to twenty-four ounces of liquor in a span of six-to-twelve hours. Ex. 6 at 6. He conceded that his alcohol consumption not only caused difficulties in his home and work life, but that he also required medical attention as a result. Ex. 6 at 8. Accordingly, he discontinued his alcohol consumption and remains in contact with a therapist. Ex. 6 at 4, 9.

During the March 2021 psychological evaluation, the DOE Psychologist learned of the Individual’s DWIs, but was also informed of the fact that the Individual had received counseling for several years. Ex. 7 at 4.<sup>3</sup> Although the outpatient treatment the Individual received lasted one month, the Individual continued attending the program until August 2019, which was when he began consuming alcohol again. Ex. 7 at 5.<sup>4</sup> The Individual also “continued his consultations [with the recovery program] through [December 2019].” Ex. 7 at 4. During this time, from June 2019 to March 2020, the Individual was also receiving counseling through his employer’s Employee Assistance Program (EAP). Ex. 7 at 8. He attended thirteen counseling sessions with the EAP counselor. Ex. 7 at 8.

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<sup>3</sup> Although discussed, the Individual’s alcohol consumption was not the primary focus of the counseling sessions. Ex. 7 at 3.

<sup>4</sup> The DOE Psychologist noted that the program was not an intensive outpatient program, as he only met with the group once a week for two-and-a-half hours. Ex. 7 at 4.

During the evaluation, the Individual clarified that between January 2020 and September 2020, he was consuming sixteen to twenty-four “shots,” not ounces, in a six-to-twelve-hour period on most weekends. Ex. 7 at 6.<sup>5</sup> The Individual also stated that he had ceased being abstinent after consuming alcohol over a nine-day period in February 2021. He last consumed alcohol on February 16, 2021. Ex. 7 at 7. The DOE Psychologist concluded that the Individual met the criteria for AUD, moderately severe, not in remission, which can impair the Individual’s reliability, stability, and trustworthiness. Ex. 7 at 10. As the Individual had only been sober for three-and-a-half weeks as of the date of his examination, the DOE Psychologist could not find adequate evidence of rehabilitation or reformation. Ex. 7 at 11. The DOE Psychologist recommended a true intensive outpatient treatment program, requiring “a minimum of nine hours of therapeutic and education meetings a week, usually in three-hour sessions, for between [twelve] to [sixteen] weeks.” Ex. 7 at 10-11. He also recommended permanent abstinence, with at least twelve months of abstinence to evidence control, and regular PEth tests every six or eight weeks. Ex. 7 at 11. It was also recommended that the Individual attend Alcoholics Anonymous (AA) meetings at least four times a week, secure a sponsor, and work on the twelve-step program. Ex. 7 at 11. As of the date of the report, the DOE Psychologist opined that the Individual’s prognosis was poor. Ex. 7 at 11.

## **V. Individual’s Exhibits**

The Individual submitted an AA attendance sheet, indicating that he had attended thirty-five meetings from August 2021 to October 22, 2021. Ex. B at 1-2. The Individual also provided a letter of support from his supervisor, which stated that the Individual has “proven to be extremely dependable[.]” and honest. Ex. D at 1.

An October 14, 2021, letter from the Individual’s counselor confirmed that the Individual had been attending sessions twice a month since February 2021. Ex. C at 1. The counselor stated that the Individual used alcohol “calm and regulate himself[,]” but has since been “motivated to remain sober for the sake of his family and children, career, and for his personal health.” Ex. C at 1. The Individual’s AA participation, good treatment progress, and months of sobriety were noted. Ex. C at 1.

An October 2021 letter from the recovery program in which the Individual enrolled and participated indicates the Individual began attending outpatient treatment in July 2021, that he “participates appropriately[,]” and is honest “about his alcohol use and how it has impacted his family life.” Ex. G at 1. The provided expected date of discharge was November 2021. Ex. G at 1.

## **VI. Hearing Testimony**

The first witness, a friend of the Individual who had been told of the concerns contained in the Notification Letter, confirmed that she had seen the Individual consume alcohol during their friendship but denied ever seeing him drink to excess. Tr. at 11-12. The witness asserted that the last time she observed the Individual consuming alcohol was approximately two years ago, in

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<sup>5</sup> During the evaluation, the Individual conceded that he could have been drinking even more than the amounts reported.

2019. *Id.* at 12, 19. The witness knew the Individual's former spouse was concerned about his drinking. *Id.* at 13.<sup>6</sup> She also testified that she knows the Individual attends AA meetings "several times a week[.]" and that he intends to remain sober. *Id.* at 14.

The second witness, the Individual's sibling who sees the Individual every other week, testified that she was made aware of the concerns contained in the Notification Letter and that she became concerned about the Individual's alcohol consumption after the Individual divorced his wife in approximately 2014 or 2015. *Id.* at 22-23. During this time, the Individual's sister would observe the Individual at social events, where he would first consume beer then move on to consuming his liquor of choice. *Id.* at 25. The witness was not privy to the amount the Individual would drink outside of the company of their family but did voice her concerns over his alcohol consumption to him. *Id.* at 25-26. The Individual kept his sister apprised of his efforts to remain abstinent, but she was made aware when the Individual began drinking again. *Id.* at 26-28. The Individual told his sister of his intent to remain abstinent from alcohol in February 2021. *Id.* at 28. She described a sober Individual as a "whole different" person and stated that the Individual told her that he does not feel the need to drink anymore. *Id.* at 29. The Individual's efforts to remain abstinent evidence how important his children and job are to him. *Id.* at 30.

Regarding his 1993 DWI, the Individual stated that after leaving the bar at which he had been drinking with his friends, he began speeding on his way home, fearing that the car tailgating him belong to the individual with whom "he got into a confrontation with" while at the bar. *Id.* at 33. He was promptly pulled over by law enforcement and was arrested after his BAC registered above the legal limit. *Id.* at 33-34. Accordingly, he attended AA meetings pursuant to a court order and remained sober for approximately one year. *Id.* at 37-38. In 1995, the Individual had been operating an all-terrain vehicle (ATV) and drinking alcohol throughout the day of his arrest. *Id.* at 34. The Individual was spotted by law enforcement at the side of the road and failed a field sobriety test, resulting in his arrest. *Id.* at 34.

He "never thought" his drinking was an issue during his last marriage but acknowledged that he began drinking more between 2008 and 2014, toward the end of the marriage. *Id.* at 39. He was drinking socially in 2008, and by 2014, he was drinking more frequently at home, taking shots of his preferred liquor. *Id.* at 39-40. By the time he participated in the psychological evaluation, he was drinking in increasing amounts on the weekends, purchasing a six-pack of beer and a fifth of liquor. *Id.* at 40-41. It was around the time he saw the DOE Psychologist that others began voicing their concerns regarding his alcohol intake. *Id.* at 41. He began attending AA meetings, then enrolled in a four-month recovery program in January 2019. *Id.* 42-43. He continued attending the aftercare program through September 2019, which consisted of a group that convened twice a week. *Id.* at 43. He was sober from January 2019 through September 2019. *Id.* at 43. Feeling that he had some control, he began drinking again in September 2019, drinking in greater amounts and more frequently than he had been before. *Id.* at 44-45. However, he resumed his endeavors to remain abstinent in September 2020 when he realized he "was going down a dark and miserable road." *Id.* at 44-45. He relapsed in early February 2021, taking his last drink on February 16, 2021. *Id.* at 44, 47. Since then, he has not kept alcohol in his home, nor has he consumed alcohol in social

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<sup>6</sup> The witness testified that she asked the Individual why he was abstaining, to which the Individual indicated that he was abstaining from alcohol for his own sake. *Id.* at 13-14. She only learned of the Individual's relapse in February 2021 on the day of the hearing. *Id.* at 14.

situations. He resumed attending AA meetings in August 2021. *Id.* at 47-48. He has a sponsor, checks in with his sponsor in person and over the phone, and is working through the steps. *Id.* at 48-51. The Individual has also been seeing a counselor since February 2021, working on various issues including his alcohol consumption. *Id.* at 52, 55.

The DOE Psychologist began his testimony by noting the Individual's multiple "unsuccessful efforts to control his drinking[]" and his failure to fulfill obligations in the home and at work but did state that the Individual seems more determined than ever to remain sober. *Id.* at 63-64. Although the Individual has an AUD diagnosis, he is currently in remission and "understand[s] that [he] will always be vulnerable to using alcohol." *Id.* at 66. The DOE Psychologist believes that there is a high percentage of probability that the Individual will avoid using alcohol. *Id.* at 66. In the DOE Psychologist's opinion, the Individual is reformed. *Id.* at 69.

## VII. Analysis

The Adjudicative Guidelines provide that an Individual can 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 modification 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 relapse, and is making satisfactory progress in a treatment program; and
- d) The individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established patter of modified consumption or abstinence in accordance with treatment recommendations.

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

Despite experiencing difficulties remaining sober early on, and particularly since the March 2021 psychological evaluation, the Individual has recognized his maladaptive alcohol use and taken commendable steps toward mitigating Guideline G concerns. Although the Individual has not, by his own testimony, remained sober for a consecutive twelve months, the DOE Psychologist expressed his belief that he has shown adequate evidence of reformation, testifying that the Individual is currently in remission and understands how vulnerable he is to alcohol. The Individual attends and remains active in AA, works through the steps with his sponsor, and keeps himself accountable to his sponsor with regular check-ins. He attends counseling twice a month to address various matters, including his alcohol use, and at the time of the hearing, had been active

in a recovery program for nine months. Further, he provided evidence of three negative PEth tests. Importantly, the Individual's testimony revealed his understanding that his maladaptive alcohol consumption posed a threat to his livelihood, health, and family life.

The sweeping and sincere actions the Individual has undertaken since February 2021 to address the consequences of his alcohol misuse, his ongoing and documented abstinence, as well as expert opinion that the Individual has been reformed as is on the path to rehabilitation from his AUD diagnosis, have mitigated the security concerns raised in the Notification Letter.

### **VIII. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be restored. Either party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman  
Administrative Judge  
Office of Hearings and Appeals