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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:        January 30, 2020                     )               Case No.:        PSH-20-0036  
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Issued:   December 23, 2020

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**Administrative Judge Decision**

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Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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 be granted access authorization.

**I. BACKGROUND**

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. On December 3, 2018, the Individual submitted a Personnel Security Information Report to the local security office (LSO) disclosing that he had been arrested and charged with Driving Under the Influence (DUI). Exhibit (Ex.) 8. On December 7, 2018, during an interview with an Office of Personnel Management (OPM) investigator, the Individual explained that he was arrested for DUI after he fell asleep while driving home from a bar and crashed his vehicle. Ex. 12 at 88.

The LSO recommended that the Individual undergo an evaluation by a DOE-contracted psychologist (DOE Psychologist). *See* Ex. 5 at 1 (recommending referral for an evaluation). During a clinical interview with the DOE Psychologist, the Individual indicated that his blood alcohol content (BAC) was measured at .24g/210L following his arrest for DUI. Ex. 9 at 3. The Individual reported that, prior to his arrest for DUI, he usually consumed four to five beers per sitting, several times weekly. *Id.* at 5. The DOE Psychologist subsequently issued a psychological

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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.

assessment (Report) in which he opined that the Individual binge consumed alcohol to the point of impaired judgement and met the diagnostic criteria for Alcohol Use Disorder (AUD) under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. *Id.* at 7–8.

On December 6, 2019, the LSO issued the Individual a letter indicating that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. In an attachment to the letter (Summary of Security Concerns), the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted twelve numbered exhibits (Ex. 1–12) into the record. The Individual submitted twelve lettered exhibits (Ex. A–L) into the record. The LSO presented the testimony of the DOE Psychologist, and the Individual presented the testimony of two witnesses, including his own testimony.

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

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the basis for denying the Individual’s security clearance. Ex. 1. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness. Adjudicative Guidelines at ¶ 21. The Summary of Security Concerns listed as relevant facts: the DOE Psychologist determined that the Individual met the diagnostic criteria for AUD under the *DSM-5*; the Individual was arrested and charged with DUI, and his BAC was measured at .24g/210L; the Individual was previously arrested and charged with Public Intoxication; the Individual consumed alcohol to intoxication after his arrest for DUI; and the Individual admitted to consuming four to five drinks multiple times per week. Ex. 1. The LSO’s allegations that the Individual engaged in alcohol-related incidents away from work, binge consumed alcohol to the point of impaired judgement, and was diagnosed with AUD by a duly qualified medical or mental health professional justify the LSO’s invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c)–(d).

## **III. REGULATORY STANDARDS**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

#### **IV. FINDINGS OF FACT**

On September 6, 2018, the Individual submitted an electronic Questionnaire for Investigations Processing (e-QIP) applying for a security clearance. Ex. 11 at 65. The Individual disclosed on the e-QIP that he was found guilty of misdemeanor Public Intoxication in 2006. Ex. 11 at 55–56. The Individual, who, at the time, was serving in the U.S. Navy, was ordered to attend a substance abuse rehabilitation program, which he completed in July 2006. *Id.* at 58–59.

On December 3, 2018, while his eligibility for a security clearance was under evaluation, the Individual submitted a Personnel Security Information Report to the LSO, disclosing that he had been arrested and charged with DUI. Ex. 8. On December 7, 2018, the Individual met with an OPM investigator for an interview. Ex. 12 at 81. The Individual disclosed that, on the night of his arrest, he had consumed alcohol at a bar with a friend and attempted to drive home. *Id.* at 88. The Individual admitted that he fell asleep while driving and hit a barrier. *Id.* Law enforcement officers arrived while the Individual was inspecting the damage to his vehicle and arrested him after he failed a field sobriety test. *Id.* The Individual indicated that, prior to his arrest, he typically consumed four to five drinks per sitting, two to three times weekly, and would become intoxicated approximately once per week. *Id.* at 88–89. The Individual reported that he believed that his alcohol consumption was problematic, and he had discontinued drinking alcohol since his arrest. *Id.* at 89.

On April 24, 2019, the Individual met with the DOE Psychologist for a clinical interview (clinical interview). Ex. 9 at 3. The Individual reported that, on the night of his arrest for DUI, he consumed eight 12-ounce beers, which were each approximately 9% alcohol by volume and that his BAC was measured at .24g/210L after his arrest. *Id.* at 3. The DOE Psychologist estimated, based on the Individual’s sex, age, height, and weight, that his BAC was as high as .28g/210L that evening. *Id.* The Individual reported that he abstained from alcohol for several weeks after his arrest, but returned to consuming alcohol twice weekly. *Id.* at 4. In late March or early April of 2019, the Individual’s case was transferred to Veterans’ Court with the stipulation that he abstain from alcohol consumption and complete weekly urinalysis testing for twelve to eighteen months. *Id.* The Individual reported that he had abstained from alcohol for the approximately three to four weeks that had elapsed between the court order and the clinical interview. *Id.*

The Individual reported that he met with a clinical psychologist (Individual’s Psychologist) on a weekly basis for approximately two months prior to the clinical interview. *Id.* at 6–7. The Individual indicated that he committed to addressing his “binge drinking” with the Individual’s

Psychologist through individual therapy. *Id.* The DOE Psychologist contacted the Individual's Psychologist, who confirmed the Individual's participation in therapy and indicated that she had diagnosed him with AUD, Mild, under the *DSM-5*. *Id.* at 7. The Individual's Psychologist expressed to the DOE Psychologist that she believed that the Individual had a good prognosis. *Id.*

At the request of the DOE Psychologist, the Individual underwent two laboratory tests, an Ethyl Glucuronide (EtG) test and a Phosphatidylethanol (PEth) test, immediately following the clinical interview. *Id.* at 5. The results of both tests were negative for traces of alcohol. *Id.* According to the Medical Doctor, who provided the results of the tests to the DOE Psychologist, the tests provided strong evidence that the Individual had not consumed alcohol in the three days prior to the clinical interview or on a regular, heavy basis for several weeks prior to the clinical interview. *Id.* at 5–6.

Following receipt of the results of the laboratory tests, the DOE Psychologist issued his Report, in which he concluded that the Individual met the diagnostic criteria for AUD under the *DSM-5* and binge consumed alcohol to the point of impaired judgment. *Id.* The DOE Psychologist observed that the Individual was in early remission, and he recommended that the Individual demonstrate rehabilitation or reformation by abstaining from alcohol for at least nine months, undergoing laboratory tests to confirm his abstinence. *Id.* at 8. The DOE Psychologist noted that he would have more confidence in the Individual's recovery if the Individual also participated in an intensive outpatient program (IOP) for alcohol use or participated in Alcoholics Anonymous, or a comparable twelve-step program, three times weekly for twelve months. *Id.*

From April 2019 to March 2020, the Individual underwent weekly EtG tests to confirm his abstinence from alcohol, each of which was negative. Ex. C; Ex. L. The Individual also submitted the results from an EtG test dated October 20, 2020, which was negative. Ex. L at 52. The Individual complied with the treatment program he was ordered to attend by the Veterans' Court, and as of February 2020, the clinical psychologist directing the Individual's treatment indicated that he demonstrated self-awareness and the ability to apply coping skills. Ex. E. On October 29, 2020, the Individual met with a Licensed Clinical Social Worker for a forensic evaluation. Ex. K. The Licensed Clinical Social Worker endorsed the DOE Psychologist's diagnosis, but opined that the Individual was in full remission and had no need for further treatment. *Id.*

## **V. HEARING TESTIMONY**

The Individual's roommate, who had been the Individual's friend since childhood, testified that he believed that the Individual was a trustworthy person with good judgment. Tr. at 9–10. The roommate noted that he had not observed the Individual consume alcohol since March 2019. *Id.* at 10. He further stated that the Individual told him that he “likes the path that he's on” and that he observed that the Individual's movements and thinking were “smoother” in the mornings since he stopped consuming alcohol. *Id.* at 14, 16.

The Individual testified that he had not consumed alcohol since Saint Patrick's Day of 2019, and that he believed that he was in control of his desire to consume alcohol. *Id.* at 29. The Individual attributed his lapse in judgment, when he was arrested for DUI, to stressors related to moving, starting a job, and breaking up with his girlfriend. *Id.* at 30–31. The Individual testified that he had

learned that his desire to consume alcohol was associated with experiencing stress, and that recognizing this fact helped him to focus on appropriate coping mechanisms to handle stress, including playing sports and pursuing higher education. *Id.* at 32, 38; *see also* Ex. G (reflecting the Individual's participation in coursework in pursuit of a Master's Degree).

The Individual acknowledged that he required "a little bit of external efforts" to stop consuming alcohol after his arrest for DUI, and that the court order spurred him to cease drinking. *Tr.* at 56. The Individual reported that he had not experienced difficulties maintaining his abstinence since the court order and attributed his success to wanting to avoid future legal issues related to his alcohol consumption. *Id.* at 57. The Individual reported that he graduated from the court-ordered treatment program in February 2020, and had not pursued further treatment because he had control over his alcohol consumption and no longer felt that treatment was necessary. *Id.* at 63–64. The Individual indicated that he did not have plans to return to consuming alcohol, but that if he did consume alcohol in the future he would not do so to excess. *Id.* at 58.

The DOE Psychologist testified last, after observing the testimony of the other witnesses. The DOE Psychologist opined that the Individual's treatment was adequate to address his AUD, and that he believed that the Individual had demonstrated rehabilitation. *Id.* at 84. The DOE Psychologist testified that the social controls of the Veterans' Court and adjudicative process for his security clearance helped the Individual modify his behavior. *Id.* at 84–85. He noted that even though the Individual had not fully complied with his treatment recommendations, he felt that the Individual's treatment had achieved the same result and that the laboratory tests satisfactorily confirmed the Individual's abstinence from alcohol. *Id.* at 84–85, 87. The DOE Psychologist further opined that he believed that the Individual's prognosis to avoid problematic alcohol consumption in the future was "very good." *Id.* at 86.<sup>2</sup>

## **VI. ANALYSIS**

### **A. Guideline G**

The Individual's alcohol-related arrest, the DOE Psychologist's diagnosis of the Individual with AUD, and the Individual's binge consumption of alcohol to the point of impaired judgment raise security concerns under Guideline G of the Adjudicative Guidelines. Adjudicative Guidelines at ¶ 22(a), (c)–(d). The Individual did not contest any of the facts set forth in the Statement of Security Concerns or the Report. An individual may mitigate security concerns under Guideline G if:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

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<sup>2</sup> The DOE Psychologist noted that the Individual's prognosis would degrade significantly if the Individual returned to social drinking and cautioned the Individual against doing so. *Tr.* at 86.

- (c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; or,
- (d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

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

The Individual has acknowledged his maladaptive alcohol use consistently from his interview with the OPM investigator, in December 2018, up to and through the hearing. The Individual also participated in individualized treatment with the Individual’s Psychologist and the court-ordered substance abuse treatment program. Moreover, the Individual testified that he abstained from alcohol for approximately eighteen months and provided EtG test results supporting his claimed abstinence from alcohol. The DOE Psychologist endorsed the Individual’s treatment regimen, opined that the Individual had demonstrated rehabilitation, and indicated that the Individual’s prognosis to avoid relapsing into problematic alcohol consumption was very good. For these reasons, I find that the Individual has met the second and fourth mitigating conditions under Guideline G. *Id.* at ¶ (b), (d).

The Individual has established a significant period of abstinence from alcohol and received positive prognoses from the DOE Psychologist and his own clinicians. Accordingly, I find that the Individual has resolved the security concerns asserted by the LSO under Guideline G.

## **VII. 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 of the Adjudicative Guidelines. After considering all of the relevant information, 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, I have determined that the Individual should be granted access authorization. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman  
Administrative Judge  
Office of Hearings and Appeals