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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:           October 27, 2021	)	Case No.:       PSH-22-0007
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Issued: January 28, 2022

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**Administrative Judge Decision**

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Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXX XXXXXX. (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled “General 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 be restored.

**I. Background**

On October 22, 2020, police arrested and charged the Individual with Driving While Intoxicated (DWI).<sup>2</sup> Ex. 11 at 1. At the time of his DWI arrest, the Individual had a history of two previous arrests for Minor in Possession (of alcohol) in June 1995 and June 1998. Ex. 12 at 3.

Because of the security concerns raised by the Individual’s three alcohol-related arrests, the LSO requested that he undergo an evaluation by a DOE-contractor Psychologist (Psychologist), who interviewed the Individual on March 29, 2021. Ex. 13 at 1-2. In addition to interviewing the Individual, the Psychologist reviewed the Individual’s medical records and security file, administered the Minnesota Multiphasic Personality Inventory-Second Edition (MMPI-2) to the Individual, and had him undergo Phosphatidylethanol (PEth) and Ethyl Glucuronide (EtG) laboratory tests that detect alcohol consumption. Ex. 13 at 2. Both laboratory tests were negative,

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<sup>1</sup> Access to authorization is defined as “an administrative determination that an individual is eligible for access to classified mater 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 to authorization or security clearance

<sup>2</sup> A blood test administered to the Individual after his arrest indicated that his blood alcohol level was .234 percent. Ex. 12 at 2.

indicating that the Individual had not consumed alcohol during the previous three weeks. Ex. 13 at 8.

The Psychologist issued a report of his findings (the Report) on April 7, 2021. Ex. 13 at 10. In the Report, the Psychologist found that the Individual “demonstrates a definite propensity toward binge drinking wherein his judgment can be compromised . . .” and was neither reformed nor rehabilitated from his binge drinking.” Ex. 13 at 9. The Psychologist reported that the Individual was attending a 90-day Intensive Outpatient Program (IOP) to address his problematic alcohol use and receiving individual counseling. Ex. 13 at 6, 9. He opined that the Individual had “made great strides” and was “exhibiting good movement toward reformation.” Ex. 13 at 9. The Psychologist further reported that he spoke with one of the Individual’s IOP counselors who reported that the Individual was making progress in his treatment program. Ex. 13 at 6. However, the Psychologist remained concerned about the Individual’s binge drinking because the Individual had “seemingly not entertained the idea of total abstinence, a commitment that should significantly elevate his chance of successful rehabilitation.” Ex. 13 at 9. The Psychologist further noted that “[m]ore time to fully demonstrate rehabilitation is necessary, particularly in view of the lack of commitment to total abstinence.” Ex. 13 at 9. The Psychologist recommended that the Individual complete his court-ordered alcohol education course (AEC) and DWI victim impact program (VP), continue his individual counseling, attend Alcoholics Anonymous (AA) or a similar support group, and abstain from alcohol use for a full year, dating back to his sobriety date, October 23, 2020. Ex. 13 at 9. The Psychologist also recommended that the Individual continue to receive random monthly laboratory tests. Ex. 13 at 9.

After receiving the Report, the LSO suspended the Individual’s security clearance and 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 the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual, his spouse, his friend, his supervisor, and the Psychologist. *See* Transcript of Hearing, Case No. PSH-22-0007 (hereinafter cited as “Tr.”). The Individual submitted seven exhibits marked as Exhibits A through G (hereinafter cited as “Ex.”).<sup>3</sup> The DOE Counsel submitted 16 exhibits marked as Exhibits 1 through 16.

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<sup>3</sup> The Individual’s Ex. A is a set of laboratory results showing that the Individual was administered PEth tests on December 17, 2021, November 19, 2021, October 22, 2021, September 24, 2021, August 27, 2021, July 30, 2021, July 2, 2021, and June 4, 2021. Each of these laboratory results were “negative” indicating that he had not been using alcohol or had not consumed more than small amounts of alcohol during the period beginning in late May 2021 through December 17, 2021. Ex. A. In addition, the Individual submitted a Certificate of Completion from his IOP; a form documenting his completion of the AEP; a Certificate of Completion for the VP; a letter from the Department of Veterans Affairs (VA) indicating that the Individual had been receiving Individual and Group Counseling for Substance Abuse Treatment from the VA since August 4, 2021; and a letter from the Individual’s employer documenting that it had administered breath alcohol tests to the Individual on October 30, 2020, December 14, 2020, February 24, 2021, June 23, 2021, July 14, 2021, September 23, 2021, and January 6, 2022, each of which had not detected the presence of alcohol. Exs. B, C, D, E, and G. Ex. F is a duplicate of one of the laboratory results included in Ex. A.

## II. The Notification Letter and the Associated Security Concerns

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance, citing the Individual's history of three alcohol-related arrests and the Psychologist's conclusion that the Individual had been engaging in binge drinking. This information adequately justified the LSO's invocation of Guideline G of the Administrative Guidelines. Under Guideline G (Alcohol Consumption), "[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 "binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder." Adjudicative Guidelines at § 22(a) and (c).

## 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) (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. Hearing

At the hearing, the Individual's spouse, a social worker, testified on his behalf. Tr. at 11. She has been married to the Individual for seventeen years. Tr. at 11. She testified that she had never been concerned about the Individual's alcohol use. However, she read the Report and agreed with its conclusions. Tr. at 14. She testified that the Individual was very embarrassed by his DWI arrest. Tr. at 14. The Individual met with a counselor (the Counselor) for several months, as required by his employer, until the Counselor's untimely passing. Tr. at 15. The Counselor recommended that

the Individual attend an IOP, and he followed that advice. Tr. at 17. The IOP was a 12-week program, which met four nights a week. Tr. at 18.

The Individual's spouse described the Individual as very reserved and uninclined to discuss his emotions; however, after he had attended the IOP for a week, he became more open about the issues that led him to the IOP and began discussing what he was learning from the IOP. Tr. at 19-20, 44. She testified that she was happy to see that the Individual was taking the IOP seriously and "was there to learn and willing to grow." Tr. at 20. After completing the IOP, the Individual has attended aftercare one night a week. Tr. at 21-22. The Individual has also been receiving individual and group counseling at the VA. Tr. at 22-23. The spouse believes that the Individual's treatment has been effective. Tr. at 23-25. She stated her believe that the Individual is now more open, and that he has made progress as a result of his treatment. Tr. at 34, 44.

In her testimony, the Individual's spouse asserted that his counseling had improved their relationship. Tr. at 44. She believes that the Individual is now happier. Tr. at 49. The Individual's free time is spent exercising and with his family. Tr. at 29. Through the IOP and his group therapy, the Individual observed how alcohol had negatively impacted other participants' lives and became concerned about experiencing some of the same consequences. Tr. at 43. To her knowledge, the Individual has not consumed any alcohol since his DWI arrest. Tr. at 28-30. She testified that the Individual has decided to permanently abstain from alcohol use. Tr. at 33, 45-47.

The Individual's supervisor testified that the Individual is "a great employee" who has been very reliable and responsible. Tr. at 55, 57, 59. He stated that he has never had reason to doubt the Individual's judgment. Tr. at 59.

A friend of the Individual testified that he met the Individual through a running club. Tr. at 69. The Individual takes running very seriously and runs a half-marathon at least twice a year. Tr. at 69. He stated that the Individual has been committed to making the changes requested of him by his employer. Tr. at 74. He has not observed the Individual using alcohol. Tr. at 76.

The Individual testified that had been engaging in binge drinking. Tr. at 126. However, his last use of alcohol occurred on October 23, 2020, the date of his DWI arrest. Tr. at 129. He further testified that shortly after his DWI arrest, he met with a psychologist employed by his employer, who recommended that he be evaluated by the Counselor. Tr. at 88. He met with the Counselor on several occasions before her passing. Tr. at 89. He decided to attend the IOP, which met four times a week for 12 weeks. Tr. at 89-90. Each meeting lasted three hours. Tr. at 90. He also met with an individual counselor affiliated with the IOP once a week during the IOP. Tr. at 93. The Individual testified that he continued to attend the IOP because he felt he was benefitting from it. Tr. at 92. He graduated from the IOP on April 6, 2021. Tr. at 92. He has been attending aftercare on a weekly basis since he graduated from the IOP. Tr. at 94. After the passing of the Counselor, he began receiving both group and Individual substance abuse counseling from the VA. Tr. at 97, 101. He intends to continue attending aftercare, individual counseling, and group counseling for the foreseeable future. Tr. at 103. He has taken a PEth test every month since June 2021, and each of these tests have been negative. Tr. at 104. He has also received several breath alcohol tests administered by his employer, each of which have been negative. Tr. at 106-107. He was also administered several urinalysis tests during the IOP, all of which were negative. Tr. at 107-108. While his initial goal was to learn to consume alcohol in a responsible manner, the AEP, VI, IOP,

and his counseling have convinced him to permanently abstain from alcohol use. Tr. at 104-106, 109-110, 114. He stated that, after going 15 months without drinking, he does not miss it, and the idea of using alcohol again does not appeal to him. Tr. at 110. He is proud of his progress and is glad to see that his spouse is also proud of him. Tr. at 111.

The Psychologist observed the testimony of each of the other four witnesses before testifying at the hearing. The Psychologist testified that the Individual has “an issue with alcohol that is best diagnosed as a history of binge drinking.” Tr. at 136. However, the Psychologist opined that the Individual’s binge drinking is “under control now,” noting that this condition is in remission because he is not using alcohol. Tr. at 136. He further testified that the Individual is rehabilitated and reformed from his binge drinking and has “done all that could be done in a 15-month period.” Tr. at 136-137. He opined that the Individual’s prognosis is “very good.” Tr. at 137. The Psychologist testified that the Individual has taken the recommendations set forth in the Report seriously and had even gone above and beyond them. Tr. at 134. He noted that the Individual had complied with these recommendations for a year and a half, and that he had validated his compliance using laboratory testing. Tr. at 134. The Psychologist testified: “he certainly has taken care of the reformation by entering into all of these treatment modalities. He has demonstrated a year of rehabilitative efforts that, I think, have been rather successful.” Tr. at 135. The Psychologist noted that the Individual seems happy with his achievement and that his relationship with his spouse seemed to have been strengthened by this experience. Tr. at 135.

## **V. Analysis**

The Individual has provided credible testimony, corroborated by laboratory results, that he has abstained from alcohol use since October 23, 2020. In addition, the Individual has submitted evidence showing that he completed the DEP, VIP, and IOP (where he continues to attend aftercare), and continues to receive individual and group counseling for substance abuse. Accordingly, I find that he has successfully mitigated the security concerns under Guideline G raised by his history of three-alcohol related arrests and by his binge drinking.

The Adjudicative Guidelines provide that 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;
- (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.

Guideline G at § 23(a)-(d). All four of these mitigating conditions are present in the instant case.

It has been 15 months since the Individual's last use of alcohol. Sufficient time has passed to convince me that the Individual's binge drinking is unlikely to recur, and to resolve the doubts raised about the Individual's reliability, trustworthiness, or judgment by his binge drinking. Therefore, I find that the mitigating condition set forth at § 23(a) is present in the instant case.

The Individual has fully acknowledged his pattern of maladaptive alcohol use and has provided evidence showing that he attended the DEP, VIP, IOP, and aftercare, and that he continues to receive individual and group counseling. Moreover, he has demonstrated a clear and established pattern of abstinence. Therefore, I find that the mitigating condition set forth at § 23(b) is present in the instant case.

The Individual is currently participating in individual and group counseling at the VA. He had previously attended and graduated from the IOP. He has no previous history of treatment and relapse and is making more than satisfactory progress in his treatment. Therefore, I find that the mitigating conditions set forth at § 23(c) and §23(d) are present in the instant case.

Accordingly, I find that the Individual has provided adequate evidence of rehabilitation and reformation to mitigate and resolve the security concerns raised under Guideline G by his binge drinking and his history of three alcohol-related arrests.

## **VI. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G. After considering all the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has mitigated the security concerns raised under Guideline G. 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. The parties may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals