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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: September 30, 2021	)	Case No.: PSH-21-0123
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Issued: February 3, 2022

**Administrative Judge Decision**

Richard A. Cronin, Jr., 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 security clearance should be restored.

**I. BACKGROUND**

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. As part of a reinvestigation for his security clearance, the Individual completed a Questionnaire for National Security Positions (QNSP) in October 2018. Ex. 9. The Individual disclosed on the QNSP that he had been arrested and charged with Driving Under the Influence (DUI) in 1998. *Id.* at 33–34. As a result, the LSO provided the Individual with a Letter of Interrogatory (LOI), which he completed in December 2020. Ex. 6. He later underwent a psychological evaluation by a DOE consultant psychologist (DOE Psychologist) in March 2021. Ex. 7.

Due to unresolved security concerns, the LSO informed the Individual, in a letter dated May 12, 2021 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance and, as a result, the Individual's security clearance was being suspended. In an attachment to the letter (Summary of Security

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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.

Concerns), the LSO explained that the derogatory information uncovered in the reinvestigation raised security concerns under Guideline G 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 review hearing. The LSO submitted ten numbered exhibits (Ex. 1–10) into the record, and presented the testimony of the DOE Psychologist at the hearing. The Individual submitted 15 exhibits (Ex. A through O) into the record, and presented the testimony of five witnesses, including his own.

## **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 a substantial doubt concerning his eligibility for a security clearance. The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as a basis for denying the Individual a 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. Guideline G at ¶ 21.

In citing Guideline G, the LSO relied upon the DOE Psychologist’s report (Report) that the Individual “habitually or binge consumes alcohol to the point of impaired judgment” and has not demonstrated adequate evidence of rehabilitation or reformation. Ex. 1. Cited as additional Guideline G derogatory information, the LSO referenced the Individual’s November 1998 DUI arrest.

## **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 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 entire process is a conscientious scrutiny of several variables known as the “whole person concept.” Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. 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 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.

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**

As stated above, due to unresolved security concerns surrounding his alcohol consumption, the Individual underwent a psychological evaluation with the DOE Psychologist in February 2021. Ex. 7 at 3. During the evaluation, the Individual explained that he received a DUI as a junior in college and subsequently completed a diversion program including an eight-hour education class. *Id.* at 4. The Individual reported that, after abstaining from alcohol for 10 years, he resumed consuming alcohol in 2013. *Id.* He also reported to the DOE Psychologist that he consumed one or two alcoholic drinks during three or four days of the week, and he consumed five to six alcoholic drinks during one or both days of the weekend. *Id.* He also told the DOE Psychologist that he drinks to the point of intoxication monthly.<sup>2</sup> *Id.*

As part of the evaluation, the DOE Psychologist ordered a Phosphatidylethanol (PEth) test and an Ethyl glucuronide (EtG) test. *Id.* at 5. The Individual's PEth test returned positive results of 38 ng/mL. *Id.* A physician evaluated the results and indicated that a PEth result of more than 20 ng/ml was evidence of "moderate to heavy alcohol consumption." *Id.* at 11–12. The Individual's EtG test indicated that he had not consumed alcohol in the previous four days before the test. *Id.* at 11. The DOE Psychologist's Report stated that, "[t]ogether, EtG and PEth indicate [the Individual] usually consumes alcohol at a moderate to heavy level but had not consumed alcohol in the four days before the [urine drug screen]." *Id.* at 6. The DOE Psychologist concluded that the Individual habitually and excessively consumes alcohol to the point of experiencing impaired judgment, and has not shown adequate evidence of rehabilitation or reformation. *Id.* He recommended that the Individual abstain from alcohol, and attend substance abuse treatment involving weekly group therapy sessions for a minimum of 12 weeks with a practitioner licensed to provide substance abuse treatment. *Id.* at 7. The DOE Psychologist also recommended that the Individual participate in release prevention/aftercare group therapy occurring no less than monthly for the remainder of one year, and participate in a program such as Alcoholics Anonymous (AA) or Rational Recovery at least weekly for a year. *Id.* He also recommended that the Individual undergo random alcohol tests to monitor his alcohol use. *Id.*

The Individual submitted reports indicating six negative PEth tests, a negative random urinalysis (UA) test report, and as well as weekly AA attendance sheets from the period June through November 2021. Ex. A, B, and C. He also submitted evidence from a sobriety treatment program he undertook including his treatment plan, copies of attendance sheets for group therapy and individual therapy sessions, and a certificate of completion dated November 2021. Ex. D; Ex. E; Ex. F; Ex. G. Additionally, he submitted letters from his therapists from his sobriety treatment program who both attested to his active, consistent participation in all components of the program. Ex. H; Ex. I.

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<sup>2</sup> In his LOI, the Individual reported that he consumed alcohol weekly, and consumed alcohol to the point of intoxication approximately one time per week or less. Ex. 10 at 3–4.

The Individual also submitted exhibits related to his employment including performance appraisals, and several awards for excellence and outstanding achievements. Ex. I; Ex. J. Ex. K. He also submitted character reference letters from his current supervisor, his former supervisor, and his coworker. Ex. L; Ex. M; Ex. N. All his character references provided excellent references, expressed no concerns about the Individual's alcohol consumption, and stated that he was trustworthy, honest, and reliable. *Id.*

## V. HEARING TESTIMONY

Regarding his November 1998 DUI, the Individual testified that at the time the incident occurred, he was a college student and was at a bar with a group of friends. *Id.* at 13. While at the bar, he and his friends planned to go to a party. He decided to “[get] drunk” because he believed that he was not going to be driving to the party. *Id.* at 13–14. Although someone else drove him to the party, he later decided to drive his friends from the party back to the bar, and was subsequently cited for DUI. *Id.* at 14–15. After completing a diversion program related to his DUI arrest, the Individual stated that he changed his behavior in that he no longer engaged in drinking alcohol and driving. *Id.* at 15. He testified that around 2002, he decided to completely stop consuming alcohol when he moved back home after graduating from college. *Id.* at 15–16.

The Individual stated that the amount of alcohol and frequency of intoxication listed in the DOE Psychologist's Report was just an estimate and he believed that he may have overreported the amount of alcohol he consumed. *Id.* at 28–30, 67. He admitted that at the time of his clinical interview with the DOE Psychologist, he did not believe he had a problem with alcohol, however, once he received the DOE Psychologist's Report, he realized that his alcohol consumption was problematic. *Id.* at 67.

The Individual asserted that he has complied with all the DOE Psychologist's treatment recommendations. *Id.* at 37. He testified that he last consumed alcohol in April 2021.<sup>3</sup> *Id.* at 26. He stated that he provided the DOE Psychologist's Report to his sobriety treatment program, and ensured that his treatment plan was based on the Report's recommendations. *Id.* at 31–32. He testified that his participation in all his treatment components have motivated him and taught him how to successfully maintain his sobriety, and he asserted that he is able and willing to rededicate himself to never using alcohol to excess, including not habitually or binge consuming alcohol. *Id.* at 46.

The Individual also asserted that he has made diligent efforts to apply what he learned from participating in the treatment program, AA, and psychotherapy. *Id.* at 38. He indicated that he made efforts to go beyond the treatment recommendations including meeting for outside discussions separate from his program with fellow program participants to discuss the lessons learned. *Id.* at 68. He described specific tools that he has implemented from his treatment program including the willingness to be vulnerable and discuss his sobriety with others, improving his physical health, and the methods he uses to cope with triggers. *Id.* at 39, 54–57. He testified that he been very forthcoming in disclosing to his family, relatives, and coworkers about his past alcohol consumption and current abstinence from alcohol. *Id.* at 39–40. He asserted that he has a

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<sup>3</sup> The Individual reported in his LOI that he last drank to intoxication on November 28, 2020. Ex. 10 at 3.

strong support system comprised of family, friends, and neighbors who motivate him to continue following the DOE Psychologist's treatment recommendations. *Id.* at 43.

The Individual's wife, who was aware of the allegations in the SSC, testified that she and the Individual have been married for 13 years and have lived together throughout that time. Tr. at 79. She also stated that in the last 13 years, she has never had a concern regarding his use of alcohol. *Id.* at 82.

The Individual's wife further testified that the Individual decided to start consuming alcohol again around 2013, and he chose to do so because he believed that he could drink responsibly. *Id.* at 72–73. She stated that prior to the Individual making this decision, they discussed it, and she had no concerns at that time about his decision to begin consuming alcohol again. *Id.* She testified that when the Individual consumed alcohol, she was usually with him, and it was usually in their home on social occasions when he was spending time with friends and neighbors. *Id.* at 81. She stated that the last time she observed him to be intoxicated was in approximately January 2021, when they had invited friends into their home, and they consumed a few more cocktails than intended that night. *Id.* at 83–84. She stated that she has not seen him consume any alcohol since mid-April 2021. *Id.* at 84. The wife testified that although she currently drinks alcohol, she does not believe that the Individual would be tempted to consume alcohol with her because he has not told her that her use of alcohol makes it difficult for him to abstain. *Id.* at 76. She further testified that during the previous period when the Individual abstained from alcohol, she also consumed alcohol, and it never caused problems regarding the Individual's prior abstinence. *Id.* The wife stated that she absolutely supports his decision to not use alcohol. *Id.* at 76.

The wife testified that in April 2021, when the Individual's security clearance was suspended, he stopped consuming alcohol. *Id.* at 74. She stated that the Individual took the information he received very seriously and began following all the recommendations that were provided to him including attending AA meetings, and participating in group therapy and individual therapy. *Id.* at 75. The wife asserted that the Individual applies the lessons that he has learned from his treatment programs on a regular basis, and she provided examples including the Individual's discussions he has with her about specific strategies he uses to help maintain his sobriety. *Id.* at 80. The wife testified that she firmly believes that the Individual will be able to continue complying with the DOE guidelines to not habitually or binge consume alcohol, and will have no problems upholding those standards. *Id.* at 77.

The Individual's neighbor and former supervisor testified that they had observed the Individual consume alcohol but never seen the Individual have a problem with or become intoxicated because of his alcohol consumption. Both also attested to the Individual's excellent character and trustworthiness. *Id.* at 88-89, 90-92, 98-100, 104. The former supervisor also testified that he was aware that the Individual worked hard to comply with attending AA meetings. *Id.* at 104.

The Individual's therapist testified that she first began working with the Individual when he entered his sobriety treatment program. *Id.* at 111. She stated that the Individual did not meet the criteria for Substance Use Disorder. *Id.* She testified that from her review of the DOE Psychologist's Report, and the Individual's desire to comply with its recommendations, they formulated a treatment plan for him that included the Report's recommendations. *Id.* The therapist testified that the Individual began seeing her for individual therapy on a weekly basis, and then in group therapy. The Individual also participated in additional support for sobriety, including AA

meetings, and other peer-support recovery groups. *Id.* She stated that all the treatment groups that he has participated in have noted the Individual's willingness and participation, especially in group sessions, where they have observed that he has shown a "willingness to take everything he can get from it." *Id.* at 112. The therapist also provided examples in which the Individual successfully demonstrated his ability to apply the skills he has learned from treatment including stress tolerance, emotional regulation, and the development of resilience, and she testified that he has used these skills in his daily life and to manage stressful events. *Id.* at 114, 117.

The therapist opined that the Individual has a very good prognosis regarding his future intention towards alcohol. *Id.* at 118. She further opined that she does not characterize the Individual as a habitual drinker or an excessive consumer of alcohol, nor does he consume alcohol to the point of impaired judgment. *Id.* at 113. She stated her belief that the Individual will not have difficulty refraining from excessive use of alcohol, nor will he have difficulty with binge drinking in the future. *Id.* at 115. Regarding the Individual's future intentions, he has told her that he feels that he has benefitted from treatment and would like to continue that on a regular basis as part of his support system to continue to meet his ongoing life goals. *Id.* at 119.

The Individual submitted into the record a November 11, 2021, letter of recommendation from his former therapist at his treatment program. Ex. H. The former therapist outlined the actions the Individual has taken including participating in additional group and individual sessions "on a structured and regular basis for more than the recommended 12 weeks" and he opined that the Individual has gained the skills he needs to help ensure long-term success in maintaining his sobriety. Ex. H.

The DOE Psychologist testified last, after observing the testimony of the other witnesses. He opined that the Individual does not currently suffer from a condition such as binge drinking, or any other conditions that would cause the DOE to have a potential issue regarding his possession of a security clearance. *Id.* at 124. He concluded that the Individual followed through with the recommended treatment plan, and he determined that the Individual has shown that he actively participated and benefited from treatment. *Id.* at 123. The DOE Psychologist explained that although he originally recommended one year of treatment, he believes that the Individual has been able to sufficiently accomplish his treatment goals more quickly than he originally estimated. *Id.* at 125. He based his opinion on the Individual's negative blood and urine tests, his participation in treatment, his ability to state what he has learned in treatment, and his therapist's testimony. *Id.*

## **V. ANALYSIS**

An individual may mitigate security concerns under Guideline G, in relevant part, if:

- (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;
  
- (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(b), (d).<sup>4</sup>

Regarding the mitigating factors described in ¶ 23(b) and (d), the record reflects that the Individual has recognized his maladaptive alcohol use and has taken substantive steps toward mitigating Guideline G concerns. He began abstaining from alcohol as soon as his security clearance was suspended, and provided evidence of his abstinence by submitting reports of six negative PEth tests, and a random UA test. Not only was he diligent in beginning his journey into sobriety, he was also diligent in fulfilling all the treatment recommendations made by the DOE Psychologist. He has and continues to participate in weekly AA meetings and provided attendance sheets to support his testimony. He has also participated in group therapy and individual therapy, and provided supporting testimony from his therapist regarding his excellent prognosis. As stated by his former therapist and current therapist, his participation in treatment has gone beyond the recommended 12 weeks, and he has expressed to his current therapist that he would like to continue participating in treatment as part of his support system to maintain his sobriety. Moreover, the Individual has successfully completed a sobriety treatment program and its aftercare component, and he has provided both objective evidence and credible witness testimony attesting to the Individual's clear and established pattern of abstinence in accordance with treatment recommendations. Further, the DOE Psychologist opined that the Individual has complied with his treatment recommendations and has sufficiently addressed the concerns regarding his former alcohol consumption. Therefore, I find that the Individual has put forth sufficient evidence to satisfy the mitigating conditions under ¶ 23(b) and ¶ 23(d). In reviewing all the evidence before me, I find that the Individual has resolved the Guideline G 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 of the Adjudicative Guidelines. After considering all 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's access authorization should be restored.

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

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Administrative Judge  
Office of Hearings and Appeals

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<sup>4</sup> I find that the other Guideline G mitigating factors are not applicable in this case.