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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: December 20, 2021	)	Case No.: PSH-22-0036
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Issued: March 17, 2022

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**Administrative Judge Decision**

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Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (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 of 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 restored.

**I. Background**

The Individual is employed by a DOE Contractor in a position which requires that he hold a security clearance. The Individual reported to the Local Security Office (LSO) that he had been arrested in August 2020 for Driving Under the Influence [of alcohol]. Ex. 4. In a September 2020 letter, he also reported three other charges that he received along with the Driving Under the Influence (DUI) charge. Ex. 4. Based on the information provided in the September 2020 letter and the Individual’s responses to a Letter of Interrogatory (LOI) issued by the LSO, the LSO requested that the Individual undergo a psychological evaluation. This evaluation was conducted by a DOE-consultant psychologist (DOE Psychologist) in May 2021. After receiving the DOE Psychologist’s report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual, informing him that his security clearance was suspended and that he was entitled to a hearing before an Administrative Judge to resolve substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

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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 authorization or security clearance

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 submitted six exhibits, marked as Exs. A through F. *See* Transcript of Hearing, Case No. PSH-22-0036 (cited as "Tr.") The DOE Counsel presented the testimony of one witness and submitted fifteen exhibits marked as Exs. 1 through 15.

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

### **Guideline G**

Guideline G (Alcohol Consumption) provides that an individual's, "[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 "[a]lcohol-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[.]" Adjudicative Guidelines at ¶ 22(a), (d). With respect to Guideline G, the LSO alleged that 1) in May 2021, a DOE Psychologist diagnosed the Individual with Alcohol Use Disorder (AUD), Moderate, in Early Remission, and recommended at least six months of sobriety and participation in a counseling program; 2) the DOE Psychologist opinion that the Individual acts in an impulsive manner, which could cause him subsequent regret; and 3) the DOE Psychologist's determination that because of his history of habitual or binge alcohol consumption, the Individual has had "multiple alcohol related incidents that have caused adverse effects on his life." Ex. 2 at 1-3. Given this, I find that the LSO had sufficient justification to invoke Guideline G in the present case.

### **Guideline J**

Under Guideline J (Criminal Conduct), "[c]riminal activity creates doubt about a person's judgement, reliability, and trustworthiness. By its very nature, it calls into questions a person's ability or willingness to comply with laws, rules, and regulations." Adjudicative Guidelines at ¶ 30. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern is "[a] pattern of minor offenses, any one of which on its own be unlikely to affect a national security eligibility, but which in combination cast doubt on the individual's judgement, reliability, or trustworthiness," and "[e]vidence...of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted." Adjudicative Guidelines at ¶ 31(a)-(b). With respect to Guideline J, the LSO alleged that the Individual has had a pattern of criminal conduct and minor offenses spanning from 1988 to 2020, including his 2020 DUI. Ex. 2 at 3-5. Therefore, I find that the LSO had sufficient justification to invoke Guideline J in the present case.

## **III. Regulatory Standards**

A DOE administrative review process under Part 710 requires me, as Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgement, made after consideration of all the relevant evidence, favorable or 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 (9<sup>th</sup> 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 personal 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 his LOI, the Individual confirmed that on August 1, 2020, he was initially stopped by law enforcement for an improper lane change. Ex. 6 at 1. The Individual reported that on the day of his DUI charge, he had consumed four beers and three mixed drinks, and that his breath alcohol content (BAC) at the time of his arrest registered at .164 and .171. Ex. 6 at 1. At the time he completed the LOI, he was consuming alcohol three to four times a week, usually consuming between one to six beers at a time. Ex. 6 at 1. He also admitted that he consumed enough alcohol to register above the legal limit of .08% once per week, and that he had operated a vehicle six times at this limit in the previous twelve months. Ex. 6 at 2. The Individual disclosed the fact that he had been charged with several alcohol-related offenses, dating back to the 1980s. Ex. 6 at 2.<sup>2</sup>

The Individual entered a plea of guilty to the DUI charge in December 2020, and the remainder of the charges against him were dismissed. Ex. 7 at 6-7. Pursuant to the plea, the Individual's driving privileges were suspended for three months, a fine was levied against him, an interlock device was required to be installed in his car, and he was placed on probation. Ex. 7 at 6. On January 14, 2022, upon the successful completion of his probation, the Individual's guilty plea was set aside, and the case was dismissed. Ex. D.

During his psychological evaluation with the DOE Psychologist, the Individual reported having consumed a total of five beers and three mixed drinks on July 31, 2020, the evening preceding his August 1, 2020, DUI charge. Ex. 9 at 3. The DOE Psychologist concluded that the amount of

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<sup>2</sup> The Individual also acknowledged the existence of these alcohol related charges from the 1980s and 1990s in a 2018 Enhanced Subject Interview (ESI). Ex. 10 at 2. He attributed these incidents to “being youthful” and “bad decisions.” Ex. 10 at 2. During that interview, he denied any adverse effects on his life due to alcohol use. Ex. 10 at 2.

alcohol the Individual reported having consumed was inconsistent with the Individual's reported BAC, as the amount he reported would have resulted in a BAC of only .07. Ex. 9 at 3. The Individual reported that although he last consumed alcohol in November 2020, "he has not consumed alcohol since his probation began on [December 1, 2020]."<sup>3</sup> Ex. 9 at 5. The DOE Psychologist diagnosed the Individual with AUD, Moderate, in Early Remission and determined that his prognosis was fair, as he had not yet participated in an alcohol treatment program. Ex. 9 at 8. Regarding what would demonstrate sufficient evidence of rehabilitation of the Individual, the DOE Psychologist recommended that the Individual abstain from alcohol for at least six months, that he attend individual and group alcohol rehabilitation counseling no less than two-to-three times per week, and in the alternative, that the Individual attend Alcoholics Anonymous (AA), or a similar program, meeting no less than three times per week. Ex. 9 at 9. If the Individual chose to attend AA meetings, he should secure the assistance of a sponsor to work through the program's Twelve Steps and adequately document his participation and attendance. Ex. 9 at 9. The DOE Psychologist also recommended that three alcohol tests be conducted within the recommended six months of abstinence. Ex. 9 at 9.

On January 7, 2022, the Individual underwent a computer-generated Global Appraisal of Individual Needs (GAIN) assessment, which was administered by an evaluator. Ex. A.<sup>4</sup> The Individual was diagnosed with AUD, Moderate, in Sustained Remission. Ex. A at 1. The assessment determined that the Individual intends to remain abstinent but also reported that the Individual "did not endorse any reasons for quitting." Ex. A at 7. The GAIN assessment did not recommend that the Individual engage in substance abuse treatment. Ex. A at 7.

## V. Hearing Testimony

At the hearing, the Individual denied having ever used alcohol while at work. Tr. at 17-18. He acknowledged that his experiences with alcohol have been "mostly negative[.]" and that alcohol consumption can impact his work life and his relationships. Tr. at 18-20. Regarding his past alcohol-related charges, the Individual testified that when he was young, he was "acting out" in response to his home life and did not undergo any counseling at that time. Tr. at 23-24, 26. He did, however, undergo treatment when he was a teenager, as it was recommended by his employer. Tr. at 58-59; Ex. 15. Regarding the August 1, 2020, DUI charge, the Individual testified that he visited a friend's home, and when he was stopped by law enforcement for an illegal lane change on his way home, his BAC was measured twice resulting in .16 and .17 alcohol levels. Tr. at 26-27, 55. Until the August 1, 2020, DUI, the Individual had not been charged with DUI since the 1990s. Tr. at 27. He went on to confirm that he took responsibility for the 2020 DUI and reported it appropriately. Tr. at 28-29. After appearing in court for the matter, the Individual decided that he needed to "do away with alcohol in [his] life[.]" Tr. at 30. The Individual testified that pursuant to

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<sup>3</sup> In conjunction with the examination, Phosphatidylethanol (PEth) and Ethyl Glucuronide (EtG) tests were administered. Ex. 9 at 7. Both tests were negative for alcohol, which was consistent with the Individual's assertion that he had abstained from alcohol. Ex. 9 at 7; Tr. at 103-04.

<sup>4</sup> During her testimony, the DOE Psychologist stressed that the GAIN Assessment provides computer-generated results. Tr. at 114. She did not agree with the conclusion that no treatment was recommended. Tr. at 114-15.

his plea agreement, the Individual was ordered to complete a year of probation, have an interlock system installed in his car for the duration of a year, and pay an assessed fine. Tr. at 30-34.<sup>5</sup> The Individual stated that prior to his evaluation with the DOE Psychologist he would consume approximately one to three beers, three or four times every week. Tr. at 84-85. He admitted there were times he would consume up to six or seven beers and drive. Tr. at 85.

The Individual testified that he received the DOE Psychologist's report and reviewed the recommendations. Tr. at 39. By the time he met with the DOE Psychologist, he had already completed six months of sobriety, but had not complied with "the AA or the counseling[]" recommendation. Tr. at 39-40.<sup>6</sup> The Individual decided to abstain from alcohol on November 7, 2020, prior to the psychological evaluation because he recognized that he had "put [his] job in jeopardy," and realized that he "needed to straighten [his] life out."<sup>7</sup> Tr. at 42, 86-88. On February 3, 2022, the Individual began using an "alcohol tester that...pairs through [his] phone," requiring him to blow into a device three times every day, producing a report pertaining to his alcohol consumption. Tr. at 45-47, 68-69; Ex. E. The Individual also began attending AA meetings, having attended three by the time of the hearing, but had not yet secured a sponsor. Tr. at 48-50, 72. Although the Individual had previously attended AA meetings, he confirmed that he stopped attending meetings, as he was not "able to stick with it." Tr. at 66. The Individual acknowledged that he had previously attempted to abstain from alcohol three or four times over the course of his adult life. Tr. at 66, 78-79. Since receiving the psychological evaluation, the Individual acknowledged that he had not undergone any PEth testing, as recommended by the DOE Psychologist. Tr. at 71.

The DOE Psychologist testified that she was given access to the Individual's personnel file, which she reviewed prior to meeting with the Individual. Tr. at 98-99. Based on the results of the psychological testing during her evaluation of the Individual, the DOE Psychologist found him to be honest and candid, save for some questioning pertaining to his juvenile legal history. She noted

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<sup>5</sup> The Individual testified that to start his car, the Individual was required to blow into the interlock device. Tr. at 34; Ex. F. On 800 occasions he blew into the device, his BAC passed. Tr. at 34-35; Ex. F. However, there were 30 "violations" where the Individual refused to retest. Tr. at 35; Ex. F. The Individual explained by stating that it is his understanding that failing to blow enough air to trigger the device results in a "fail." Tr. at 35. The Individual, having contracted Covid-19 during the time the device was in his car, had occasionally had trouble blowing enough air to activate the device. Tr. at 35-36. Further, during his probation, the Individual also submitted to one thirteen-panel blood test and two multi-panel blood tests, all of which were negative for the substances tested. Tr. at 68; Ex. C. The DOE Psychologist could not determine if the tests tested for alcohol. Tr. at 68, 111-12. She also could not conclude whether the Individual had consumed alcohol, waited a period, then blew into the interlock system to "get around the interlock device." Tr. at 112.

<sup>6</sup> The Individual testified that he lives in a town in which, to his knowledge, there are no counseling services. Tr. at 38-39. He also stated that the DOE Psychologist did not recommend counseling when he met with her for the evaluation. Tr. at 44. The Individual was actively seeking counseling services at the time of the hearing. Tr. at 48.

<sup>7</sup> The Individual testified that between his August 1, 2020, DUI charge and his sobriety date, he consumed alcohol while on week-long hunting trip. Tr. at 87. He entered a plea in the 2020 DUI matter in late November 2020 but could not recall receiving a court order to remain abstinent from alcohol in the time between making his first court appearance and entering the plea. Tr. at 87, 90. During his evaluation with the DOE Psychologist, he informed her about this incident. Tr. at 90.

that her testing also revealed the Individual demonstrated “some impulsivity.” Tr. at 100-01. The DOE Psychologist confirmed that she diagnosed the Individual with AUD, Moderate, in Early Remission at the time of the evaluation. Tr. at 104. Accordingly, she recommended a period of abstinence of not less than six months, deviating from the standard twelve months period because she believed the Individual had not been drinking since his reported sobriety date. Tr. at 105-06. She also recommended that the Individual obtain alcohol rehabilitation counseling with an individual and group component or attend AA meetings, and work through the AA program with a sponsor, two or three times per week. Tr. at 106, 109. The DOE Psychologist also recommended “at least two PEth tests over [the] course of six months.” Tr. at 106. At the time of the report, the Individual was given a fair prognosis, but that prognosis would have changed to “good” or “excellent” had the Individual participated in an alcohol rehabilitation program. Tr. at 110. The DOE Psychologist indicated that she would have preferred to have some objective evidence, like PEth tests, to verify that the Individual had been abstinent, as self-reports “are notoriously incorrect.” Tr. at 115-16. Ultimately, at the time of the hearing, the DOE Psychologist could not conclude that the Individual showed adequate evidence of rehabilitation or reformation, and she could not conclude whether the Individual was in early or sustained remission. Tr. at 129-32.

## **VI. Analysis**

### **Guideline G**

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 modified consumption or abstinence in accordance with treatment recommendations;

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

Although the Individual has recognized his maladaptive alcohol use and has enjoyed over a year of sobriety, I cannot conclude that the Individual has mitigated the Guideline G concerns stated in the Notification Letter. In her May 2021 report, DOE Psychologist provided very specific recommendations that the Individual did not endeavor to implement in their entirety. Although the Individual has engaged with his local AA chapter, he had only attended three meetings at the time of the hearing and had not yet secured a sponsor. In the alternative, it was recommended that the Individual seek substance abuse treatment with an individual and group component. As of the date of the hearing, the Individual had not yet done so. Further, although the Individual had recently engaged a service that tests for alcohol three times per day, the results of which were not yet available at the time of the hearing, and submitted logs from the interlock device in his car, the DOE Psychologist had specifically recommended PEth alcohol testing to provide objective proof

of the Individual's sobriety. Based on the foregoing, the DOE Psychologist could not conclude that the Individual had sufficiently shown that he was reformed or rehabilitated. Considering the Individual's years-long history of maladaptive alcohol use and his failure to thoroughly implement the DOE Psychologist's recommendations, the Individual has failed to completely resolve the Guideline G concerns.

### **Guideline J**

The Adjudicative Guidelines provide that an Individual can mitigate security concerns under Guideline G if:

- a) So much time has elapsed since the criminal behavior happened, 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;

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- d) There is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32(a), (d).

Although all but one of the charges occurred prior to 2009, the most recent offense was the DUI in 2020. The Individual's 2020 DUI is relatively recent. Further, the more egregious of the charges enumerated in the Individual's criminal record are alcohol related, including the 1990 and 2020 DUIs. Considering the charges within the context of the Individual's history of alcohol misuse, his admission that he previously operated his car under the influence of alcohol and his relatively recently established sobriety, I conclude that not enough time has elapsed since the latest criminal behavior so as not to cast doubt on his reliability, good judgement, or trustworthiness. It is also for these reasons that I cannot conclude that the behavior took place under unusual circumstances. As stated above, the Individual has indicated that he has committed himself to abstinence, but the Individual has not presented sufficient evidence of successful rehabilitation from his AUD diagnosis. The resolution of his 2020 DUI is encouraging, but I am not convinced the Individual has been successfully rehabilitated without a showing of further treatment and additional lifestyle changes. Accordingly, the Individual has failed to resolve Guideline J security concerns.

### **VII. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and J 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 not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, the Individual has not 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 not 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