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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 10, 2022) Case No.: PSH-22-0042
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Issued: April 13, 2022

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “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, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ 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

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In early February 2021, the Individual self-reported that he had been arrested for Driving Under the Influence (DUI) in January 2021. Ex. 5. Subsequently, the Individual completed a Letter of Interrogatory (LOI) in February 2021 and was evaluated by a DOE consultant psychologist (Psychologist) in May 2021. Exhibits 7, 9. The Psychologist diagnosed him with Alcohol Use Disorder, Moderate, without adequate evidence of rehabilitation or reformation. Ex. 9 at 7.

Due to unresolved security concerns related to the Individual’s alcohol use and criminal conduct, the Local Security Office (LSO) informed the Individual in a Notification Letter that his security clearance had been suspended and that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. In the Summary of Security Concerns attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline G (alcohol consumption) and Guideline J (criminal conduct) of the Adjudicative Guidelines. Exs. 1-2.

¹ Access authorization is defined 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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted 12 numbered exhibits (Exs. 1-12) into the record and presented the testimony of the Psychologist. The Individual introduced three lettered exhibits (Exs A-C) into the record and presented his own testimony as well as that of three other witnesses. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

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 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).

An 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). An 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.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included the Summary of Security Concerns, which set forth the derogatory information that raised concerns about the Individual’s eligibility for access authorization. The Summary of Security Concerns specifically cited Guideline G and Guideline J of the Adjudicative Guidelines. Exs. 1-2. Guideline G relates to security risks arising from excessive alcohol consumption. “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. Guideline J concerns security risks arising from criminal conduct. “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Guideline J at ¶ 30. It “calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” *Id.*

In citing Guideline J, the LSO cited four incidents of criminal conduct, which included the January 2021 DUI, a 2006 charge of “minor consumption” of alcohol, and a 2006 charge of “grand theft

and forgery.” Ex. 2. The LSO additionally cited the Individual’s admission in the LOI that he had “driven over the legal limit (.08%) 4-5 . . . times in the past 12 months.” *Id.* As support for citing Guideline G, the LSO relied upon the Psychologist’s May 2021 determination that the Individual met the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), criteria for a diagnosis of Alcohol Use Disorder, Moderate, without adequate evidence of rehabilitation or reformation. Ex. 2. It additionally cited the three alcohol-related criminal incidents, which it contended demonstrated “habitual or binge consumption of alcohol to the point of impairment.” *Id.* The LSO cited the Individual’s positive Phosphatidylethanol (PEth) test results, following his evaluation with the Psychologist, and an April 2021 diagnosis of Alcohol Use Disorder, Moderate, by a Certified Alcohol and Drug Counselor (CADC) as well as the CADC’s recommendation that the Individual receive outpatient treatment. *Id.*

IV. Findings of Fact

As stated above, due to unresolved security concerns arising from a self-reported January 2021 DUI citation, the Individual underwent an evaluation with the Psychologist in May 2021. Ex. 9. The Psychologist’s report (Report) noted that, in April 2021, the Individual underwent an evaluation with a CADC who diagnosed him with Alcohol Use Disorder, Moderate, and recommended an outpatient treatment program. *Id.* at 4. The Report stated that although the Individual indicated that he was seeking a treatment program, he was not yet enrolled as of the date of the evaluation. *Id.* at 4-5.

The Individual reported to the Psychologist that he last consumed alcohol approximately two weeks prior to the evaluation, drinking two light beers. *Id.* at 5. As part of the evaluation, the Psychologist ordered a PEth test, which measured the Individual’s blood PEth level at 42 ng/mL. *Id.* at 6. The Psychologist determined that the PEth results did “not support [the Individual’s] description of his current alcohol consumption.” *Id.* Consequently, she opined that the Individual was underreporting his alcohol consumption. *Id.* at 7.

Ultimately, the Psychologist determined that the Individual had “been heavily consuming alcohol, either by bingeing or drinking significant amounts on a frequent basis (habitually).” *Id.* at 7. She stated that this consumption warranted a diagnosis of Alcohol Use Disorder, Moderate. *Id.* The Psychologist opined that the Individual had not demonstrated adequate evidence of rehabilitation or reformation, and that to do so, he would need to participate in an intensive outpatient rehabilitation program (IOP), consisting of program attendance of nine hours a week for between 12 and 16 weeks, and attend weekly aftercare for a period of six months. *Id.* at 8. She noted that, should the Individual choose not to participate in an IOP, then the Individual should actively participate in Alcoholics Anonymous (AA) for 12 months, attend four meetings per week, obtain a sponsor, and work through the 12-Step program. *Id.* The Psychologist indicated that the Individual should remain abstinent from alcohol throughout the treatment period and provide evidence of his abstinence in the form of at least six PEth tests. *Id.*

At the hearing, the Individual called two friends to testify on his behalf. One was a friend and coworker (Coworker), and one was a friend as well as his cousin (Cousin). Both testified that they had known the Individual since childhood and had only seen the Individual occasionally consume alcohol on weekends or in social settings. Tr. at 18-19, 30, 34. The Coworker testified that he last saw the Individual consume alcohol around December 2020, and the Cousin testified that he last

observed the Individual consume alcohol around the time he was arrested for the DUI. *Id.* at 20, 22, 35.

The Individual's live-in girlfriend (Girlfriend) of 13 years also testified on his behalf. *Id.* at 40, 42. She testified that she was with the Individual when he was arrested for the DUI. *Id.* at 42. The Girlfriend stated that they had been at a bar, which was not a typical activity for them, and the Individual was arrested on the drive home. *Id.* She noted that, after the January 2021 DUI, the Individual consumed alcohol in April 2021, but he "pretty much stopped...drinking." *Id.* at 43. The Girlfriend testified that she never had any concerns about the Individual's alcohol consumption and always felt safe with him. *Id.* at 44. She stated that the Individual does not currently consume any alcohol, and they do not keep alcohol in their home. *Id.* at 48.

The Individual testified on his own behalf. He did not dispute the allegations contained in the Summary of Security Concerns, but rather sought to mitigate the security concerns. The Individual testified that after he was arrested in January 2021 for the DUI, he did not immediately stop consuming alcohol. *Id.* at 69. He stated that he last consumed alcohol on April 27, 2021, the day before he went to court to be sentenced for the DUI.² *Id.* The Individual explained that he "knew the time was coming where [he] was going to have to stop." *Id.* at 70. As such, he decided that he would "have a couple [drinks] here and there" until that time came. *Id.*

The Individual testified that, following the evaluation with the CADC, which resulted in a diagnosis of Alcohol Use Disorder, Moderate, the CADC recommended an outpatient treatment program. Tr. at 74; *see* Ex. 9 at 4. The Individual stated that he enrolled in an outpatient program in September 2021 and successfully completed it December 2021. Tr. at 76, 78; *see* Ex. B. He explained that the program consisted of a weekly group meeting and educational classes, totaling approximately three hours per week, as well as an hour-long individual counseling session twice per month. Tr. at 78-79.

As a result of the program, the Individual testified that he has been able to identify his triggers for alcohol consumption and has been able to avoid them. *Id.* at 82. He stated that he is now working to "relearn how to do [the activities that may trigger him] without drinking." *Id.* The Individual reported that, early in his recovery, he "had a lot of triggers," but as time passed, his "head started clearing up and [his] energy was coming back." *Id.* at 140. He explained that, now that he is abstinent from alcohol, he is more productive and motivated, and he finds that "as time goes on, it just gets easier and easier for [him] to not even think about" alcohol. *Id.* The Individual testified that although he attended "a couple" of aftercare meetings once he successfully completed the program, he has not consistently attended. *Id.* at 83.

In addressing the Report, the Individual testified that he felt that, at time of the evaluation, the diagnosis was accurate; however, he clarified that he feels that the Alcohol Use Disorder, Moderate diagnosis no longer applies to him. *Id.* at 93. In addressing the results of the PEth test ordered by the Psychologist, the Individual stated that he is certain that his last alcohol consumption was April 27, 2021, when he consumed two beers. *Id.* at 87-89. He clarified, however, that the weekend prior

² The Individual was sentenced to probation for a term of one year, which included the installation of an Ignition Interlock device in his vehicle. Ex. A. According to his probation officer, the Individual has never: (1) violated his probation; (2) failed an Ignition Interlock test; or (3) tested positive for substance use. *Id.*

to ceasing his alcohol consumption, he “could have” consumed up to six beers in a sitting. *Id.* at 90-91. The Individual stated that although he sees himself being able to drink a beer in a social setting in the future, he feels that remaining abstinent once his probation concludes “would be the best option” for him.³ *Id.* at 99, 101.

The Psychologist testified after observing the hearing and listening to the testimony presented. She noted that the Individual’s outpatient treatment program did not “technically” meet the recommendations that she set forth in the Report to demonstrate adequate evidence of rehabilitation or reformation. *Id.* at 124. However, she explained that it is ultimately “important for [her] to hear what the person has gained from whatever intervention they have received.” *Id.* Specifically, she stated that she looks for “how the person can talk about what the treatment did for them [and] what it involved.” *Id.* The Psychologist explained that this information is important “because some people can go through the motions of attending treatment and not really participate [or]...internalize.” *Id.*

The Psychologist stated that, in the Individual’s situation, “he was able to cite his triggers. He was able to talk about refusal skills. He was able to identify some changes in his lifestyle that he has made, activities, hobbies, refusal skills in social situations.” *Id.* She explained that, given these factors, although the Individual did not “technically” meet her recommendations, the Individual’s progress nonetheless met the “expectations for rehabilitation.” *Id.* at 125. The Psychologist added that, as of the date of the hearing, she “would put him at [a] low to moderate” risk of relapse. *Id.* at 134. She noted that the Individual should be engaging in consistent aftercare, and if he were to do so, she would be able to say that his risk of relapse would be low. *Id.*

Turning to the PEth test, the Psychologist explained that, as she wrote in the Report, the Individual’s reported consumption, at the time of the evaluation (two beers, two weeks prior to the test) would not produce the results shown on the Individual’s PEth test. *Id.* at 111. However, she clarified that she “failed to ask” the Individual about his alcohol consumption prior to becoming abstinent. *Id.* at 112. The Psychologist testified that the Individual’s disclosure at the hearing, that he had consumed up to six beers the weekend prior to the start of his abstinence from alcohol, would be consistent with the PEth test results. *Id.*

Ultimately, the Psychologist testified that her current diagnosis would be Alcohol Use Disorder, in early remission. *Id.* at 136. She stated that she believed the Individual when he testified that he had been abstinent from alcohol since April 27, 2021. *Id.* She explained that, as of the date of the hearing, he is slightly short of a year of abstinence. *Id.* As such, approximately a month after the hearing, she would be able to say that the Individual was in “sustained remission.” *Id.* The Psychologist testified that she believes the Individual has shown adequate evidence of rehabilitation or reformation from the original Alcohol Use Disorder, Moderate, diagnosis. *Id.* at 137.

V. Analysis

³ It should be noted that there is nothing in the record showing that any of the Individual’s evaluative providers have recommended permanent abstinence from alcohol.

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. The specific findings that I make in support of this Decision are discussed below.

Guideline G

Regarding Guideline G, a diagnosis of alcohol use disorder by a duly qualified medical or mental health professional, including a clinical psychologist, is a condition that could raise a security concern and may disqualify an individual from holding a security clearance. Guideline G at ¶ 22(d). An Individual's failure to follow treatment advice once he is diagnosed, or the consumption of alcohol which is not in accordance with a treatment recommendation, after a diagnosis of alcohol use disorder, may disqualify an individual from holding a clearance. *Id.* at ¶ 22(e), (f). Additionally, alcohol-related incidents away from work could raise a disqualifying security concern. *Id.* at ¶ 22(a). If an individual acknowledges the 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, the individual may be able to mitigate the security concern. *Id.* at ¶ 23(b).

In this case, the Psychologist diagnosed the Individual with Alcohol Use Disorder, Moderate, after he was arrested for the DUI in January 2021. *See* Guideline G at ¶ 22(a), (d). Since that time, the Individual has successfully completed an outpatient treatment program and has remained abstinent from alcohol for nearly a year. His claims of abstinence are supported by his probation officer's statement that the Individual has never: (1) violated the terms of his probation; (2) tested positive on his Ignition Interlock device; or (3) tested positive for substance use. *See id.* at ¶ 23 (b). Furthermore, the Psychologist testified that the Individual has demonstrated adequate evidence of rehabilitation or reformation and is now in early remission from the alcohol use disorder. *See id.* I find the Individual's commitment to his recovery to be genuine, not only due his completion of the outpatient treatment program and his continued abstinence, but also due to the Individual's credibility in describing his newfound motivation, energy, and ability to live his life free from thoughts of alcohol. As such, I find that the Individual has mitigated the Guideline G security concerns.

Guideline J

Turning to Guideline J, evidence of criminal conduct may disqualify an individual from holding a security clearance. Guideline J at ¶ 31(b). An individual may be able to mitigate such a concern if so much time has elapsed since the criminal behavior occurred, 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. *Id.* at ¶ 32(a).

In this case, two of the four cited criminal incidents occurred when the Individual was a minor, over 15 years prior to the hearing. The remaining two incidents were alcohol related and inexorably linked to the Individual's alcohol use disorder diagnosis. As the Individual has demonstrated adequate evidence of rehabilitation or reformation from the diagnosis and has been abstinent from alcohol for nearly a year, I find that the criminal incidents listed in the Summary of Security

Concerns are unlikely to recur and do not cast doubt on the Individual's reliability, trustworthiness, or good judgment. *Id.* Therefore, I find that the Individual has sufficiently mitigated the Guideline J concerns.

VI. Conclusion

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has brought forth sufficient evidence to resolve the security concerns associated with Guideline G and Guideline J. 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, 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 regulations set forth at 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals