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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 1, 2021	)	Case No.:	PSH-22-0017
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Issued: May 13, 2022

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**Administrative Judge Decision**

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James P. Thompson III, 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 access authorization should be restored.

**I. BACKGROUND**

The DOE employs the Individual in a position that requires possession of a security clearance. In 2020, the DOE Local Security Office (LSO) discovered derogatory information regarding the Individual’s alcohol use which prompted the LSO to request that the Individual be evaluated by a DOE-consultant psychologist (“Psychologist”). Afterward, the LSO informed the Individual by letter (“Notification Letter”) that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guideline G and Guideline J of the Adjudicative Guidelines.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review

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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.

hearing. *See* Transcript of Hearing (Tr.). At the hearing, the Individual presented the testimony of four witnesses and testified on his own behalf. The LSO presented the testimony of the Psychologist. The LSO submitted eighteen exhibits, marked Exhibits 1 through 18.<sup>2</sup> The Individual submitted eight exhibits, marked Exhibits A through H.<sup>3</sup>

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

As indicated above, the LSO cited Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Ex. 1 at 6-7.

Guideline G provides that “[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. Conditions that could raise a security concern include “[a]lcohol-related incidents away from work, such as driving while under the influence,” and “[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist . . .) of alcohol use disorder[.]” *Id.* at ¶ 22(a) and (d). The SSC cited the following information:

1. [In 2021, the Psychologist] concluded that [the Individual] met Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, [ ] criteria for Alcohol Use Disorder (mild) which is a mental condition that impairs judgment, with no adequate evidence of rehabilitation.
2. [In December 2020, local authorities] arrested and charged [the Individual] with Aggravated Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor or Drugs 1st Offense, Failure to Maintain a Traffic Lane, Driving While Intoxicated with A Minor in the Vehicle, Abuse of a Child (Does Not Result in Death of Great Bodily Harm), Turning Movements and Required Signals, Open Container (Drink) and Speeding in a Construction Zone. He admitted he consumed four miniature (50 ml) bottles of vodka prior to the arrest.
3. [In May 2020, local authorities] arrested and charged him with Driving While Under the Influence of Intoxicating Liquor 1st, Failure to maintain a Lane, and No Proof of Insurance. He admitted that he consumed four miniature (50 ml) bottles of vodka prior to the arrest.
4. [In October 2013, local authorities] arrested him for Aggravated Driving While Intoxicated and Reckless Driving. He admitted that he had been drinking, amount not recalled, prior to the arrest.

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<sup>2</sup> The LSO's exhibits were combined and submitted in a single, 286-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This Decision will cite to the LSO's exhibits by reference to the exhibit and page number within the combined workbook where the information is located as opposed to the page number that may be located on the page itself.

<sup>3</sup> The Individual's exhibits will be referenced in the same manner as the LSO's exhibits, except for Exhibit H, which is a separate document. *See supra*.

Ex. 1 at 6-7. The above information justifies the LSO's invocation of Guideline G.

Under Guideline J, “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Adjudicative Guidelines at ¶ 30. “By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” *Id.* Conditions that could raise a security concern include “[e]vidence (including . . . an admission[] and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted[.]” *Id.* at ¶ 31(b). The LSO recited the Individual’s above arrests and criminal charges. That information justifies the LSO’s invocation of Guideline J.

### **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 or her 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. *Id.* at § 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**

In October 2013, the Individual was charged with Aggravated Driving While Intoxicated (DWI) and reckless driving after he crashed his vehicle. Ex. 17 at 177; Ex. 18 at 246. During a security interview conducted by the Office of Personnel Management (OPM) in 2016, he told an OPM investigator that this DWI was a one-time event that would never happen again. Ex. 18 at 246. The record includes the Individual’s written response to questions presented in the LSO’s 2021 Letter of Interrogatory (LOI). Ex. 14. Therein, the Individual explained that he lost his sister in a fatal car accident earlier in 2013, and he turned to alcohol to deal with his extreme grief. *Id.* at 92. He explained that he stopped consuming alcohol to intoxication after his arrest because it threatened his employment. *Id.* at 96. However, after his brother’s sudden death in June 2019, he began

consuming “hard liquor increasingly” and to intoxication on “holidays, birthdays, and death anniversaries.” *Id.* Realizing he had a problem, the Individual self-enrolled in an intensive outpatient alcohol treatment program (IOP) in March 2020. *Id.* at 98.

In May 2020, police records reflect that the Individual was again charged with a DWI after initially being stopped for a traffic violation and then failing an officer-administered field sobriety test (FST). Ex. 13 at 78-79. The officer discovered opened and unopened containers of alcoholic beverages in the vehicle. *Id.* at 79. In his response to the LOI, the Individual reported that he was stopped by the police as he drove to the cemetery to visit the graves of his siblings, which he decided to do after consuming alcohol. Ex. 14 at 84.

In December 2020, the Individual was charged with DWI for a third time after initially being pulled over for several traffic infractions and then failing a FST. Ex. 9 at 43. His child was with him at the time, and the officer observed open miniature containers of alcohol in the Individual’s vehicle. Ex. 9 at 43. The Individual explained in his LOI response that he did not expect to have his child that day based on a prior arrangement with the child’s mother. Ex. 14 at 87. However, the child’s mother called the Individual to take the child to an appointment because the mother had a scheduling conflict. *Id.*

The record contains the report the Psychologist produced after evaluating the Individual in 2021. Ex. 15. During the evaluation, the Individual reported that, during the IOP, he attempted to abstain but frequently consumed alcohol throughout the program. *Id.* at 107. He reported that, in May 2020, he began seeing a social worker to address his alcohol use and his “pathological grieving.” *Id.* at 108. He also reported that he abstained from alcohol after his May 2020 DWI up until the events immediately preceding his December 2020 DWI, when he consumed alcohol to address the intensified grief he experienced because of the holidays. *Id.*

At the time of the Psychologist’s evaluation, the Individual reported being under the care of a mental health professional and taking medication to treat his diagnosed depression. *Id.* at 109. He was also receiving continuing therapy from the IOP counselor, and he had completed a twelve-week educational program delivered by his employer’s Employee Assistance Program (EAP).<sup>4</sup> *Id.* He also reported that he had been attending one or two Alcoholics Anonymous (AA) virtual meetings a week but had not found a sponsor or begun working the “Steps.” *Id.* The Individual also reported that he had been abstinent since December 2020. *Id.* The Psychologist requested that the Individual undergo an Ethyl Glucuronide (EtG) test and Phosphatidylethanol (PEth) test to detect whether the Individual had consumed alcohol. *Id.* at 109-10. Both test results were negative and consistent with the Individual’s claim that, on the date of the evaluation, he had been abstinent for six months. *Id.* The Individual told the Psychologist that he would remain abstinent for the foreseeable future because he recognized that no amount of alcohol was healthy for his recovery. *Id.* at 109.

Based on the Individual’s history of alcohol consumption, the Psychologist diagnosed him with AUD, mild. *Id.* at 110, 111. The Psychologist provided the following recommendations for the Individual to demonstrate reformation of his AUD: six additional months of abstinence

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<sup>4</sup> While the Psychologist’s report indicated that it was a six-week program, both the provider’s testimony and the Individual’s Certificate of Completion establish that it lasted twelve weeks. Tr. at 31; Ex. A at 4.

documented by laboratory testing; commitment to permanent abstinence; and continued counseling “to resolve the reasons he is stuck in the grieving process.” *Id.* at 111.

The record includes a February 2022 letter from a clinical psychologist who began treating the Individual as part of a Fitness for Duty evaluation in June 2020. Ex. B at 8. The clinical psychologist confirmed the Individual’s relapse in December 2020 and reported that the Individual thereafter began attending AA. *Id.* The clinical psychologist also reported that the Individual had “successfully completed intensive outpatient substance abuse treatment, regularly attends [AA] meetings, [] has an AA sponsor[,] and [a]ll of his [EtG] tests were negative.” *Id.* The clinical psychologist’s letter and the record include the results of the Individual’s several EtG and PEth tests, which are consistent with the Individual having been abstinent from December 2020 to March 2022. Ex. B at 8; Ex. C at 11-12; Ex. D. at 14-20.

At the hearing, a clinical counselor (“Group Counselor”) testified on the Individual’s behalf. She facilitated the twelve-week group EAP treatment program the Individual started attending in January 2021. Tr. at 12-13. She described it as a “structured group” with “psycho-education, journaling homework, sharing homework, listening, sharing, [and] interaction.” *Id.* at 14. She detailed the Individual’s positive participation in the group sessions throughout the program and described him as “fully engaged.” *Id.* at 15-16. She testified that she last met with the Individual in March 2022 and observed that he has a “robust outpatient support system.” *Id.* at 14. She stated that she was so impressed, she asked him to “come back to the group and share his experience.” *Id.* at 16.

The Individual’s AA sponsor (“Sponsor”) testified at the hearing. The Sponsor testified that he had worked with the Individual for approximately three months, and that they had been seeing each other two to three times a week after AA meetings. *Id.* at 24-25. He described the contents of their discussions, including working the AA Steps. *Id.* at 25-26. The Sponsor described the Individual as “open and honest about his problems[.]” *Id.* at 28. He also testified that the Individual has been “meeting all the requirements that have been set upon him[.]” *Id.* at 33.

The Individual’s wife testified that she had seen a huge improvement with the Individual’s alcohol use, starting with his actions after the May 2020 DWI. *Id.* at 51. She testified that he made changes in his life that led to the two getting married and starting a family, but that he became complacent before his December 2020 DWI. *Id.* She testified that he now considers sobriety to be a lifelong change. *Id.* She described being involved in his recovery by doing some of the AA readings with him, which also helps her understand what he is going through. *Id.* She also stopped consuming alcohol to support the Individual’s recovery. *Id.* She described activities that he engages in instead of consuming alcohol, like maintaining their property, focusing on creating art, and spending more time with their children. *Id.* at 54-55, 57.

The Individual testified that he accepted responsibility for his DWIs because they were his mistakes caused by his problematic alcohol consumption. *Id.* at 64. He referred to himself as “an alcoholic.” *Id.* at 64, 80. He stated, “it’s not something I’m proud of. I don’t want to be an alcoholic.” *Id.* at 64. Once he came to that realization, he wanted to take steps to change his life. *Id.*

He reviewed the circumstances of his three DWIs. He testified that the traumatic death of his sister in 2013 led him to consume alcohol to avoid dealing with the grief, and the DWI and related charges were dismissed before going to trial. *Id.* at 65-66. For the next seven years, he consumed alcohol infrequently and avoided dealing with his grief. *Id.* at 67. Then, in 2019, his brother passed away, and he could no longer avoid the feelings of grief. *Id.* He returned to his pattern of consuming alcohol to numb the feelings. *Id.* He testified that, on the day of his May 2020 DWI, he decided to drive to the cemetery to deal with his feelings of depression and anger. Tr. at 67-68.

After his May 2020 DWI, he continued participating in the IOP and stopped consuming alcohol without addressing the underlying grief. *Id.* at 68. He testified that holidays, birthdays, and death anniversaries would make him feel depressed, and he would crave alcohol. *Id.* After seven months of sobriety, with Christmas approaching, he chose to consume alcohol to deal with his feelings and received his final DWI. *Id.* This time, he decided to take responsibility for his conduct because he feared that this DWI, unlike the others, would not be dismissed. *Id.* at 69. However, it too was dismissed after eight months. *Id.* In the interim, he realized that “grief was . . . a big part of [his] alcoholism[,]” and he needed to address it if he was going to stay sober. *Id.*

He described thereafter working with his IOP counselor to address his grief, which he identified as his biggest trigger. *Id.* at 69, 73. He combined this focus on grief with his alcohol treatment. *Id.* at 70. In addition to addressing grief, he identified his weekly, in-person AA meetings and obtaining an AA sponsor as significant factors that distinguish his current recovery from his prior, unsuccessful attempt because they increased his understanding of the AA program. *Id.* at 71, 72-73. He testified that he learned from his mistake of not reaching out to a counselor or another resource instead of deciding to consume alcohol when he was sad and upset during the 2020 Christmas holiday. *Id.* at 72-73. He testified that his recent recovery efforts demonstrate a change in circumstance that will ensure he does not relapse again. *Id.* at 73, 75-77. He described AA as a necessity. *Id.* at 81. He testified that he wants to finish AA and remain sober. *Id.* at 74, 85. He also testified positively about the support his wife provides and that he appreciates her involvement. *Id.* at 88. He testified that he obeys the law and that, since he is abstinent, there is “no way of [him] drinking and driving” or “getting in trouble with the law or anything else.” *Id.* at 92-93.

The Psychologist testified that the recommendation for rehabilitation and reformation in his report had been conservative because the Individual had previously relapsed after five months of abstinence. *Id.* at 96. The Psychologist testified that the Group Counselor gave a notably positive assessment of the Individual’s progress. *Id.* at 97. After having the benefit of observing the hearing testimony and reviewing the Individual’s negative laboratory test results, the Psychologist testified that the Individual had “met everything [] asked, and he’s done it in a way that is impressive.” *Id.* The Psychologist also noted that the Individual’s wife’s sincere testimony demonstrated “great support.” *Id.* Furthermore, the Psychologist noted that the Individual’s clinical psychologist rarely writes letters of support, and the fact that she did so for the Individual provided strong support for finding reformation. *Id.* at 98. The Psychologist concluded that Individual demonstrated reformation and had a good prognosis. Tr. at 99-100.

## V. ANALYSIS

### **A. Guideline G Considerations**

A condition that can mitigate security concerns based on alcohol consumption is that “[t]he 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(b).

The Individual brought forth sufficient evidence to apply ¶ 23(b) and resolve the Guideline G security concerns. First, there is ample evidence that the Individual acknowledged his pattern of maladaptive alcohol use. His testimony demonstrates that he referred to himself as an alcoholic, described how his past alcohol use was problematic and how he used it to avoid grief, and connected his criminal conduct to his poor decision-making related to alcohol consumption.

Second, the Individual put forth evidence of the following actions that he has taken to overcome the problem: he stopped consuming alcohol; he actively participated and fully engaged in a twelve-week treatment program; he openly and sincerely addressed his triggers with treatment professionals; he frequently attended AA meetings and obtained a supportive sponsor; he enlisted the continuing support of his wife; and he continues to maintain his sobriety.

Finally, the Individual demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations. First, he demonstrated that he stopped consuming alcohol after his December 2020 DWI, and he has remained sober thereafter, surpassing a year by the hearing date. He also demonstrated that he intends to remain sober indefinitely. My findings are supported by the Individual’s testimony, glowing witness testimony, and negative laboratory test results. Second, the Psychologist opined that the Individual, through his efforts, demonstrated adequate reformation of his AUD by meeting all of the Psychologist’s treatment recommendations. In reaching my conclusion, I favorably considered the Individual’s candor, and I adopt the Psychologist’s opinion that the Individual has a good prognosis. Accordingly, I find that the Individual has resolved the Guideline G security concerns.

### **B. Guideline J Considerations**

Based on the record in this case, the Individual has resolved the Guideline J security concerns by demonstrating that “[t]here 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(d).

The record reflects that the Individual has not engaged in criminal conduct since he received his last DWI, which occurred over one year ago. While the passage of time may be relatively brief, I find that the Individual’s criminal conduct was inextricably linked to his AUD, and my above findings in the preceding section demonstrate that the Individual has abstained from alcohol for over a year, reformed that condition by following the Psychologist’s recommendations, effectively addressed the underlying issues that contributed to his past behavior, and obtained a positive

prognosis. I therefore find that the Individual demonstrated successful rehabilitation, and the criminal conduct is therefore unlikely to recur. Accordingly, I conclude that the Individual has resolved the Guideline J 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 and Guideline J of the Adjudicative Guidelines. 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 find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the SSC. Accordingly, I have determined that the Individual's access authorization should be restored.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

James P. Thompson III  
Administrative Judge  
Office of Hearings and Appeals