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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 31, 2022 ) Case No.: PSH-22-0045  
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Issued: May 17, 2022

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**Administrative Judge Decision**

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Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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**

A DOE Contractor employs the Individual in a position that requires her to hold an access authorization. In early April 2021, the Individual was stopped by law enforcement after her vehicle was observed swerving. Exhibit (Ex.) 9 at 4. Law enforcement also observed a bottle of liquor in the backseat of the Individual's vehicle. Ex. 8 at 4; Ex. 10 at 4; Ex. 9 at 5. She was arrested following a field sobriety test and was released from custody soon thereafter. Ex. 9 at 4-5; Ex. 8 at 2; Ex. 6 at 1; Ex. 7 at 1. The Individual appropriately reported the incident to the Local Security Office (LSO), prompting the LSO to instruct the Individual to complete a Letter of Interrogatory (LOI), which the Individual signed and submitted on May 5, 2021. Ex. 7 at 1; Ex. 6 at 1; Ex. 8. As a result of the responses therein, the LSO instructed the Individual to undergo a psychological evaluation conducted by a DOE-consultant Psychologist (DOE Psychologist). Ex. 10. The DOE Psychologist produced a report of his findings on July 20, 2021.<sup>2</sup> Ex. 10. In forming his opinion,

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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.

<sup>2</sup> Phosphatidylethanol (PEth) and Ethyl Glucuronide (EtG) urine tests were administered in conjunction with the psychological evaluation. Ex. 10 at 6. The EtG test detects alcohol up to 80 to 96 hours after any alcoholic beverage

the DOE Psychologist relied on the information he obtained in his clinical interview with the Individual, as well as his review of the Individual's Personnel Security File, the Individual's Office of Personnel Management (OPM) background investigation report, and the *Diagnostic Statistical Manual of Mental Disorders, 5<sup>th</sup> Edition* (DSM-V). Ex. 10 at 3-4. The DOE Psychologist opined that the Individual "does drink habitually or binge consume[s] alcohol to the point of experiencing impaired judgement." Ex. 10 at 8. The DOE Psychologist recommended abstinence, treatment "related to substance abuse[.]" weekly participation in a group therapy program that meets for at least one hour for a span of four months followed by a relapse prevention program that meets every two weeks for the span of four months, and twice weekly participation in a support group like Alcoholics Anonymous (AA) for a span of three months. Ex. 10 at 8.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified her that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance and that her clearance had been suspended. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual that she was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding her eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as 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 her own behalf and presented the testimony of her husband, her AA sponsor (Sponsor), and her counselor (Counselor). *See* Transcript of Hearing, Case No. PSH-22-0045 (hereinafter cited as "Tr."). She also submitted ten exhibits, marked as Exhibits A through J. The DOE Counsel presented the testimony of one witness, the DOE Psychologist, and submitted twelve exhibits marked as Exhibits 1 through 12.

## II. Notification Letter and the Associated Concerns

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning her eligibility for a security clearance. That information pertains to Guideline G of the Adjudicative Guidelines. Ex. 1. Under Guideline G (Alcohol Consumption), "[e]xcessive alcohol consumption often leads to the exercise of questionable judgement 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[.]" and "[h]abitual or binge

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consumption. Ex. 10 at 6. PEth results higher than 200 ng/mL indicate alcohol consumption of "at least four drinks per day several days per week." Ex. 10 at 7. Both test results were positive, with the EtG results indicating that the Individual had consumed alcohol within the previous four days, and the PEth results indicating that she consumed about five to seven alcohol beverages per day. Ex. 10 at 6-7. The report noted the discrepancy in the amount of alcohol the Individual indicated she was drinking and the laboratory results. Ex. 10 at 7.

consumption of alcohol to the point of impaired judgement, regardless of whether the individual is diagnosed with alcohol use disorder[.]” Adjudicative Guidelines at ¶ 22(a) and (c). With respect to Guideline G, the LSO alleged that on April 4, 2021, the Individual was arrested and charged with Driving Under the Influence (DUI), Transport an Open Container of Alcoholic Beverage, Landed Roadways-Maintain Lane/Safe Lane Change and No Driver’s License on Person, after she consumed six shots of tequila over three to four hours prior to her arrest. Ex. 1 at 1. The LSO further alleged that on July 12, 2021, a DOE Psychologist evaluated the Individual and opined in a July 20, 2021, report that the Individual “drink[s] habitually, or binge consumes alcohol to the point of experiencing impaired judgement[,]” and “plac[es] herself in a position of compromising judgement or reliability through impairment and intoxication.” Ex. 1 at 1.

### 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 regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 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 and Hearing Testimony

At the hearing, the Individual did not deny any of the basic facts contained in the Notification Letter and agreed that her previous pattern of alcohol consumption was “inappropriate.” Tr. at 14, 18-19. She confirmed that prior to her arrest, she engaged in an irregular pattern of binge drinking,<sup>3</sup> but has remained abstinent since September 20, 2021.<sup>4</sup> Tr. at 20-21, 43-44. On the day of her arrest,

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<sup>3</sup> During the psychological evaluation, the Individual indicated that in the previous two years, “she would normally consume alcohol twice a month and would have two to three shots of tequila over a two-hour period.” Ex. 10 at 5. At the time of the evaluation, she indicated that she had “consumed alcohol on four occasions since the [arrest,] generally consuming one margarita and one shot of tequila[.]” Ex. 10 at 6.

<sup>4</sup> To support of claim of abstinence, the Individual submitted six drug and EtG test results from October 2021 to April 2022. Exs. A-F. All results were negative. *Id.*

the Individual had gathered in her home with several other people, including her husband, and had consumed approximately six shots of liquor over a three-to-four-hour period. Tr. at 21; Ex. 8 at 1; Ex. 10 at 4. Both the Individual and her spouse testified that when the guests departed, they began to argue. Tr. at 21; Ex. 8 at 1; Ex. 10 at 4. The Individual and her husband also testified that their alcohol consumption had contributed to their poor communication that evening. Tr. at 21-23, 86, 94. As a result of their arguing, the Individual decided to leave and go to her cousin's home. Tr. at 21; Ex. 8 at 1; Ex. 10 at 4. She lost her way while in route and was ultimately stopped by law enforcement officials. Tr. at 21; Ex. 8 at 1; Ex. 10 at 4. The Individual was released soon after her arrest and complied with the terms of her release. Ex. 8 at 4. To resolve her citations, she ultimately entered into a plea bargain, wherein she was ordered to take a drug and alcohol course, attend a victim impact panel, pay fines, and submit to a year of random alcohol testing.<sup>5</sup> Tr. at 24-25; Ex. 10 at 5. At the time of the hearing, there were no allegations that the Individual had violated the terms of the agreement. Tr. at 26.

The Individual received the DOE Psychologist's report in December 2021. Tr. at 48-49. Although she discontinued drinking for approximately one month after her arrest, she was consuming alcohol at the time she underwent the psychological evaluation. Tr. at 47; Ex. 10 at 6. She acknowledged that she had underreported the amount of alcohol she was drinking to the DOE Psychologist because "[a]t the time[, she] was very ashamed[.]" Tr. at 46. Upon receiving the report, she began implementing the DOE Psychologist's recommendations, which included seeing a Counselor.<sup>6</sup> Tr. at 48-49, 56, 85. She disclosed her DUI charge to her Counselor, and together, they addressed matters that could impact her sobriety, her work, and her marriage. Tr. at 57, 65, 87-88. She began seeing her Counselor in December 2021 and attends sessions with him every two weeks. Tr. at 59, 64-65. Her Counselor testified that the Individual emailed him a copy of the DOE Psychologist's report several weeks prior to the hearing, which he reviewed, and he confirmed that the Individual has taken steps to address the concerns stated in the report. Tr. at 65-66, 76-77. He also did not find it unusual that, during the psychological evaluation, the Individual underestimated the amount of alcohol she was drinking. Tr. at 72. The Individual's Counselor opined that the Individual is no longer in denial about her issues with alcohol, that "she was very good at the onset about being honest[.]" and that she participates appropriately during her counseling sessions.<sup>7</sup> Tr. at 66. He also confirmed that the Individual is "embracing the tenets of AA" and that she has not endorsed any cravings for alcohol. Tr. at 67, 76. The Individual's Counselor maintained that the Individual "seems very determined to remain sober[.]" and that she has a low risk of relapse because she has added structure to her life and actively works on her issues. Tr. at 68-69. The Individual's husband believes that the Individual intends to continue receiving counseling. Tr. at 87.

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<sup>5</sup> The Individual attended the victim impact panel in November 2021 and completed the drug and alcohol course in August 2021. Exs. G and I.

<sup>6</sup> DOE Counsel stipulated to the Counselor's expertise in the field of counseling. Tr. at 9; Ex. J.

<sup>7</sup> In his testimony, the Individual's Counselor diagnosed the Individual with Alcohol Use Disorder, In Remission, along with another diagnosis not at issue in this case. Tr. at 77.

The Individual testified that she began attending AA meetings twice a week in December 2021, becoming a core member of the group and that she takes pride in her participation.<sup>8</sup> Tr. at 26-28, 40, 84, 95. She views AA as a “lifetime commitment.” Tr. at 55, 87. The Individual testified that the AA group she attends also conducts open meetings that the Individual’s husband, from whom she enjoys strong support, has attended. Tr. at 38-39, 42, 67, 99, 112. Through her AA attendance, she has met and engaged a Sponsor, with whom she meets every Sunday. Tr. at 27-28, 53, 104-06. Her Sponsor testified that together, they discuss current circumstances in the Individual’s life and how those things “relate[] to the disease of alcoholism.” Tr. at 106. The Individual stated, and her Sponsor confirmed, that she is currently working on Step Four of the Twelve Steps and that she reaches out to her sponsor when she needs comfort or answers. Tr. at 35-37, 50, 67-68, 107-08. The Individual’s Sponsor asserted that she visited the Individual at her home prior to the hearing, providing the Individual with emotional support. Tr. at 92, 108-09. The Individual testified that she no longer experiences any cravings for alcohol but would call her Sponsor if she did. Tr. at 59, 111. Her Sponsor also testified that the Individual is keeping herself accountable by “correcting her past” and refusing to make the same choices. Tr. at 107. She also confirmed that the Individual engages and participates in AA in a meaningful way, that the Individual completes her AA assignments, and further, that it is her belief that the Individual is not “at any risk for a drink.” Tr. at 108, 110, 114. In explaining her belief that the Individual is motivated to “pursue and maintain her sobriety[,]” the Sponsor explained that the Individual “is going to great lengths so that she can stay sober[]” and that she has seen the Individual do “things [she has] not seen other alcoholics do.” Tr. at 114.

The Individual stated that since abstaining from alcohol, she has noticed an improvement in her marriage, which helps motivate her to maintain her sobriety. Tr. at 29, 43, 50-51. Her husband also confirmed that he has noticed positive changes in their marriage, endorsing the fact that their communication has improved and that he feels closer to the Individual. Tr. at 86-88. Her husband also stated that he would be able to observe changes in the Individual’s behavior and their relationship if she began consuming alcohol again, which would prompt him to ask her to stop her alcohol consumption. Tr. at 94-95. The Individual’s children also motivate her to remain sober. Tr. at 54. Further, the Individual testified that she has strong support from her nearby extended family, has experienced significant weight loss, spends more time with her children and extended family, and partakes in family get-togethers that do not include the consumption of alcohol. Tr. at 30-32, 50-52, 82-83, 89-90, 92-93, 112-13. The Individual has learned how to avoid alcohol and places where alcohol is typically consumed, and further, she has learned to move through and past difficult circumstances using prayer. Tr. at 49-50. The Individual no longer keeps alcohol in her home, and her husband testified that he is also abstaining from alcohol in support of the Individual. Tr. at 40, 52, 84, 88. When asked what he would “be willing to do for [the Individual,]” the Individual’s husband simply stated, “[e]verything.” Tr. at 95. The Individual further testified that she now engages in her various hobbies, which do not include or involve alcohol consumption. Tr. at 40-41, 51. The Individual’s husband confirmed that since abstaining from alcohol, the Individual has been more focused on exercise and their children. Tr. at 85-86, 89-90, 96-98.

Having had the opportunity to listen to witness testimony and review the exhibits, the DOE Psychologist opined that the Individual has “participated in the treatment recommended to her[,]”

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<sup>8</sup> The Individual submitted AA attendance logs into the record, which indicated that she had attended 25 AA meetings from December 2021 to March 2022. Ex. H.

and that she “seems to have made good progress[.]” Tr. at 117. He further opined that the Individual has complied with the recommendations that he made for her, and accordingly, the Individual has shown adequate evidence of rehabilitation and reformation. Tr. at 117-18. Accordingly, he described the Individual’s prognosis as “good.” Tr. at 119.

## V. Analysis

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline G include:

- (a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or judgment;
- (b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and
- (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(a)-(d).

The record establishes that the Individual recognized her maladaptive alcohol use and took tangible steps toward treating the issue. Although she was still consuming alcohol at the time she underwent a psychological evaluation in July 2021, she began abstaining from alcohol in September 2021, which is evidenced by the drug and alcohol test results the Individual submitted into the record. Further, upon receiving the DOE Psychologist’s report in December 2021, she engaged the services of her Counselor and joined her local AA chapter the same month. Based on the testimony offered during the hearing, the Individual is committed to and participates appropriately in the AA program as well as her counseling sessions. Through her efforts, the Individual has also enjoyed some tangential benefits, like a noticeable improvement in her family life and weight loss, that motivate her to remain sober. Further, not only does her husband zealously support her efforts to remain abstinent, but the Individual also has the steadfast support of her Sponsor and her extended family. Importantly, the DOE Psychologist determined that the Individual has complied with his recommended treatment requirements.<sup>9</sup> The DOE Psychologist further opined that the Individual has shown adequate evidence of rehabilitation and reformation and that she has a good prognosis. The Counselor’s assessment was consistent with that of DOE Psychologist’s, in that the Counselor

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<sup>9</sup> The DOE Psychologist noted in his report that the Individual did “not meet the diagnostic criteria for a [DSM-V] alcohol use disorder.” Ex. 10 at 8.

confirmed that the Individual has implemented the DOE Psychologist's recommendations, and further, he opined that the Individual has a low risk of relapse. Accordingly, given the state of the Individual's rehabilitation, I find that the Individual has mitigated all Guideline G concerns raised in the Notification Letter. *See* Adjudicative Guidelines at ¶ 23(b) and (c).

## **VI. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G 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 brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, the Individual has demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's security clearance should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh  
Administrative Judge  
Office of Hearings and Appeals