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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: February 2, 2022 ) Case No.: PSH-22-0050  
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Issued: April 25, 2022

**Administrative Judge Decision**

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”<sup>1</sup> For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored.

**I. BACKGROUND**

The Individual is employed by a DOE Contractor in a position requiring that she hold a security clearance. In August 2020, the Individual notified the DOE that she had been charged with Driving While Intoxicated (hereafter DWI or DUI)<sup>2</sup> and Aggravated DWI several days prior. The Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding her eligibility to continue holding 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 the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of three witnesses—her counselor, her former colleague, and her boyfriend—and testified on her own behalf. The LSO presented the testimony of the DOE Psychiatrist (“Psychiatrist”) who evaluated the Individual. *See* Transcript of Hearing (hereinafter

<sup>1</sup> Under the regulations, “Access authorization” means 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 also be referred to in this Decision as a security clearance.

<sup>2</sup> During the hearing, the charges were incorrectly stated as DUI several times. Therefore, for purposes of this decision, the acronym DUI will refer to the charge Driving While Intoxicated.

cited as “Tr.”). The LSO submitted 10 exhibits, marked as Exhibits 1 through 10 (hereinafter cited as “Ex.”). The Individual submitted seven exhibits, marked as Exhibits A through G.

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

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for a security clearance. That information pertains to Guidelines G and J of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. 10 C.F.R. 710.7.

Guideline G (Alcohol Consumption) 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. The conditions set forth under Guideline G that could raise a disqualifying security concern are alcohol-related incidents, at or away from work, regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder; habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder; Alcohol Use Disorder diagnosis by a duly qualified medical or mental health professional; failure to follow treatment advice after diagnosis; alcohol consumption that is not in accordance with treatment recommendations after a diagnosis of alcohol use disorder; and failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence. Adjudicative Guidelines at ¶ 22.

Guideline J (Criminal Conduct) provides that “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶30. The conditions set forth under Guideline J that could raise a security concern and may be disqualifying include a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual’s judgment, reliability, or trustworthiness; evidence of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; an individual is currently on parole or probation; an individual’s parole or probation was violated or revoked; an individual’s failure to complete a court-mandated rehabilitation program; and discharge or dismissal from the Armed Forces for reasons less than “Honorable.” Adjudicative Guidelines at ¶ 31.

The LSO alleges that the Individual was arrested for driving with a Blood Alcohol Concentration of .21% in July 2020; that when pulled over for the July 2020 incident, the Individual told the officer that she had only consumed one drink; that the Psychiatrist diagnosed the Individual with Alcohol Use Disorder, Moderate in March 2021;<sup>3</sup> that the Individual reported to the Psychiatrist that she drank to intoxication about twice a month; and that blood and urine testing ordered by the

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<sup>3</sup> The Psychiatrist’s report included recommendations that the Individual abstain from alcohol for at least 12 months, attend an intensive outpatient substance abuse treatment program followed by 12 months of aftercare, attend Alcoholics Anonymous or a similar program, and complete quarterly blood testing to confirm her abstinence. Ex. 7 at 11.

Psychologist revealed that the Individual may have underreported her alcohol use. Accordingly, the LSO's security concerns under Guidelines G and J are justified.

### 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 entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

### IV. FINDINGS OF FACT

The Individual's counselor testified that she first met the Individual at her evaluation in January 2022. Tr. at 14. At that time, the counselor recommended, and the Individual enrolled in, clinical outpatient treatment which involved multiple group and individual sessions per week. *Id.* at 16. She testified that the Individual has had perfect attendance, except for excused absences, and participates fully in the program. *Id.* at 16–17. The counselor testified that the Individual had reported consuming alcohol three times since entering treatment, the most recent time being in February 2022. *Id.* at 17. She testified that this consumption was consistent with the Individual's treatment plan and recommendations because the treatment center helps clients meet their goal of abstinence or moderate alcohol consumption, rather than requiring abstinence. *Id.* at 17–18, 27. The counselor testified that the Individual's alcohol consumption would not be considered a relapse under a goal of consuming alcohol in moderation. *Id.* at 30. She further testified that the Individual's treatment goal was still being identified. *Id.* at 30–31.

The counselor testified that the Individual has a strong support system. Tr. at 19–20. The treatment center diagnosed the Individual with Alcohol Use Disorder, Moderate, and the counselor had recommended clinical outpatient treatment, rather than an Intensive Outpatient Program (IOP), because she did not believe the Individual’s alcohol consumption was severe enough to warrant an IOP. *Id.* at 22–23. She testified that the Individual was still working on identifying her triggers and that the Individual was exploring the Alcoholics Anonymous (AA) program. *Id.* at 20, 25.

The Individual’s former colleague testified that he and the Individual worked closely together for about four years, from 2017 to 2021. Tr. at 39–41. He described her as disciplined, organized, and a team player. *Id.* at 41–42. He did not observe any problems with the Individual’s conduct or performance at work and did not observe her reporting to work intoxicated. *Id.* at 42–43. He did not see her socially and was unaware whether she was consuming alcohol. *Id.* at 44–45. He described the Individual as open with others regarding her DUI and did not believe she would be susceptible to blackmail on that subject. *Id.* at 51–52. He further described the Individual as a rule-follower who was careful and conscientious in her handling of classified or protected material. *Id.* at 53–54.

The Individual’s boyfriend had known her nearly a year and they had been dating for about five months. Tr. at 58. During that time, they saw each other almost every day. *Id.* He testified that he met the Individual when she was working as a bartender and that she currently works as a bartender. *Id.* at 58–59. He and the Individual had discussed her DUI, the circumstances of the administrative review process, and her alcohol consumption. *Id.* at 59–60. He testified that he had not seen the Individual consume alcohol during the entirety of their relationship and that the Individual was not allowed to consume alcohol while working as a bartender. *Id.* at 60–61. The boyfriend testified that the Individual’s social life consisted of having dinner with him, talking with friends or family on the phone, or shopping. *Id.* at 61–63. He stated that he has a beer with dinner occasionally, but otherwise did not consume alcohol in front of the Individual. *Id.* at 62. He stated that they had been to social gatherings together where alcohol was present, and he had not observed the Individual having difficulty abstaining. *Id.* at 64. He described her as hardworking, honest, and trustworthy, and stated that he would trust her with his child’s life. *Id.* at 65, 73.

The boyfriend had discussed the outpatient treatment with the Individual. Tr. at 65–66. He stated that she described feeling like she did not belong because the other attendees had very severe alcohol problems. *Id.* at 66, 69. He had not observed her having cravings and testified that the Individual did not keep alcohol in her home. *Id.* at 67. He was confident in her ability to maintain her abstinence going forward. He testified that he did not believe the Individual had been tempted to consume alcohol. *Id.* at 69. He had not asked the Individual if she had consumed alcohol and she had not volunteered such information, but he believed that she had not consumed alcohol during their relationship and that she would tell him if she had. *Id.* at 70–71.

The Individual testified that she continued consuming alcohol after her DWI arrest, including the night before her evaluation with the Psychiatrist. Tr. at 134–38. In an effort to prevent binge drinking, she switched from hard seltzer to whiskey, which she found less palatable. *Id.* at 134; Ex. 8 at 8. She had been aware that she would be evaluated in the morning but chose to consume multiple drinks anyway. Tr. at 138. The Individual testified that she first received the Psychiatrist’s recommendation from DOE in September 2021. *Id.* at 113. Prior to that, she was not aware that she had been diagnosed with Alcohol Use Disorder, Moderate or that the Psychiatrist had

recommended that she attend an IOP. *Id.* at 114. She testified that she was in denial at the time, particularly because her evaluation for her criminal DWI charge had found no diagnosis and recommended no follow up. *Id.* at 174–76. She did not begin abstaining from alcohol until she received the full Psychiatrist’s report in December 2021. *Id.* at 168–170. She began looking for an outpatient treatment program in January 2022 because she wanted a “boost” to help her remain abstinent. *Id.* at 117, 142. She did not recall being told at the treatment facility that she had been diagnosed with an alcohol use disorder. *Id.* at 143. The Individual testified that she did not complete blood testing for alcohol consumption because it was prohibitively expensive. *Id.* at 168, 240. She had found an AA group that she could attend every other week and, as of the hearing date, she had attended two meetings. *Id.* at 145–46.

The Individual testified that her abstinence and her treatment program are going well and have helped her see how entangled she was with alcohol and how it affected her decision-making. Tr. at 117, 176–79. The Individual was not yet sure whether she would be able to have a healthy relationship with alcohol or would need to abstain permanently. *Id.* at 181–82. She was still working with her counselor on developing her long-term goals and stated that they had not yet discussed whether she should abstain indefinitely. *Id.* at 182, 184. The Individual testified that she is learning a lot and making connections with her peers in the program’s women’s group. *Id.* at 117–18. However, she felt some difficulty relating to her peers in the other groups because many of them were using drugs or on narcotic substitutes and had more serious legal incidents in their past. *Id.* at 119. The Individual testified that she does not have external triggers for alcohol consumption and does not have issues being around alcohol but identified her general anxiety and social anxiety as internal triggers. *Id.* at 147. She stated that she does not consider peer pressure to be a trigger but dealt with the peer pressure that led her to drink in February by resigning from the bar where the incident took place. *Id.* at 150. She stated that she had learned coping mechanisms such as physical movement or going outside for fresh air but explained that she did not need to use them on a regular basis because she does not have alcohol cravings. *Id.* She added that she did not have cravings when she was evaluated by the Psychiatrist. *Id.* at 121–22. Medication to help with alcohol cravings was available to her in her treatment program, but she stated that she had not needed it. *Id.* at 129–31. The Individual testified that she takes pride in her abstinence but had not yet decided whether she would continue to abstain in the long-term. *Id.* at 179–81.

The Individual described herself as abstinent from alcohol. Tr. at 122. She testified that she had consumed alcohol three times in the two months she had been in treatment and that her most recent drink was in February 2022. *Id.* at 122, 161–62. In each of those incidents, she had gone to the bar she worked at to get her paycheck and had consumed a few sips of beer that a friend bought her, citing peer pressure as one of the reasons she drank. *Id.* at 123. Prior to those incidents, she had consumed alcohol very rarely in the prior six months. *Id.* She testified that she was working at a bar because she needed the money after becoming unable to work for the DOE Contractor. *Id.* at 115–16. The Individual further testified that working at a bar has given her an outside perspective on alcohol consumption and that the longer she abstains, the better abstinence feels. *Id.* at 124–25. She described her early abstinence period as difficult but stated that she is committed to abstinence because alcohol is not worth the consequences she has faced recently. *Id.* at 125. She testified that she had not told her boyfriend about her alcohol use during their relationship because she was embarrassed that she had succumbed to peer pressure and because she had only had a few sips. *Id.* at 163–64.

The Individual's support network included her boyfriend, her supervisors, her yoga group (many of whom are abstinent as well), her peers in her treatment program's women's group, and her mother. Tr. at 118, 126. The Individual was working as much as possible and spent her limited free time at yoga, shopping, or with her boyfriend. *Id.* at 127. She did not have alcohol in her house and drank soda or water in situations where alcohol was served. *Id.* at 128. She felt that the people around her, including other bartenders, were accepting of her abstinence. *Id.*

The Psychiatrist testified that the Individual's treatment program was functionally similar to the IOP that he recommended. Tr. at 199–202. However, he testified that the Individual was not yet rehabilitated or reformed. *Id.* at 203–04. He based this opinion on the Individual's having only been abstinent for one month by the time of the hearing and her equivocation about long-term abstinence. *Id.* at 204–06. The Psychiatrist testified that he would characterize the Individual's February alcohol consumption as a lapse and described a relapse as "a pattern of lapses." *Id.* at 238. He gave a guarded, if optimistic, prognosis for the Individual, stating that it was too early in the process to determine what was likely to happen. *Id.* at 231–32. He was discouraged that her treatment providers were not recommending abstinence and that the Individual took so long to decide to be abstinent. *Id.* at 233–34. He stated that blood testing for alcohol use would help confirm the Individual's trustworthiness and reliability because it could show abstinence over several weeks. *Id.* at 229, 235. As of the hearing, the Psychiatrist was not yet fully confident in the Individual's judgment, trustworthiness, and reliability due to her continued relationship with alcohol. *Id.* at 235–36.

## V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a commonsense manner. "Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security." Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO's security concerns have been mitigated such that restoring the Individual's clearance is not an unacceptable risk to national security.

### A. Guideline G

Guideline G provides that security concerns arising from alcohol consumption can be mitigated when (1) the individual's alcohol use was so infrequent or so long ago that it is unlikely to recur and does not cast doubt on her current reliability, trustworthiness, or judgment; (2) the individual acknowledges her pattern of alcohol abuse, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence; (3) the individual has no history of relapse and is making satisfactory progress in treatment or counseling; or (4) the individual has successfully completed a treatment program and has established pattern of modified consumption or abstinence. Adjudicative Guidelines at ¶ 23.

None of the Guideline G mitigating factors apply in this case. The Individual's heavy alcohol use is relatively recent, certainly not so long ago as to be part of a past phase of her life, and she has had enough difficulty abstaining that I cannot say it is unlikely to recur. While the Individual does recognize that her alcohol use was problematic, she has only recently begun her actions to overcome the problem. Furthermore, she has not yet decided on whether she will be abstinent or just modify her consumption, and she had multiple slips within the several weeks preceding the hearing. I cannot say that she has demonstrated a clear or established pattern of modified consumption or abstinence. The Individual has only begun her treatment program and has not yet identified goals toward which she could make satisfactory progress. Moreover, while the Psychiatrist described the Individual's February sips of beer as a lapse, that incident was the third of three incidents over a short period of time. The Individual's behavior meets the Psychiatrist's characterization of relapse as a pattern of lapses. Finally, the Individual has not completed her treatment program and, as noted above, has not shown a pattern of abstinence or modified consumption.

Additionally, I am troubled by the Individual's resistance to abstinence despite facing serious legal and professional consequences. The Individual's reaction to her DWI was to replace hard seltzer with whiskey. She continued working in bars even after succumbing to peer pressure to drink. The Individual also chose to consume multiple drinks the night before a mental health evaluation required as a consequence of her DWI. She has only begun her rehabilitative journey and has not yet determined what her treatment goals are. These decisions give rise to concerns about the Individual's judgment and reliability. Regarding her trustworthiness, her decision to hide her alcohol use, both before and during treatment, from her boyfriend to avoid embarrassment goes to a core component of national security concerns: that someone could compromise the Individual through threat of embarrassment or scandal. Her willingness to deceive to avoid embarrassment casts doubt on her ability to protect the national security when the truth could lead to professional or financial consequences.

For the foregoing reasons, I cannot find that doubts remain about the Individual's judgment, trustworthiness, and reliability and, therefore, I must resolve them in favor of the national security. Therefore, I cannot find that the Guideline G concerns are mitigated.

## **B. Guideline J**

Guideline J provides that security concerns arising from criminal conduct can be mitigated when (1) 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; (2) the individual was pressured or coerced into

committing the act and those pressures are not prescribed, the pressures are no longer a part of the individual's life, and the abuse has since ended; (3) there is no reliable evidence to support that the individual committed the offense; and (4) 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.

The Guideline J concerns arise from and are inextricably linked to the Guideline G concerns. Having determined that doubt remains regarding the Individual's judgment and reliability in regard to her alcohol use, I cannot find that she is unlikely to drive while alcohol impaired in the future. Nor can I find that the Individual is rehabilitated in that she has not successfully controlled her alcohol consumption.

For the foregoing reasons, I cannot find that the Guideline J concerns are mitigated when the underlying Guideline G concerns remain unresolved.

## **VI. CONCLUSION**

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for a security clearance under Guidelines G and J of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that restoring DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore access authorization to the Individual at this time.

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

Kristin L. Martin  
Administrative Judge  
Office of Hearings and Appeals