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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: March 28, 2022	)	Case No.: PSH-22-0067
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Issued: June 28, 2022

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**Administrative Judge Decision**

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Janet R. H. Fishman, 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**

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. The local security office (LSO) determined that derogatory information regarding the Individual existed, *i.e.*, his two alcohol-related arrests. Subsequently, the LSO issued the Individual a letter in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Exhibit (Ex.) 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. The LSO submitted eleven exhibits (Ex. 1–11) and offered no witnesses. The

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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.

Individual offered six exhibits (Ex. A-F), testified on his own behalf, and offered the testimony of his fiancée, his supervisor, and a co-worker. Tr. at 8, 21, 31.

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

The LSO cited Guideline J (Criminal Conduct) as a basis for its determination that the Individual was ineligible for access authorization. Ex. 1. “Criminal 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 LSO cited the Individual’s June 2021 Operating While Under the Influence (OWI) arrest and his February 2018 Public Intoxication arrest as justification for raising Guideline J. Ex. 1. The Individual’s two arrests justify the LSO’s invocation of Guideline J. Adjudicative Guidelines at ¶ 31(b).

## **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 Dep’t 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 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.

## **IV. FINDINGS OF FACT AND HEARING TESTIMONY**

While in college in 2018, the Individual was arrested for Public Intoxication after leaving a bar to walk home. Tr. at 45. *Id.* The Individual testified that it was Valentine’s Day and he was out with friends when he decided he had consumed too much alcohol and should leave. *Id.* He asserted that he was under a lot of stress because he had a high course load and was apart from his girlfriend for the first time. *Id.* at 44. The Individual lived about five blocks from the establishment where he was consuming alcohol but jaywalked in front of a police officer who performed a field sobriety test, which the Individual failed. *Id.* The Individual freely admitted that he was intoxicated. He claimed that he pleaded guilty to the charge and paid the fine. *Id.* at 44; Ex. 9 at 2; Ex. 10 at 43. In addition, he immediately informed his parents and his girlfriend of his arrest. Tr. at 46. He also reported his arrest to his employer when he was first employed. Ex. 10 at 42. The Individual’s

testimony about the circumstances of this arrest was consistent with his responses to the LSO's October 2021 Letter of Interrogatory (LOI). Ex. 9 at 2.

In June 2021, the Individual was charged with OWI, after he left a wedding reception. Tr. at 47. He and his fiancée explained that they thought there would be a shuttle back to their hotel, but only found out after consuming alcohol that there was no shuttle. *Id.* at 38, 47. The Individual explained that they tried to get a Lyft or Uber, but in the very small town where the wedding was located, none were available. *Id.* at 48. The hotel was two miles from the reception venue, and the Individual hoped he could drive there without incident. *Id.* He testified that within three-quarters of a mile he realized that he could not, so he pulled to the side of the road, put on his flashers, and tried to determine what to do. *Id.* Soon after stopping, a police officer knocked on the car window. *Id.* He asked the Individual to complete a field sobriety test, which he failed, along with a Breathalyzer. *Id.* at 49. The Individual's blood alcohol content was .181. Ex. 8 at 1. The Individual testified that he pleaded guilty to the OWI charge, paid the fine and court costs, and attended a 48-hour substance abuse class. Tr. at 50; Ex. 7; Ex. 9 at 1. Like the Individual's LOI responses regarding the 2018 public intoxication charge, the Individual's LOI responses regarding the 2021 incident were consistent with his testimony. Ex. 9 at 1. Further, the Individual was evaluated by a DOE-consulting psychologist in December 2021. The information conveyed to the DOE-consulting psychologist, as reflected in the psychological evaluation report, is consistent with the Individual's testimony and his responses to the LOI. Ex. C at 5.

The Individual admitted that the alcohol-related arrests show a pattern. Tr. at 49. However, the DOE-consulting psychologist found that he was not alcohol dependent, Ex. C, and the DOE-consulting psychologist does not believe that the Individual has a problem with alcohol. Ex. C at 5. Like the DOE-consulting psychologist, the substance abuse evaluator that the Individual was required to see after the OWI found that the Individual did not have a substance abuse disorder. Ex. D at 2. The OWI 48-hour program helped him determine that he could have better handled the stressors in his life. At the time of his OWI, he was working full time and attending a full-time post-graduate degree program. *Id.* at 51. The 48-hour program made him realize that alcohol could have become a problem in his life. *Id.* He stated, "I was able to complete a 48-hour OWI program which educated me on the -- I guess it would be like the flags of alcohol dependency and alcohol issues, as well as how to cope with those stresses rather than continuing drinking." *Id.* The Individual declared that he currently attends counseling twice a month. *Id.* at 52. He claimed that the OWI program had participants compute the monetary cost of the OWI, and he was startled by the amount. *Id.* at 57. Another consequence of the OWI is the suspension of his clearance, requiring that he have an escort in secure areas at work. *Id.* at 58. He testified that he never wants to have his clearance suspended again. *Id.* at 59. The Individual also stated that recently he and his fiancée attended a wedding. *Id.* at 61. They determined prior to the reception that there would not be a shuttle to the hotel, and he did not consume alcohol so that he could drive home. *Id.*

The Individual's co-worker, who is also a friend, testified that they have known each other about two years. Tr. at 9. The co-worker served as a mentor for the Individual when he started his employment. *Id.* at 15. He testified that the Individual has good character and good judgment. *Id.* at 11. The co-worker asserted that the Individual consistently follows all rules and regulations. *Id.* He averred that the Individual is a reliable co-worker who never needs to be reminded to complete his work. *Id.* at 15. Although the Individual and his co-worker play kickball and soccer together once a week and have spent time together in each other's home, the only time the co-worker has seen the Individual consume alcohol was during a pickleball tournament, where a bar was

available. *Id.* at 12-13. The co-worker stated that he only saw the Individual consume one beer during the time they were playing. *Id.* at 13.

The Individual's supervisor testified that he has known the Individual for two years. Tr. at 21. Prior to the COVID-19 pandemic, they met every day. *Id.* at 21. The supervisor asserted that the Individual can be relied upon to follow the rules and regulations, and that the Individual asks if he does not know the proper rules. *Id.* at 26. He has not had any rules infractions. *Id.* Although they are more co-workers than friends, they have socialized. *Id.* at 27. The supervisor stated that he has never seen the Individual consume alcohol in excess. *Id.*

The Individual's fiancée testified that they have known each other six years and have cohabitated for three years. Tr. at 31. She said they typically spend time playing with their dog, visiting with family, or hiking. *Id.* at 33. She asserted that the Individual is very humble and a very hard worker. *Id.* The fiancée stated that the Individual does consume alcohol, but she does not see a personality change when he consumes it. *Id.* at 34-35. She testified that the Individual was very proactive about handling the requirements of the OWI. *Id.* at 35. She asserted that she is confident he will not have another alcohol-related arrest. *Id.* She stated that he has good judgment and is reliable, especially about his employment. *Id.* at 39.

## V. ANALYSIS

The Individual's two arrests justify the LSO's invocation of Guideline J. Adjudicative Guidelines at ¶ 31(b). Conditions that could mitigate security concerns under Guideline J include:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) [there is] no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32(a)–(d). As the regulations state, the decision to grant or deny a security clearance is based on a comprehensive, common-sense judgment, made after consideration of all the relevant evidence, both favorable and unfavorable. 10 C.F.R. § 710.7(a). The regulations continue that:

Each Adjudicative Guideline sets forth a series of concerns that may create a doubt regarding an individual's eligibility for access authorization. In resolving these concerns, all DOE officials involved in the decision-making process shall consider: The nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct;

the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

*Id.* at § 710.7(c). In both situations that led to his arrest, the Individual believed he was doing the right thing. In the public intoxication arrest, the Individual, even as a young college student, was attempting to behave properly. He knew he was intoxicated and decided to cease consuming alcohol and walk the five blocks to his home. He did not attempt to drive, nor did he continue to drink, even though his friends did. He admitted his guilt and pleaded guilty to the charge. He paid all the required fines without complaint. At no time did he deny that he was intoxicated. The Individual's parents, fiancée, and employer are aware of the incident. Although the incident embarrasses him, he cannot be coerced into improper action because of it.

Regarding his recent OWI, the Individual testified that he was misguided regarding the availability of a shuttle to take him home, leading him to consume more alcohol than prudent. He stated that as soon as he realized he could not make the drive, he pulled to the side of the road, trying to figure out what to do. He asserted that at a recent wedding, he confirmed prior to consuming alcohol that there was no shuttle, so he did not partake.

I found the Individual to be credible and trustworthy in his testimony. It is clear that the Individual has learned from his two arrests, and I believe that they will not recur. A DOE-consulting psychologist did not find that the Individual had an alcohol use disorder, yet the Individual still sought out and found a therapist to help him with his stress and alcohol consumption. Prior to his first arrest, the Individual thought he was behaving properly by returning home after he realized he had consumed too much alcohol. The Individual's witnesses testified that he follows all rules and when he does not know the rules, he queries his supervisor to find out the proper procedure. The Individual struck me as an honest, trustworthy person, who made two mistakes regarding his alcohol use which resulted in criminal charges; however, he has taken steps to learn from those mistakes through the 48-hour OWI program and consulting a therapist.

Thus, I find that the Individual has resolved the security concerns asserted by the LSO under Guideline J.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline J of the Adjudicative Guidelines. After considering all the relevant information, 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 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.

Janet R. H. Fishman  
Administrative Judge  
Office of Hearings and Appeals