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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: May 10, 2022) Case No.: PSH-22-0080
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Issued: July 22, 2022

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, Subpart A, entitled “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should be not restored.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. On March 21, 2021, the Individual was arrested and charged with Public Intoxication. Exhibit (Ex.) 1. In response, the Local Security Office (LSO) provided the Individual with a Letter of Interrogatory (LOI), which he completed in April 2021. Ex. 7 at 20. The Individual later underwent a psychological evaluation by a DOE consultant psychologist (Psychologist) in September 2021. Exhibit (Ex.) 10.

Due to unresolved security concerns related to an evaluative report (Report) issued by the Psychologist diagnosing the Individual as suffering from Alcohol Use Disorder, the Individual’s 2021 Public Intoxication arrest, and a prior 2016 Driving Under the Influence (DUI) arrest, the LSO informed the Individual, in a Notification Letter, that his security clearance had been suspended and it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. In an attachment to the Notification Letter, the

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 3. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted 17 numbered exhibits (Exs. 1-17) into the record and presented the testimony of the Psychologist. The Individual introduced two lettered exhibits (Exs. A-B) into the record, and presented the testimony of two witnesses: himself and his spouse. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of 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. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the Individual’s eligibility for access authorization. Guideline G relates to security risks arising from excessive alcohol consumption. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses and can raise questions about an individual’s reliability and trustworthiness. Adjudicative Guidelines at ¶ 21. Guideline J addresses criminal activity, which can create doubts about a person’s judgment, reliability, and trustworthiness. *Id.* at ¶ 30. Furthermore, it calls into question a person’s ability or willingness to comply with laws, rules, or regulations. *Id.*

In citing Guideline G, the LSO relied upon the Psychologist’s determinations in her Report that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders 5th Edition* (DSM-5)

criteria for a diagnosis of Alcohol Use Disorder, Moderate, in early remission, and that the Individual had not demonstrated adequate evidence of rehabilitation or reformation. Ex. 1. As a basis for citing both Guidelines G and J, the LSO relied upon the Individual's 2021 arrest for Public Intoxication and his 2016 DUI arrest. *Id.* Given this evidence, the LSO was justified in invoking Guidelines G and J.

IV. Findings of Fact

In March 2016, the Individual and his wife were attending a convention. Ex. 15 at 50-51 (Enhanced Subject Interview). On the evening before his arrest, the Individual had consumed 4 or 5 shots of vodka prior to getting into his vehicle to drive to a gas station to make various purchases. Ex. 13 at 44 (Federal Bureau of Investigation Criminal History Report); Ex. 1 at 48-49; Tr. at 17-20, 56-57. On his way to the gas station, he was arrested and charged with DUI after he was pulled over by a law enforcement officer and his Breath Alcohol Content was measured at 0.12. Ex. 10 at 26 (Report). He subsequently pled guilty and was ordered to attend Drug and Alcohol education classes and placed on supervised probation for one year. Ex. 10 at 26. The Individual and his spouse confirmed this factual account of the incident in their testimony. Tr. at 17-20 (spouse); Tr. at 56-57 (Individual).

In an Enhanced Subject Interview by the Office of Personnel Management concerning the Individual's eligibility for access authorization conducted on March 17, 2020, the Individual attributed his 2016 arrest to his youth (being 22 years old at the time of the arrest) and asserted that he had matured since that incident. Ex. 15 at 50. He also asserted that he had not consumed alcohol since January 2020, and that, in the future, he would not consume alcohol to the point where it would have a negative impact in his life. Ex. 15 at 50.

In the evening of March 20, 2021, beginning at approximately 11:00 p.m., the Individual consumed five or six vodka-based mixed drinks after returning from a club. Ex. 10 at 27. Later that night, at 12:30 a.m., the Individual was invited by a friend to come to his house. The Individual walked approximately one and one-half miles to his friend's house where he consumed approximately 5 or 6 shots of whiskey. *Id.* The Individual's friend asked the Individual to leave the house at approximately 3:00 a.m. *Id.* The Individual refused to leave, and a physical encounter ensued between the men. *Id.*; Ex. 4 at 13 (local police department report of arrest); Tr. at 73. The friend then called local police who arrested the Individual for Public Intoxication. The Individual pled guilty to this misdemeanor charge and paid a fine. Ex. 6 at 18 (Individual's report to LSO); Ex. 5 at 16 (court deposition record). In his testimony, the Individual confirmed the facts leading to this arrest. Tr. at 68.

In March 2021, after receiving notice of the Individual's arrest for Public Intoxication, the LSO sent the Individual the LOI. Ex. 7. The LOI asked the Individual to provide details concerning his arrest and the amount of alcohol he would usually consume. In his response, the Individual reported consuming alcohol sometimes on a weekly basis but with varying periods where he would not consume any alcohol. Ex. 8 at 2. On occasions when he would consume alcohol, he would drink a couple of beers or three or four mixed drinks. Ex. 8 at 23. The Individual estimated that he had consumed alcohol 15 times since his 2016 DUI arrest. *Id.*; Ex. 10 at 28.

After receiving the Individual's response to the LOI, the LSO referred the Individual to the Psychologist for an evaluation. Ex. 10. In evaluating the Individual, the Psychologist reviewed the Individual's personnel security file and his LOI response, and had an Ethyl Glucuronide (EtG) urine test and a Phosphatidylethanol (PEth) blood test performed on the Individual. The Individual reported to the Psychologist that he had stopped consuming alcohol approximately 6 months prior to the interview. Despite this assertion, the Psychologist found in her Report that:

[The Individual's prior] pattern of alcohol consumption would be characterized as binge drinking. His use was not regular or necessarily frequent, but when he drank, he was likely drinking to a (legal) level of intoxication. Prior to (and leading up to) his first alcohol-related arrest, [the Individual] was also binge drinking. However, he reported drinking more often during that time period but did not or could not provide specifics. His response to getting a DUI was to drink less frequently, but he did not curtail the amount of alcohol he was consuming when he did drink.

Id. at 29.

The Psychologist concluded that the Individual's "pattern of drinking in both 2016 and 2021 incidents [arrests] . . . constitute binge drinking defined as the consumption of alcohol to a level of intoxication that is markedly and episodically higher than what is typical for an individual." *Id.* at 30.² The Psychologist opined in her Report that, for the Individual to demonstrate adequate evidence of rehabilitation or reformation, he would have to show evidence of 12 months of abstinence from alcohol consumption supported by frequent, random PEth and EtG testing. *Id.* at 32. Additionally, she stated that the Individual should engage in a weekly group therapy program, such as Alcoholics Anonymous or another equivalent program, with evidence of 12 months of participation. *Id.* at 32.

The Individual and his spouse testified as to the Individual's efforts to resolve the concerns arising from the two alcohol-related arrests. His spouse asserted that early in their relationship they would occasionally be in social situations where the Individual might consume one or two alcohol drinks. Tr. at 16. After his 2016 arrest, she was upset over the incident. *Id.* at 20. She was not concerned about his level of consumption but about his "poor choice" in his actions resulting in the arrest. *Id.* at 20-21. She viewed the incident as the Individual "making a mistake." *Id.* at 21. After the 2016 DUI, the Individual's spouse stopped consuming alcohol because of her dislike of the taste of alcohol and later because of prescribed medication she began to take. *Id.* Further, she disliked the consumption of alcohol because it reminded her of the Individual's DUI. *Id.* She specifically informed the Individual of her decision to stop consuming alcohol. *Id.* Nonetheless, she did not believe the Individual needed any type of counseling concerning his alcohol consumption after his 2016 DUI arrest. *Id.*

The Individual testified that after his 2016 DUI arrest, he reduced his consumption of alcohol and made the decision not to drive after consuming alcohol. *Id.* at 60. The Individual also completed all court-ordered activities, such as attending defensive driving classes and a Mothers Against

² The PEth and EtG tests were negative. The Psychologist also had the Individual complete the Minnesota Multiphasic Personality Inventory (MMPI), a psychometric test. The results of the MMPI along with the Psychologist's clinical interview did not lead the Psychologist to diagnose the Individual with any non-alcohol related condition. Ex. 10 at 30-32.

Drunk Driving meeting. *Id.* at 61. After this arrest, the Individual testified that he consumed alcohol on an irregular basis in the amount of two to four drinks at a time. *Id.* at 62-63. Although he completed the court-ordered activities, the Individual did not believe that he had a problem with alcohol and did not seek any treatment or counseling. *Id.* at 65.

Regarding his 2021 arrest for Public Intoxication, around the time of this arrest, the Individual testified that he would consume alcohol and “would feel a difference” from consuming alcohol two to three times a year and would become too intoxicated to operate a vehicle once a year. *Id.* at 67. The Individual testified that he had told the Psychologist that he did not consume alcohol around his wife because she “didn’t like [the Individual] drinking.” *Id.* at 72. When asked if he thought that he might have a problem with alcohol in light of 2021 arrest, the Individual testified, “I don’t feel like I have a problem, but it’s caused me problems.” *Id.* at 75. The Individual does not believe that he is an alcoholic. Tr. at 76.

The Individual did not seek counseling because he did not believe it was needed. *Id.* The Individual stated that his approach to avoiding the consumption of alcohol is, “I don’t have to touch it and it’s not going to bother me to not drink.” *Id.* at 77. The Individual asserted that while he has friends who like to consume alcohol, he does not go out with them. *Id.* at 78. The Individual denied experiencing an urge to consume alcohol and asserted that if he had stress or an urge to consume alcohol, he would consult a physician. *Id.* at 92. Further, the Individual plans not to “put [him]self in a position to be around the influence of [alcohol].” *Id.*

The Individual noted that since becoming abstinent after his 2021 arrest, his job situation had improved, and he and his spouse had decided to start a family. *Id.* at 86. In further support of his efforts to have his clearance restored, the Individual submitted a copy of a negative PEth test conducted in June 2022. Ex. A-B.

After listening to all the testimony presented at the hearing, the Psychologist modified her diagnosis of the Individual to “Alcohol Use Disorder, in full remission.” Tr. at 122. In making this revision to her original diagnosis, the Psychologist, based upon her assessment of the honesty of the Individual, determined that he had completed 12 months of abstinence as recommended. *Id.* at 123. However, the Psychologist also noted that the Individual had not participated in any type of support group or AA, as recommended in her Report. She believed that he had not done so because he “does not adequately understand the gravity of the incidents that alcohol led him to be involved in or the role that alcohol really plays for him as being a problem.” *Id.* at 125. She opined that the Individual’s plan for rehabilitation and reformation of his alcohol misuse is essentially “to avoid getting into trouble or to avoid more stress.” *Id.* at 126. The Psychologist elaborated that the Individual’s efforts at rehabilitation and reform are “dependent on his wife knowing about it . . . [and] on him staying at home and not being in social situations where there might be alcohol . . . [and therefore is] dependent on external factors rather than on himself and his understanding of the nature of the problem.” *Id.* at 128.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the Individual’s eligibility for access authorization, I have been guided by the applicable factors

prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual has not sufficiently mitigated the security concerns noted by the LSO regarding Guideline G and Guideline J. I cannot find that restoring the Individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual's security clearance should not be restored at this time. The specific findings that I make in support of this Decision are discussed below.

As described by Guideline G, a diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder is a condition that could raise a security concern and may disqualify an individual from holding a security clearance. Adjudicative Guidelines at ¶ 22(d). Additionally, alcohol-related incidents away from work could raise disqualifying security concerns. *Id.* at ¶ 22(a)-(b).

The Adjudicative Guidelines describe the following factors that could mitigate Guideline G security concerns:

- (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 Individual is currently diagnosed by the Psychologist as suffering from Alcohol Use Disorder, in full remission. In the present case, while the Individual is no longer consuming alcohol, he has not availed himself of any type of treatment program that could provide assurance that future alcohol-related incidents would be unlikely to occur. I found the Psychologist's testimony convincing on the issue of the sufficiency of the Individual's own efforts regarding rehabilitation and reformation. In the Individual's case, his alcohol misuse occurred relatively recently, and I cannot find that the Individual has fully accepted his alcohol misuse problem. As the testimony of the Psychologist indicates, the Individual has not sought or completed any type of alcohol treatment program. In sum, I find that none of the Guideline G mitigating factors are applicable to the Individual. Consequently, the Individual has not presented sufficient evidence to resolve the Guideline G security concerns raised by his alcohol consumption.

Regarding Guideline J, the Adjudicative Guidelines list the following mitigating factors:

- (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) 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 an initial matter, both arrests cited as raising security concerns under Guideline J occurred when the Individual was intoxicated. As described above, there is significant doubt as to the state of the Individual's reformation and rehabilitation efforts regarding his prior alcohol misuse. This finding weighs heavily against a determination that the Guideline J concerns are currently resolved. The Individual's 2021 arrest for public intoxication is recent. I find that the circumstances giving rise to both arrests are not so unusual as to provide any type of mitigation nor is there any evidence that the Individual did not, in fact, commit the offenses. On review of all the Guideline J mitigating factors, I find that none are applicable in the present case. Thus, I find that the Individual has failed to present sufficient evidence to resolve the Guideline J security concerns raised in the Notification Letter issued to the Individual.

For the forgoing reasons, I find that the Individual has not mitigated the Guideline G and Guideline J security concerns. As such, I find that the DOE should not restore access authorization to the Individual.

VI. Conclusion

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 have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline G and Guideline J. Accordingly, I have determined that the Individual's access authorization should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals