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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-22-0065  
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Issued: August 19, 2022

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**Administrative Judge Decision**

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Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXX XXXXXX (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 not be granted.

**I. Background**

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. As part of the clearance process, the Individual was required to complete a Questionnaire for National Security Positions (QNSP), which he signed and submitted on February 25, 2021. Exhibit (Ex.) 7. In the QNSP, he disclosed the fact that he was charged with four misdemeanors for Driving Under the Influence (DUI) in or about May 1979, July 1988, April 1992, and September 1996. Ex. 7 at 32-35.

In conjunction with the investigation, the Individual underwent an Enhanced Subject Interview (ESI) conducted by an Office of Personnel Management (OPM) investigator in April 2021. Ex. 8 at 59. During his interview, the Individual indicated that he began consuming alcohol on an infrequent basis when he was 19 or 20 years of age. Ex. 8 at 60. He also reported that he began drinking in social settings in increasing amounts from approximately 1978 to 1986, and in 1987, his alcohol consumption increased and became routine until about 1992. Ex. 8 at 60. The Individual asserted that his alcohol consumption decreased from 1992 to 1996 "due to his work requirements

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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.

changing[.]” and on the date of the ESI, he reported his rate of consumption at approximately four beers twice a week and stated that he was drinking to the point of intoxication once a week. Ex. 8 at 60-61. The Individual reported that he “feel[s] that he has a problem with alcohol given his history of alcohol consumption and being arrested[.]” Ex. 8 at 61. Although he had reduced his alcohol consumption, he stated his intention to continue consuming alcohol.<sup>2</sup> Ex. 8 at 61. The Individual indicated that he received education regarding alcohol abuse in conjunction with his prior alcohol-related criminal charges, and in or around 1992, he underwent an assessment at the behest of his employer to determine whether he was dependent on alcohol. Ex. 8 at 60-61. According to the Individual, the assessment determined that he was not dependent on the substance. Ex. 8 at 60. Further, the Individual admitted that he continued to drive after consuming alcohol and that he purchased a device to determine his alcohol level so that he could determine whether he could legally operate his vehicle. Ex. 8 at 65.

As a result of the information provided, the LSO requested that the Individual undergo a psychological evaluation conducted by a DOE-consultant Psychologist (DOE Psychologist). Ex. 5. The DOE Psychologist produced a report of his findings on December 20, 2021.<sup>3</sup> Ex. 5. In forming his opinion, the DOE Psychologist relied on the information he obtained in the clinical interview with the Individual, as well as his review of the Individual’s Personnel Security File (PSF), and the *Diagnostic Statistical Manual of Mental Disorders, 5<sup>th</sup> Edition* (DSM-V). Ex. 5 at 3. During the clinical interview, the Individual disclosed his alcohol-related arrests and the circumstances surrounding them. Ex. 5 at 3-4. The Individual also acknowledged that his past arrests “reflect[ed] bad judgement on his part.” Ex. 5 at 4. At the time of the evaluation, the Individual indicated that he was not consuming alcohol and that the last time he consumed an alcoholic beverage was on October 24, 2021. Ex. 5 at 4. On that date, the Individual reported, he had consumed four beers. Ex. 5 at 4. Prior to abstaining from alcohol, the Individual stated, he would usually consume “two to four 12-ounce beers on two or three evenings a week and that he [would reach] the point of intoxication after four 12-ounce beer[s].”<sup>4</sup> Ex. 5 at 5. The Individual indicated that he began drinking four nights per week the prior summer. Ex. 5 at 5. Further, the Individual reported that he would occasionally drink “one or two mixed drinks, usually twice per month[.]” Ex. 5 at 5. He also described his alcohol consumption over the years as “variable.” Ex. 5 at 5.

Based on the information the DOE Psychologist reviewed, including the Individual’s history of alcohol consumption and test results, the DOE Psychologist opined that the Individual “does habitually consume alcohol to the point where impaired judgement can be a concern.” Ex. 5 at 8. Further, the DOE Psychologist did not find evidence of rehabilitation or reformation. Ex. 5 at 8.

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<sup>2</sup> At a different point during the ESI, the Individual voiced his desire to discontinue drinking alcohol “because he wants to remain healthy.” Ex. 8 at 65.

<sup>3</sup> A Phosphatidylethanol (PEth) blood test was administered in conjunction with the psychological evaluation. According to the DOE Psychologist’s report, the PEth test “provide[s] evidence of...alcohol consumption over the preceding three weeks or more.” Ex. 5 at 7. The report recorded that the Individual’s PEth test results were negative, indicating that the Individual “ha[d] not consumed significant or heavy amounts of alcohol in the days to possibly several weeks prior to the collection of the specimen.” Ex. 5 at 7.

<sup>4</sup> At the hearing, the Individual agreed that this statement was accurate. *See* Transcript of Hearing, Case No. PSH-22-0065 (hereinafter cited as “Tr.”) at 79.

To evidence adequate rehabilitation or reformation, the DOE Psychologist recommended that the Individual “enroll in and successfully complete an Intensive Outpatient Program (IOP) of at least four weeks duration[.]” Ex. 5 at 8. Regarding the IOP, the DOE Psychologist stated that it “should include intensive educational opportunities[.]” Ex. 5 at 8. The DOE Psychologist also indicated that the IOP should have group and individual psychotherapy opportunities, and that the Individual should continue receiving outpatient therapy for at least six months after the completion of the IOP, or for a length of time recommended by the [Individual’s] treatment team. Ex. 5 at 8. The DOE Psychologist also stated that “[t]hereafter, [an] individual outpatient therapist should aid in determining the frequency and timeframe of ongoing care[.]” and that the Individual should participate in a support group like Alcoholics Anonymous (AA), “or another reputable/approved program[.]” on a twice weekly basis. Ex. 5 at 8. The DOE Psychologist further stated that the Individual should engage a sponsor at the support group and abstain from alcohol for a full year from the date of last consumption. Ex. 5 at 8. The DOE Psychologist noted that, to objectively evidence ongoing abstinence, the Individual should submit to PEth tests on “at least a quarterly basis[.]” and he should submit to breath alcohol testing pursuant to his employer’s requirements. Ex. 5 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 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 G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing. In his hearing request, he indicated that he had discontinued consuming alcohol on October 25, 2021. The LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). Ex. 2. 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 his own behalf and presented the testimony of two witnesses, a former supervisor and current coworker. The DOE Counsel submitted eight exhibits marked as Exhibits 1 through 8 and presented the testimony of the DOE Psychologist.

## **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 his 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 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 December 8, 2021, the DOE Psychologist determined that the Individual habitually consumes alcohol to the point of impaired judgement, without adequate evidence of rehabilitation or reformation. The LSO also alleged that the Individual had four alcohol-related arrests from 1979 to 1996. Ex. 1 at 1. The derogatory information cited by the LSO justifies the invocation of Guideline G.

### 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 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.

### IV. Findings of Fact and Hearing Testimony

At the start of his testimony, the Individual confirmed that he did not participate in an IOP or receive any counseling since seeing the DOE Psychologist, but that he did receive alcohol-related education in the wake of his prior arrests. Tr. at 55-56. Further, the Individual indicated that he had not attended any AA meetings “in a very long time[.]” and that he had not submitted to any alcohol testing since seeing the DOE Psychologist. Tr. at 56-57. However, the Individual did state that he had been abstinent from alcohol since October 24, 2021,<sup>5</sup> and that after July 2022, he would be able to schedule an appointment with his employer’s Employee Assistance Program (EAP). Tr. at 57-58, 64. He stated that his busy schedule had prevented him from engaging the EAP, but that he intended to take time off in August 2022 so that he “will have time to devote to that.” Tr. at 65.

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<sup>5</sup> While the Individual testified that he had become abstinent on October 24, 2021, all other accounts in the record him as being abstinent on October 25, 2021. *Compare* Ex. 2 at 1; Ex. 5 at 3 with Tr. at 58.

The Individual asserted that because he did not have any prior knowledge that he would be tested in conjunction with the December 20, 2021, psychological evaluation, the evaluation did not influence his decision to abstain from alcohol beginning on October 25, 2021. Tr. at 69.

The Individual also testified that he had made prior attempts to stop drinking alcohol, and “there have been times where [he has] gone quite a long time without any alcohol use at all.” Tr. at 59. He stated that his attempts at sobriety were not inspired by his prior arrests or involvement with law enforcement personnel, but rather, he would discontinue alcohol use due to other considerations. Tr. at 59. The Individual’s intermittent periods of abstinence would vary in length, and he would resume drinking alcohol because he “enjoyed it at the time.” Tr. at 59. When asked how his latest endeavor to remain sober was any different from those in the past, the Individual stated that he has some concerns over his health and that he wants to make his sobriety permanent. Tr. at 59-60. He stated that he intends “[t]o quit altogether[,]” and at the time of the hearing, he stated that he does not keep alcohol in his home. Tr. at 60. When asked if he believes he has “a problem with alcohol[,]” the Individual stated that after reflecting on the matter, he “believe[s] he] did[,]” and that was why he stopped consuming alcohol. Tr. at 64.

According to the Individual, since the start of the Covid-19 pandemic, he has been exercising more, spending more time at home, and reading. Tr. at 61. Further, he testified, he interacts with fewer people since abstaining from alcohol, and although he frequents restaurants where alcohol is served and one of his brothers consumes alcohol in significant amounts, he no longer experiences any difficulty being around others who consume alcohol. Tr. at 61-62.

The Individual acknowledged that his prior involvement with law enforcement was the result of “mak[ing] a bad decision [and] driving home” after consuming alcohol in social settings. Tr. at 62-63. Since 1996, the Individual has not had any alcohol-related interactions with law enforcement. Tr. a 64. However, he did acknowledge that on some occasions where he did consume alcohol and drive, he did not realize that he had been intoxicated. Tr. at 69-72.

The Individual’s former supervisor testified that he worked with the Individual daily for approximately 20 years and considers the Individual a friend. Tr. at 12-15. He testified that he had never known the Individual to report to work “under the influence of alcohol[.]” or fail to report to work due to excessive alcohol consumption. Tr. at 18. The Individual’s former supervisor confirmed that while they would drink together on occasion, he never had any concerns with the amount of alcohol the Individual consumed and never saw the Individual drink to a state of intoxication. Tr. at 18-20, 25-26. The Individual’s former supervisor also testified that the Individual had informed him of a past alcohol-related infraction. Tr. at 20, 24.

The Individual’s coworker, who occasionally resides with the Individual and sees him approximately “three to four days a week[,]” testified that based on the questions she was asked by OPM investigators, she surmised that there was some concern about the Individual’s alcohol consumption. Tr. at 35-37. Although the Individual’s coworker stated she has seen the Individual consume alcohol, she confirmed that she has never known the Individual to report to work “under the influence” of alcohol or miss work due to alcohol. Tr. at 38-39. Further, she had not witnessed the Individual consume an alcoholic beverage “in a really long time” and testified that in October 2021, the Individual told her he was abstaining from alcohol. Tr. at 39-41. The Individual’s coworker indicated that she never had any concerns over the amount of alcohol the Individual was consuming. Tr. at 41. She also testified that the Individual has considered seeking therapy and she deduced from their conversations that alcohol is “not something [the Individual] has to have in his

life.” Tr. at 42-43. During the time she lived with the Individual, she observed that the Individual had gone “through spells where he [does not] drink as often,” and further, she has never seen the Individual engage in “excessive drinking” or drink to intoxication. Tr. at 43-44. She also confirmed that she has never seen the Individual drink and drive, and stated that he has hobbies, such as exercising, cooking, and volunteering with animal shelters. Tr. at 45, 48-49.

The DOE Psychologist testified that although the Individual did exhibit some defensiveness during his evaluation, he found the Individual to be quite candid, so “it did not rise to a point of concern[.]” Tr. at 87. However, he testified that he made several observations during the evaluation that ultimately resulted in the conclusion that the Individual habitually drinks alcohol to the point of impaired judgement, even though the Individual’s arrests took place decades ago. Tr. at 89-90. Among these observations were:

[The Individual] did not abstain completely from alcohol use, even following any of the arrests . . . . My concerns began to double when he struggled to describe or define "intoxication" or "feeling buzzed." He actually made "buzzed" a notch above and beyond intoxication itself. He did not acknowledge or discuss the mental memory, cognitive decision-making component of being intoxicated. Another thing that concerned me, led toward my ultimate recommendations, was that somewhere along the way, rather than to not drink and drive, he told me he had done that on numerous other occasions that did not result in any negative consequence. But he did choose to go out on his own and purchase a piece of equipment that reportedly measures breath alcohol.

Tr. at 89.

The DOE Psychologist also testified that he “[could not] help but recognize that the [Individual’s] drinking had not gone away, other than the six or eight weeks before [the psychological] evaluation.” Tr. at 90. The fact that the Individual’s PEth test results indicated only that the Individual had not had a binge drinking episode in the prior three weeks “left [the DOE Psychologist] thinking that [there is] simply more need for education[,]” a belief which resulted in the specific recommendations he made in the report. Tr. at 91-92. At the conclusion of his testimony, the DOE Psychologist indicated that despite the Individual’s friends being a good support system, he does not believe the Individual has shown adequate evidence of rehabilitation or reformation. Tr. at 92-93.

## **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).

Based on the record before me, I cannot conclude that the Individual has mitigated the Guideline G concerns as stated in the SSC. As an initial matter, the record indicates that the Individual failed to implement any of the DOE Psychologist's treatment recommendations, and at the hearing, the DOE Psychologist restated his opinion that the Individual has not shown adequate evidence of rehabilitation or reformation.

While it is true that the Individual's last alcohol-related charge took place decades ago, the Individual continued to consume alcohol into the recent past, even reporting to the OPM investigator as late as April 2021 that he was consuming alcohol to intoxication at an approximate rate of once a week. Ex. 8 at 61. This fact, taken with the Individual's history of alcohol-related arrests, leads me to the conclusion that the behavior in question, the Individual's habitual use of alcohol to the point of impaired judgment, did not occur so long ago or take place under such unusual circumstances that it does not cast doubt on the individual's current reliability, trustworthiness, or judgment.

Although the Individual testified that he believes his alcohol consumption was maladaptive and that he has been abstinent from alcohol since October 2021, the Individual has not mitigated the Guideline G concerns pursuant to mitigating factor ¶ 23(b). Other than the PEth test the Individual took in conjunction with the December 2021 psychological evaluation, the record is bereft of any ongoing testing to objectively corroborate the Individual's assertion that he has remained sober since October 2021. Further, at the time of the hearing, the Individual's claimed sobriety is approximately 10 months as of the date of the hearing. Therefore, I cannot conclude that the Individual has demonstrated a clear and established pattern of abstinence pursuant to the DOE Psychologist's treatment recommendations.

The record also establishes the fact that the Individual has failed to participate in any kind of a treatment program, therapy, or counseling, nor any accompanying aftercare. Accordingly, the Individual has not mitigated the stated Guideline G concerns pursuant to factors ¶ 23(c) and (d).

## **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 not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter and accompanying SSC. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should not be granted. 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  
Department of Energy