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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: April 21, 2022 ) Case No.: PSH-22-0074  
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Issued: August 2, 2022

**Administrative Judge Decision**

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”<sup>1</sup> As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should be restored.

**I. Background**

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. As part of a clearance process, the Individual completed and signed a Questionnaire for National Security Positions (QNSP) on April 7, 2019. In the QNSP, the Individual disclosed a Driving Under the Influence (DUI) charge in August 2011. Exhibit (Ex.) 10 at 33. The concerns associated with that incident were mitigated and the Individual was granted an access authorization. Ex. 8 at 6.

In the early morning hours of July 6, 2021, law enforcement personnel reported to assist the Individual, as the Individual’s “vehicle was [seen] off the roadway.” Ex. 6 at 2. Law enforcement personnel observed that the Individual smelled of alcohol, exhibited slurred speech, and experienced “difficulty maintaining balance.” Ex. 6 at 2. The Individual “performed poorly” when a field sobriety test was conducted. Ex. 6 at 2. Accordingly, the Individual was arrested and charged with Driving Under the Influence. Ex. 6 at 2. An alcohol breathalyzer test administered at the local detention center registered a result of .131 g/210L. Ex. 6 at 2; Ex. 7 at 2; Ex. 8 at 2. The

<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 reported the July 6 incident the local security office (LSO) the next day on July 7, 2021. Ex. 6 at 1.

In July 2021, the Individual underwent an evaluation in connection with his Human Reliability Program (HRP) certification.<sup>2</sup> Ex. 8 at 5. The substance abuse provider who evaluated the Individual diagnosed him with Alcohol Use Disorder (AUD), Mild. Ex. 8 at 5. The provider recommended that the Individual complete 20 hours of Alcoholics Anonymous (AA) meetings and that he complete five hours of individual counseling. Ex. 8 at 5; Tr. at 64, 66, 80. The Individual was also asked to complete “education related to substance use disorder and disease progression[.]” Ex. 8 at 5. The Individual completed all these requirements. Ex. 8 at 5; Ex. B; Ex. 7 at 3-4, 8-9.

As a result of the July 7 self-report, The local security office (LSO) requested that the Individual complete a Letter of Interrogatory (LOI), which the Individual signed and submitted on September 25, 2021. Ex. 7. At the time the Individual completed the LOI, he had not yet attended his scheduled court date. Ex. 7 at 3-4. He stated in the LOI that he “[had] not consumed alcohol since the night of July 5, 2021.” Ex. 7 at 5.

Based on the answers provided in the LOI, the Individual was instructed to undergo a psychological evaluation with a DOE-consultant Psychologist (DOE Psychologist). Ex. 8. The DOE Psychologist produced a report of her findings on January 10, 2022.<sup>3</sup> Ex. 8. In forming her clinical assessment of the Individual, the DOE Psychologist relied on the information she obtained in her interview with the Individual, as well as her 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. 8 at 3. During his interview with the DOE Psychologist, the Individual disclosed his 2011 DUI arrest and that pursuant to that arrest, he was given a breathalyzer test, which indicated his blood alcohol content (BAC) was over the legal limit. Ex. 8 at 4. The Individual stated that he disposed of that matter “by mail” and indicated the “arrest [was] no longer on his record.”<sup>4</sup> Ex. 8 at 4. The Individual reported that his heaviest period of alcohol consumption was in 2013, but that by 2015, his alcohol consumption had decreased. Ex. 8 at 4. From 2015 to the present, the Individual reported consuming alcohol “approximately once per month when he would typically consume one or two beers with dinner and rarely more.” Ex. 8 at 4. He did, however, also report drinking to intoxication on “special occasions.” Ex. 8 at 4. The Individual also recounted the events that resulted in his most recent DUI arrest and informed the DOE Psychologist that he finds AA

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<sup>2</sup> Because the Individual has an HRP certification, he is subject to random breath alcohol and drug testing. The Individual submitted the results of these tests as hearing exhibits, ranging from 2019 through 2021. The results of all these tests were negative for alcohol. Ex. C; Ex. D at 3-4.

<sup>3</sup> A Phosphatidylethanol (PEth) blood test was administered in conjunction with the psychological evaluation. The PEth test was negative, indicating that the Individual “ha[d] not been drinking on a regular, heavy basis within a few weeks of the test, and ha[d] not had a binge drinking episode or a pattern of moderate drinking within about one week of the test.” Ex. 8 at 5.

<sup>4</sup> The Individual testified that after his first DUI in 2011, he learned to accept rides from designated persons or hire taxicabs when he drank alcohol. *See* Transcript of Hearing, Case No. PSH-22-0074 (hereinafter cited as “Tr.”). Tr. at 70. However, regarding the impact the 2011 DUI had upon him, he stated that “the consequences were really slim” and that it was as though “everything was just swept underneath the rug and forgot about[.]” Tr. at 72.

meetings helpful, but that at the time of the evaluation, “he had not been to [an AA] meeting in approximately two months.” Ex. 8 at 4-5.

In her January 10, 2022, report (Report) regarding her evaluation of the Individual, the DOE Psychologist noted that the Individual “continues to deny that he has (or has had) a problem with alcohol[.]” Ex. 8 at 6. The DOE Psychologist diagnosed the Individual with AUD, Moderate, and indicated that he was in early remission. Ex. 8 at 6. She found that the Individual did not have a favorable prognosis at that time, and she recommended that the Individual remain abstinent for a period of twelve months, and that breathalyzer tests given to the Individual by his employer “should be ‘supported’ by at least two PETH tests” over a twelve-month period. Ex. 8 at 9-10. The DOE Psychologist also recommended that the Individual attend weekly AA (or a similar program) meetings. Ex. 8 at 10.

Due to the unresolved security concerns raised by the DOE Psychologist’s evaluation and the Individual’s alcohol-related arrests, 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 and that his clearance had been suspended. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual that 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, and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of his supervisor and his wife. He also submitted seventeen exhibits, marked as Exhibits A through Q. The DOE Counsel submitted eleven exhibits marked as Exhibits 1 through 11.

## **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 “[d]iagnosis by a duly qualified medical or mental health professional...of alcohol use disorder[.]” Adjudicative Guidelines at ¶ 22(a) and (d). With respect to Guideline G, the LSO alleged that on December 27, 2021, the DOE Psychologist evaluated the Individual and stated in her subsequent Report that she diagnosed the Individual with “[AUD], Moderate, without adequate evidence of rehabilitation or

reformation.” Ex. 1 at 1. The LSO also cited the Individual’s DUI arrests on July 6, 2021, and September 10, 2011. Ex. 1 at 1. Given the DOE Psychologist’s diagnosis and the Individual’s two alcohol-related arrests, the LSO had sufficient grounds to invoke 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**

The Individual does not deny the underlying facts in the summary of security concerns, and he testified that he believes “alcohol was a problem for [him].” Tr. at 64, 92. Further, he acknowledged that the 2021 DUI arrest was not the first time “alcohol...led to bad decisions for [him].” Tr. at 93. Furthermore, after reflecting on his circumstances, he came to agree with the diagnosis of AUD and described the situation as an “eye-opener.” Tr. at 106-107.

On July 5, 2021, the Individual and his wife took separate vehicles to attend a social event at a friend’s home. Tr. at 42. The Individual’s wife disclosed that she does not consume alcohol and that, under normal circumstances, she would be the one to drive them home in the same car in the event the Individual had consumed alcohol, but because they had driven separately, she could not do that. Tr. at 42, 48, 54. In the early morning hours of July 6, the Individual was held in detention for four hours pursuant to his DUI arrest, and upon his release, he proceeded to report the incident to local security officials and his supervisor. Tr. at 17, 66. His supervisor noted the Individual’s remorse, stating that the Individual “told [him] he messed up, he made a bad decision, and he was...very embarrassed by what had happened, and what it meant to his family.”<sup>5</sup> Tr. at 17-18. The Individual testified that his wife came to retrieve him from the detention center, and he felt

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<sup>5</sup> Letters submitted by character witnesses also state that the Individual “expressed regret” and feelings of remorse regarding the incident, and was taking measures “to make things right.” Ex. J; Ex. I; Ex. K; Ex. L; Ex. M.

“disappointed” and “knew there [were] going to be a lot of consequences.” Tr. at 67. The Individual testified that he has faced more consequences from the 2021 DUI than the 2011 DUI. Tr. at 74. Specifically, the fallout from the 2021 DUI “has...been a big burden[.]” for his family to bear. Tr. at 74. His wife also testified that the Individual expressed remorse about his circumstances after the incident, that he has taken responsibility for his actions, and that she supports the decisions he is making regarding alcohol. Tr. at 38, 42; Ex. P. She indicated that the Individual’s father, brothers, and close cousins have shown their support and they have all been made aware of the DUI. Tr. at 44-46. The Individual’s wife also testified that the Individual is trustworthy and of good character. Tr. at 43; Ex. P.

The Individual testified that, in addition to completing the five individual counseling sessions recommended by the substance abuse provider in July 2021, he voluntarily attended two more sessions with the same counselor. Tr. at 85; Ex. B. He also testified that the substance abuse provider recommended that the Individual discontinue consuming alcohol. Tr. at 66. The Individual informed his wife of the recommendation and testified that he had not consumed any alcohol since the day of the incident, which his wife confirmed.<sup>6</sup> Tr. at 34, 65-66; Ex. P.

The Individual, who identifies himself as an alcoholic at AA meetings, testified that “there was a gap” in his AA attendance after he completed the 20 hours of AA meetings the substance abuse provider recommended. Tr. at 87, 111. The Individual resumed attending AA meetings again after he received the DOE Psychologist’s report. Tr. at 87. He tries to attend at least one in-person AA meeting every week, a fact that was confirmed by the Individual’s wife. Tr. at 35, 87. At the time of the hearing, the Individual had attended approximately 27 AA meetings since March 2022. Ex. H. In addition to attending AA meetings, the Individual listens to the AA “Big Book” on audio during any “downtime at work.” Tr. at 83-84; Ex. G. At the time of the hearing, the Individual had received AA chips marking 90 days of sobriety, two months of sobriety, and one year of sobriety. Tr. at 89. Although the Individual has not engaged an AA sponsor, he finds the AA meetings helpful. 89-90. The individual has also voluntarily submitted to four PEth tests, once in April 2022, once in May 2022 and twice in June 2022, all of which were negative. Tr. at 82-83; Ex. A; Ex. D at 1-2; Ex. E; Ex. F; Ex. Q.

Since abstaining from alcohol, the Individual has been in situations where alcohol is customarily consumed in a social manner. Tr. at 75, 82. The Individual stated that he has not had any difficulties while being in the presence of alcohol, and he has not found it difficult to remain sober because, according to his testimony, he did not need to consume alcohol on a daily basis even when he was consuming alcohol. Tr. at 75-76. The Individual testified, and his wife confirmed, that he has adopted new hobbies and has incorporated friends into his life who engage in family-oriented activities. Tr. at 76-77, 81, 37-40. The Individual’s wife testified that because of the Individual’s sobriety, certain people have been “cut out” of their inner circle. Tr. at 37. Regarding his future plans, the Individual believes he will be able to consume alcohol responsibly and stated that he would like to attend something like a “baseball game and have a drink or two[.]” Tr. at 79, 91. When that time comes, he intends to plan accordingly and secure appropriate transportation, like a ride share or public transportation. Tr. at 79. The Individual’s wife also indicated that although

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<sup>6</sup> His wife felt confident in confirming this sobriety date because the Individual has never hidden his alcohol consumption from her, and further, she has some understanding of how the Individual presents when he is consuming alcohol. Tr. at 34-35.

it is clear the Individual “needs to make better decisions[,]” she feels he would be “fine” if he began drinking again in the future. Tr. at 52.

The Individual’s supervisor testified that he did not have any concerns over the Individual’s judgement and indicated that the Individual has “earned [his] trust.”<sup>7</sup> Tr. at 14-16. He testified that the Individual has never reported to work either smelling of alcohol or in a “hung-over” state.<sup>8</sup> Tr. at 16. Further, the Individual has never given his supervisor a reason to believe that he should be tested for alcohol or drugs. Tr. at 16. His supervisor has also noticed that the Individual has matured within the last year and is respected by his coworkers. Tr. at 21.

At the hearing, the DOE Psychologist testified that she determined that the Individual met the diagnostic criteria for AUD, Moderate, and further, that at the time she evaluated him, he was in early remission. Tr. at 118. The DOE Psychologist stated that although AA recommends abstinence, she also referenced in her Report other support groups that would be equivalent to AA that do not mandate total abstinence. Tr. at 123. Based on the information presented to her, the DOE Psychologist indicated that she believes the Individual has “created his own program for setting that goal of...very occasional controlled drinking.” Tr. at 125. At the hearing, the DOE Psychologist determined that the Individual had shown adequate evidence of rehabilitation and reformation, and that the Individual’s prognosis is good and his chance of relapse is minimal. Tr. at 125-28.

## V. Analysis

The Adjudicative Guidelines provide that an individual may mitigate Guideline G concerns if “[t]he 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[.]”<sup>9</sup> Adjudicative Guidelines at ¶ 23(b).

Although the DOE Psychologist noted in her Report that the Individual had some doubt about whether he had an issue with alcohol, the Individual’s feelings on the matter have changed. After reflecting on the matter, the Individual accepted and acknowledged his maladaptive alcohol use. Not only has the Individual remained abstinent since the incident, as corroborated by witness testimony and the objective test results, the Individual has attended AA meetings on a regular basis since March 2022 and has engaged with the AA “Big Book.” He also expeditiously completed all the treatment sessions recommended by the substance abuse counselor and has attended two additional sessions on top of those. He was also transparent about the circumstances surrounding his alcohol misuse with the important people in his life, and now enjoys a strong support network in his wife and close family members. The Individual has also made changes to his social life and

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<sup>7</sup> Letters from character witnesses also assert that there is no reason to doubt or question the Individual’s trustworthiness, reliability, or good judgement. Ex. J; Ex. I.

<sup>8</sup> Letters from character witnesses also assert that the Individual has never presented to work in an intoxicated or hungover state. Ex. K; Ex. M; Ex. O.

<sup>9</sup> I have not addressed the mitigating factors at ¶ 23(a), (c), and (d) as these mitigating factors are not applicable in this case.

taken up new hobbies to better ensure his continued sobriety. Importantly, the DOE Psychologist testified that the Individual had shown adequate evidence of rehabilitation and reformation, that he had a good prognosis, and that his chances of relapse are minimal. Accordingly, I find that the Individual has mitigated the Guideline G concerns stated in the Notification Letter pursuant to ¶ 23(b).

## **VI. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, the Individual has demonstrated that 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 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  
Department of Energy