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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: June 9, 2022) Case No.: PSH-22-0104
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Issued: August 12, 2022

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXX (hereinafter referred to as “the Individual”) to hold an 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.”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 not be restored.

I. Background

The Individual has a history of five alcohol-related arrests. On August 28, 1992, and September 20, 1993, police arrested and charged the Individual with Minor In Possession of Alcohol. Exhibit (Ex.) 3 at 3. On May 10, 1993, police arrested and charged the Individual with Illegal Consumption of Alcohol. Ex. 3 at 3. In May 1996, police arrested and charged the Individual with Driving Under the Influence (DUI). Ex. 3 at 3; Ex. 6 at 5. The Individual subsequently discontinued the use of alcohol for 17 years. Ex. 3 at 1. At some point, the Individual began using alcohol again, and 24 years after his first DUI, on January 9, 2021, police arrested and charged the Individual with DUI, Open Container, and Resisting Arrest.² Ex. 7 at 1; Ex. 6 at 4.

¹ Under the regulations, “[a]ccess 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.

² The document which specifically identifies the derogatory information that the LSO relied upon in determining that the Individual is not eligible to hold a security clearance, the Summary of Security Concerns (SSC), states that this arrest occurred on January 13, 2021. Summary of Security Concerns at 2. The arrest report indicates that the arrest occurred on January 9, 2021. Ex. 7 at 1.

As a result of the Individual's second DUI arrest, a local security office (LSO) issued a Letter of Interrogatory (LOI) to the Individual. The Individual submitted his response to the LOI on August 4, 2021. Ex. 6 at 1. In this response, the Individual indicated that he was in a court-ordered treatment program that included individual and group counseling. Ex. 6 at 4. He further reported that he had been sentenced to one year of probation for Inattentive Driving. The Individual also admitted, in this response, that he had violated this probation by consuming alcohol. Ex. 6 at 4-5. The Individual stated that that he had since stopped using alcohol, was abiding by his probation, and last used alcohol on July 7, 2021. Ex. 6 at 7-8. He acknowledged that he has a problem with alcohol and asserted that he was trying to abstain from further alcohol use. Ex. 6 at 9. The Individual also admitted that he had operated a motor vehicle under the influence of alcohol on several occasions. Ex. 6 at 8.

The LSO subsequently requested that the Individual undergo an evaluation by a DOE-contracted Psychologist (Psychologist), who conducted a clinical interview (CI) of the Individual on November 29, 2021. Ex. 3 at 1. In addition to interviewing the Individual, the Psychologist reviewed the Individual's security file, administered the Minnesota Multiphasic Personality Inventory – Third Edition (MMPI-3) to the Individual, and had him undergo a Phosphatidylethanol (PEth) laboratory test to detect alcohol consumption. Ex. 3 at 2. The Individual's PEth test result was positive, indicating that the Individual had engaged in moderate to heavy alcohol consumption during the previous three to four weeks. Ex. 3 at 6. The test results from the MMPI-3 administered to the Individual indicated that the Individual may have clinically significant elevated tendencies to worry and act impulsively. Ex. 3 at 6. The Psychologist issued a report of his findings (the Report) on December 27, 2021. Ex. 3 at 8. In the Report, the Psychologist found that the Individual had met the criteria for Alcohol Use Disorder, Moderate-Severe (AUD), set forth in the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5) and that the Individual was neither reformed nor rehabilitated. Ex. 3 at 6-7. The Psychologist recommended that the Individual completely abstain from alcohol use and continue his participation in individual and group counseling for at least one more year. Ex. 3 at 8. The Psychologist further opined that the Individual's prognosis was "poor." Ex. 3 at 8.

After receiving the Report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him 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 the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual, his spouse, his Alcoholics Anonymous (AA) sponsor (Sponsor), his probation officer (PO), his former counselor (Counselor), and the Psychologist. *See* Transcript of Hearing, Case No. PSH-22-0104 (hereinafter cited as "Tr."). The Individual submitted one exhibit marked as Exhibit A. The DOE Counsel submitted eight exhibits marked as Exhibits 1 through 8.

Exhibit A is a laboratory report indicating that tests for “CDT,” “Transferrin,” and “%CDT” administered to the Individual on July 5, 2022, were “within normal limits.” Ex. A at 1. The test panel was identified as “Transferrin, Carbohydrate-deficient (Alcohol Abuse).” Ex. A at 2.

II. The Summary of Security Concerns

The SSC informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines, citing the Psychologist’s finding that the Individual met the DSM-5 criteria for AUD. This information adequately justifies the LSO’s invocation of Guideline G. Under Guideline G, “[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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are “alcohol-related incidents away from work, such as driving while under the influence . . . regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder,” and “diagnosis by a duly qualified . . . clinical psychologist . . . of alcohol use disorder.” Adjudicative Guidelines at ¶ 22(a) and (d).

The LSO also invoked Guideline J (Criminal Conduct) in the SSC, citing the Individual’s five alcohol-related arrests, admission that he operated motor vehicles under the influence of alcohol, and admission that he had consumed alcohol in violation of his probation requirements.³ This information adequately justifies the LSO’s invocation of Guideline J. Guideline J provides that “[c]riminal activity creates doubt about a person’s judgement, 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 also invoked Guideline E (Personal Conduct) in the SSC. Specifically, the SSSC alleges:

While your previous alcohol related illegal activities took place 25-30 years ago, you have a history of using alcohol illegally and driving while intoxicated. This history should have made you more cautious regarding drinking and illegal activities. This leads to concerns regarding the “whole person” concept.

You had only resumed alcohol consumption for 8 months (resumed use in 5/20 and charged with DUI in 1/21) when you were driving after consuming 12 beers, drinking all day, and had an open container in your vehicle. This conduct, in addition to your continued use of alcohol despite probationary requirements and your own statements that you intended to stop, lead to concerns regarding the “whole person” concept.

[The Psychologist] also expressed a concern about immature or impulsive behavior on your part as evidenced by employment issues in 2016, continuing to consume

³ While in some states probation violations are considered to be civil matters, probation violations are considered to be criminal violations in the state in which the Individual resides.

alcohol in a binge pattern due to family stress, and continuing to drink and drive. While there is no mental health diagnosis, [the Psychologist] expressed a concern that this conduct may be related to your continuing to drink and drive and violate probation This also leads to concerns regarding the “whole person” concept.

SSC at 3. The Individual’s criminal conduct, alcohol consumption, and psychological issues described in these three paragraphs are all explicitly covered under Guidelines G, I,⁴ and J and therefore were not appropriately raised under Guideline E. Guideline E at ¶ 16(d) (Guideline E’s catch all provision, ¶ 16(d) does not apply to adverse information that is explicitly covered by another guideline). Therefore, this information does not adequately justify the LSO’s invocation of Guideline E. Moreover, the decision below fully addresses the derogatory information cited under Guideline E in the SSC in its analysis of the other three guidelines cited in the SSC.

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 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.

IV. Hearing

At the hearing, the Individual presented the testimony of five witnesses, including himself, to show that he was reformed and rehabilitated in order to mitigate the security concerns raised by his five alcohol-related arrests and his AUD.

⁴ Guideline I pertains to psychological conditions, and applies when “[c]ertain emotional, mental, and personality conditions can impair judgement, reliability, or trustworthiness.” Adjudicative Guidelines at ¶ 27. “A formal diagnosis of a disorder is not required for there to be a concern under this guideline.” Adjudicative Guidelines at ¶ 27. Guideline I specifically applies to impulsive behavior that does not warrant a formal psychiatric diagnosis. Adjudicative Guidelines at ¶ 28(a). The LSO did not cite Guideline I in the Summary of Security Concerns.

The Counselor testified at the hearing that he had previously provided substance abuse counseling to the Individual for “eight or nine months” to “help him comply with probation.” Tr. at 14-15. They met on a weekly basis. Tr. at 15. The Individual also participated in two substance abuse groups. Tr. at 15. During this therapy, the Counselor testified, they:

focused on him learning to become more self-aware of early signs that he could be potentially having a struggle, learning to recognize the stressors and symptoms and triggers that in the past would have led him to perhaps drinking or other maladaptive coping and finding ways to develop skills or techniques, or use and develop supports to help him manage these symptoms in earlier stages and finding healthier ways to cope with difficulties he encounters.

Tr. at 16.

The Counselor opined that Individual used alcohol to cope with stress. Tr. at 17. While he was counseling the Individual, the Individual had a “slip” in March 2022, however, the Counselor did not consider this use of alcohol to be a relapse. Tr. at 17. The Counselor testified that the Individual “got to a point where he was remaining sober using his family support, social supports, and engaging in some community-based events to help him find ways to be happy, have joy, and remain sober.” Tr. at 18. The Counselor opined that the Individual “was doing quite well when we last met approximately the first of June.”⁵ Tr. at 19. According to the Counselor, the Individual stopped minimizing and began taking ownership of his problems, holding himself accountable, and began understanding how his actions affected those around him. Tr. at 20. He believes that the Individual has learned to reach out to others for help and support. Tr. at 20. The Counselor reported that the Individual has begun to attend Alcoholics Anonymous (AA) meetings. Tr. at 26, 29. The Counselor opined that the Individual has “a wonderful, wonderful outlook to remain sober and continue moving forward as long as he continues to use the supports that he’s found.” Tr. at 30.

The PO testified on the Individual’s behalf. He began supervising the Individual’s probation in July 2021. Tr. at 34-35. The Individual is required to abstain from alcohol use, attend treatment, and meet with the PO. Tr. at 37-38. The PO testified that the Individual has tested positive for alcohol on two occasions during his probation, on March 1, 2022, and in July 2021, which led to his probation being extended. Tr. at 35-36, 47. Other than these instances of alcohol use, the Individual has complied with the requirements of his probation and been cooperative. Tr. at 38. The PO believes that the Individual is committed to his sobriety. Tr. at 43. He further opined that the Individual’s relationship with his wife has improved since he became sober. Tr. at 41.

The Individual’s wife testified that the Individual had gone 17 years without using alcohol but began using alcohol again when faced with stressful events. Tr. at 62-63. The Individual’s wife testified that the Individual has changed since his last DUI. Tr. at 53. She testified that the Individual “is trying a lot harder” and making progress. Tr. at 53. He has become “a lot more open” and handles stress better. Tr. at 53, 58. She observed that the Individual has acquired skills to deal with stressors and has found better ways to cope with his stress. Tr. at 58, 63. When he experiences stress, he seeks her out to discuss his stressors. Tr. at 53. She recounted a recent

⁵ The Counselor stopped treating the Individual when the practice that employed the counselor shut down. Tr. at 23.

family crisis that was extremely stressful which the Individual handled well. Tr. at 53. He attends at least two AA meetings every week. Tr. at 53. She usually attends with him. Tr. at 53. The lessons he has been learning in AA have helped him face stressful situations in a more appropriate, calm, and productive manner. Tr. at 53. He has been working on Step Seven of the AA program for a while. Tr. at 64. The Individual has changed who he socializes with and his friends from AA have become the focus of his social life. Tr. at 57. He has a good support system. Tr. at 63. He has some close friends through AA, his volunteer work, and his faith community. Tr. at 63. He is very committed to his family and his sobriety. Tr. at 61-62. He is now a better husband and father. Tr. at 62.

The Sponsor testified that he has known the Individual for five to seven months. Tr. at 73. The Sponsor has observed real change in the Individual. Tr. at 80. He testified that the Individual is “doing really well.” Tr. at 74. He believes that the Individual is very committed to his sobriety. Tr. at 77. He testified that the Individual is “very humble” and is “accepting responsibility for what he has done.” Tr. at 74, 77. The Individual is also doing better at managing his stressors. Tr. at 79. The Individual regularly attends his AA meetings and puts a lot of effort into maintaining his sobriety. Tr. at 75. The Individual enthusiastically participates in his AA meetings, and he is working on the fourth step of AA’s 12-Step Program. Tr. at 75. The Individual has had one relapse, but the Sponsor stated that he would be surprised if the Individual would relapse again. Tr. at 76-77. The Sponsor and his wife are friends with the Individual and his wife. Tr. at 76.

The Individual testified that he last used alcohol on February 28, 2022. Tr. at 83. He testified that he is working on being able to recognize the feelings that lead him to drinking and to express himself in order to better manage his frustrations and avoid feeling overwhelmed. Tr. at 85. He has learned to reach out to his support system when confronted with those feelings. Tr. at 88. The Individual testified, “I feel I’m actually in a fairly good place right now. And with my wife and my AA group, I feel like I’m handling things in a lot more productive manner.” Tr. at 88. The Individual described himself as an “alcoholic” and testified that he intends to permanently abstain from alcohol use and to continue AA for the rest of his life. Tr. at 94-95. Until about two months before the hearing, the Individual had been required to be tested for alcohol use twice a day. Tr. at 96. The Individual admitted he had been drinking and driving during the period leading up to his last DUI. Tr. at 99-100.

The Psychologist observed the testimony of each of the other witnesses at the hearing before testifying himself. The Psychologist testified that he no longer believes that the Individual’s prognosis is “poor” as he had opined in his report. Tr. at 109. The Psychologist summarized his conclusions after hearing the other witnesses’ testimony by stating:

I think he’s doing all the things that he needs to do, and I think his heart is in it, his mind is in it. I think the testimony of his wife was convincing, and I think his sponsor may be somebody he can rely on. He seems to have understood that over the last five months he really can’t drink. And if he does, he blows it. And he gets his wife upset. He risks his job, and so forth. So I think he’s on a good -- a really good path. I would raise that now to that if prognosis is defined as his drinking to intoxication within the next year, I’d say that’s probably less than -- the probability of him doing it is not real high. I would say less than 40 or so percent, given some

kind of qualification. So there's probably a 60 or so percent chance that he will be sober.

Tr. at 109. The Psychologist further testified that the Individual is now in early remission, opining: "I think that now he's on as good of path as he could be on and to not drink." Tr. at 110.

When the Psychologist was questioned about the significance of the fact that the Individual had only been sober for five months, he replied: "He has not shown a long enough time of being able to work on those stresses to satisfy me." Tr. at 113. However, citing testimony in the record concerning the Individual's ability to remain sober and well-grounded when faced with a recent family crisis that was extremely stressful, the Psychologist stated: "That gives me a little more confidence that five months, maybe in his case, is enough." Tr. at 113. Nevertheless, the Psychologist found the Individual's relapse in February to be "worrisome." Tr. at 113-114.

V. Analysis

The Individual has clearly recognized the scope and seriousness of his AUD. It is also clear that he is highly committed to maintaining his sobriety. Moreover, the Individual has built a strong support system and sober social network. For the past five months, the Individual has been doing everything he should be doing to address his alcohol problem. However, at the time of the hearing, the Individual had only been sober for five months.⁶ Given the Individual's history, where he first returned to using alcohol after a 17-year hiatus, and then recently used alcohol twice in violation of his probation requirements, while being constantly monitored for alcohol use, I find that this short period of sobriety is not sufficient to demonstrate a clear and established pattern of abstinence.

Guideline G

The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if they can show "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." Adjudicative Guidelines at ¶ 23(a). In the present case, the Individual's alcohol consumption occurred as recently as February 28, 2022. As discussed at length above, his maladaptive alcohol use has been a recurring event as evidenced by his history of five alcohol-related arrests and two alcohol-related parole violations. While the Individual is taking the necessary actions to address his AUD, he has only been sober for five months, which is too short a period to allow me to conclude that further alcohol use by the Individual is unlikely to recur. Accordingly, the Individual has not shown that the mitigating conditions set forth in ¶ 23(a) are present in the instant case.

The Adjudicative Guidelines further provide that an individual may mitigate security concerns under Guideline G 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

⁶ While the Counselor dismissed the Individual's use of alcohol on February 28, 2022, as a "slip" rather than a relapse, the Individual's use of alcohol in violation of his probation when he was aware that he was subject to regular alcohol detection tests showed that, as recently as February 28, 2022, he was unable to control his alcohol use.

recommendations.” Adjudicative Guidelines at ¶ 23(b). In the present case, the Individual has acknowledged his pattern of maladaptive alcohol use and has taken the appropriate steps to overcome his AUD. However, for the reasons discussed above, he has not demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations. Accordingly, the Individual has not shown that the mitigating conditions set forth in ¶ 23(b) are sufficiently present in the instant case.

The Adjudicative Guidelines also provide that an individual may mitigate security concerns under Guideline G if “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.” Adjudicative Guidelines at ¶ 23(c). In the present case, the Individual has been participating in counseling and a treatment program and he has clearly made progress. However, as discussed above, the Individual has a recent history of repetitive relapse. Accordingly, the Individual has not shown that the mitigating conditions set forth in ¶ 23(c) are present in the instant case.

The Adjudicative Guidelines also provide that an individual may mitigate security concerns under Guideline G if “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(d). In the present case, the Individual has completed a treatment program, however, the Individual has not provided sufficient evidence to demonstrate a clear and established pattern of abstinence in accordance with treatment recommendations. Accordingly, the Individual has not shown that the mitigating conditions set forth in ¶ 23(d) are present in the instant case.

For the reasons discussed above, the security concerns raised by the Individual’s AUD diagnosis under Guideline G have not yet been resolved.

Guideline J

The Individual’s criminal activity concerns are inextricably linked to his AUD. All five of his arrests, his two probation violations, and his operation of a motor vehicle while under the influence of alcohol, involved alcohol and were clearly symptomatic of his AUD. Moreover, the Individual’s recent and repetitive use of alcohol in violation of his probation requirements provides an additional example of the Individual’s AUD causing him to engage in criminal activity. Since the Individual has not convincingly shown that he is rehabilitated or reformed from his AUD, I find that the Individual has not yet shown that the root cause of his criminal activity has been successfully addressed.

An individual may mitigate security concerns under Guideline J if they can show that “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.” Adjudicative Guidelines at ¶ 32(a). In the present case, the Individual’s alcohol use which has been the root cause of his criminal activity has occurred as recently as February 28, 2022. The Individual’s criminal activity has also been recurrent, with five alcohol-related arrests and two parole violations, therefore it does not constitute an “unusual circumstance.” Until the Individual’s AUD has been shown to be successfully addressed, I am not

convinced it is unlikely to recur. Accordingly, the Individual has not shown that the mitigating conditions set forth in ¶ 32(a) are present in the instant case.

An individual may also mitigate security concerns under Guideline J if “the individual was pressured or coerced into committing the act and those pressures are no longer present in the person’s life.” Adjudicative Guidelines at ¶ 32(b). In the present case, there is no evidence that the Individual was pressured or coerced into engaging in his alcohol-related criminal activity. Accordingly, the Individual has not shown that the mitigating conditions set forth in ¶ 32(b) are present in the instant case.

An individual may also mitigate security concerns under Guideline J if there is “no reliable evidence to support that the individual committed the offense.” Adjudicative Guidelines at ¶ 32(c). In the present case, the Individual does not deny the circumstances which led to his alcohol-related arrests. Accordingly, the Individual has not shown that the mitigating conditions set forth in ¶ 32(c) are present in the instant case.

An individual may also mitigate security concerns under Guideline J if “[t]here 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(d). In the present case, rehabilitation would need to be in the form of rehabilitation from his AUD. The Individual has not shown that he is rehabilitated from his AUD. Accordingly, the Individual has not shown that the mitigating conditions set forth in ¶ 32(d) are present.

I therefore find that the security concerns raised under Guideline J by the Individual’s five arrests, operation of a motor vehicle while under the influence of alcohol, and probation violations have not been resolved.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and J. I have also found that the LSO did not properly invoke Guideline E. After considering all the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has not mitigated the security concerns raised under Guidelines G and J. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual’s security clearance should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals