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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 8, 2022)	Case No.: PSH-22-0099
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_____)	

Issued: September 22, 2022

Administrative Judge Decision

Janet R.H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."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 restored.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires her to hold a security clearance. In August 2021, she was charged with Aggravated Driving Under the Influence (DUI).² Exhibit (Ex.) 1 at 1. The local security office (LSO) sent the Individual to a DOE-consulting Psychologist (DOE Psychologist). After receiving the report from the DOE Psychologist, the LSO issued a letter to the Individual in which it notified her that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. In the Summary of Security Concerns (SSC) attached to the letter, the LSO explained that derogatory information about the Individual raised security concerns under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1.

¹ 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.

² There were two lesser included charges of Driving While Intoxicated with a Minor in the Car, and Failure to Signal Before Turning. Ex. 11 at 6.

The Individual exercised her right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted 17 exhibits (Ex. 1–17), and the Individual submitted 9 exhibits (Ex. A–I). The Individual testified on her own behalf and presented the testimony of three witnesses: her Employee Assistance Program (EAP) counselor, her Alcoholics Anonymous (AA) sponsor, and an EAP group attendee. Hearing Transcript (Tr.) at 8, 19, 31. The LSO offered the testimony of the DOE Psychologist. *Id.* at 74.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline G (Alcohol Consumption) as the first basis for its determination that the Individual was ineligible for access authorization. Ex. 1 at 1. “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. The LSO cited the DOE Psychologist’s report, in which she determined that the Individual met the diagnostic criteria for Alcohol Use Disorder (AUD), Severe, in Early Remission, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. Ex. 1 at 1. In addition, the LSO relied on the Individual’s two alcohol-related arrests – the August 2021 arrest for DUI and a February 2010 arrest for Aggravated Driving While Intoxicated (DWI). Ex. 1. The LSO’s assertions justify its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c), (d).

The LSO also cited Guideline J (Criminal Conduct) as a basis for its determination that the Individual was ineligible for access authorization. Ex. 1. at 2. “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. The LSO cited the August 2021 DUI charge, the February 2010 DWI charge, and a July 2006 Larceny charge. Ex. 1 at 2. The criminal charges against the Individual justify the LSO’s invocation of Guideline J. Adjudicative Guidelines at ¶ 31(b).

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Dep’t of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a

full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. FINDINGS OF FACT

In July 2006, the Individual was charged with larceny. Ex. 21 at 3. She testified that after quitting her job with a credit union she received documentation that her teller drawer was short \$2,000; she was subsequently charged with larceny. Tr. at 40, 41. She asserted that the charges were false and later dropped. Tr. at 41; Ex. 2 at 3.

The Individual admitted that she was intoxicated during the February 2010 DWI incident. Tr. at 43; Ex. 12 at 5. She testified that prior to the incident, she was in an uncomfortable, dangerous situation during a party and sensed that she needed to leave. Tr. at 43. The Individual was arrested for aggravated DWI, open container on a person in a motor vehicle, possession of marijuana, and leaving the scene of an accident, all of which were reduced to a regular DWI and an open container charge. Tr. at 43; Ex. 12 at 6. In August 2021, the Individual was charged with DUI. Ex. 1; Ex. 11. She indicated that she had consumed a half pint of Fireball whiskey between the prior evening and the day of her arrest. Ex. 12 at 1. The Individual admitted that she was intoxicated. Ex. 11 at 2.

The Individual explained that prior to the August 2021 DUI, she underwent many surgeries on her lower back, and she was in constant pain. Tr. at 46. Her grandparent had suggested that alcohol was an excellent painkiller. Tr. at 46. She had a lot of stress from her marriage falling apart, COVID quarantine, attempting to deal with her children during the quarantine, and her heavy workload. Tr. at 48. She developed a pattern of heavy alcohol consumption. Tr. at 49. Since the DUI, the Individual's pain has been reduced. Tr. at 51. She is working with a new doctor, who directed her to a pain specialist, who has been able to alleviate most of her back pain. Tr. at 51. In addition to over-the-counter pain medications, the pain specialist has prescribed another pain medication, but is slowly weaning her off that prescription medication. Tr. at 72.

Immediately after the DUI, the Individual knew she wanted to stop consuming alcohol. Tr. at 52. She asserted that she considers herself to be an alcoholic. Tr. at 52. She stated that she began attending an alcohol awareness and education class at the EAP in September 2021. Tr. at 53; Ex. B at 3. This information was confirmed by her EAP counselor. Tr. at 8. The Individual asserted that she has been attending AA since November 2021. Tr. at 56. Her AA sponsor confirmed the Individual's recollection. Tr. at 31. The Individual, supported by her sponsor, asserted that she is working on step nine of the twelve steps. Tr. at 37; 59. She is making amends, and it is going "really well." Tr. at 59. She said that it was easy for her to write down to whom she wanted to make amends and for what, but that completing the work "face to face" was very difficult. Tr. at 60. She received her one-year chip for abstinence and stated that she would hate to lose all the support and friendships that she has acquired during her recovery. Tr. at 62. The Individual also shared that her mother attended AA with her when she was getting her one-year chip and that her

mother expressed that she was proud of the Individual and that she understood her struggles. Tr. at 61.

The Individual asserted that the last alcoholic beverage she consumed was in August 2021 just prior to her DUI. Tr. at 66. She no longer keeps alcohol in her house. Tr. at 66. She said that she has attended functions that include alcohol, including concerts and parties. Tr. at 66. The Individual asserted that instead of going to a brewery for dinner now, she and her boyfriend, who is very supportive of her desire to remain abstinent, will go to a restaurant that does not serve alcohol. Tr. at 67. The Individual intends to continue attending the EAP maintenance group and AA, because she believes they are important for success in maintaining her abstinence. Tr. at 67. She stated that she has come to understand her triggers during the last year, and they are related to “H.A.L.T.,” which stands for hungry, angry, lonely, and tired feelings. Tr. at 68. She understands that when she has one of those feelings, she needs to contact her support system. Tr. at 68-69. The Individual shared a story about traveling to Las Vegas after her DUI—a trip she had paid for prior to the DUI. Tr. at 63. When she returned from that trip, because she had felt some desire to consume alcohol while there, the Individual testified that she “doubled down on AA meetings because I was like I need some -- because I felt guilty when I got back that I had craved a drink.” Tr. at 68.

The Individual presented evidence of near-monthly negative phosphatidylethanol (PEth) testing beginning in October 2021 and continuing through May 2022.³ Ex. C; Tr. at 69. In addition, the Individual presented September and October 2021 negative, random alcohol and drug tests, which included alcohol testing in the form of the Ethyl Glucuronide (EtG) tests taken during her Fitness For Duty evaluation. Ex. E.

The Individual’s EAP counselor testified that the Individual entered her six-week alcohol education and awareness program in September 2021. Tr. at 8. The EAP counselor asserted that the Individual’s participation was excellent. Tr. at 9, 11. She stated that she was honest and open about her struggles with alcohol. Tr. at 9. The EAP counselor asserted that the Individual is humble and used the group well by sharing her feelings and fears. Tr. at 9. After completing the education and awareness program, the Individual registered for the maintenance group. Tr. at 10. The EAP counselor indicated that the only prerequisite for attending the maintenance group is that the person wants to abstain from alcohol. Tr. at 10. According to the counselor, the Individual’s participation in the maintenance class is also excellent, as is her attendance. Tr. at 11. In addition to the classes at EAP, the counselor testified, the Individual attends one-on-one counseling, goes to AA and a second self-help support group. Tr. at 11. The EAP counselor testified that the Individual has an excellent prognosis because she has worked to make connections with AA, her sponsor, her counselor, and the self-help support group. Tr. at 12. Finally, the EAP counselor asserted that the Individual is very candid about her desire to remain abstinent, and expressed to her that the DUI saved her life, and that the thought of consuming alcohol terrifies her. Tr. at 13.

The Individual’s AA sponsor testified that she met the Individual just over a year ago through an AA women-only meeting that meets once a week. Tr. at 31. Within a week or two of meeting, the

³ The Individual explained that she missed the February 2022 PEth test, because she had the PEth testing during her evaluation with the DOE Psychologist, which was the same month. Tr. at 70. In addition, she missed the April 2022 PEth test, because she could not get to the testing facility due to a road closure. She also testified that she has not received the results of the June or July testing. Tr. at 70.

Individual asked her to be her sponsor, which the sponsor believed to be very proactive for the Individual. Tr. at 32. In addition to seeing each other at the AA meetings, they meet once a week and read through the “Big Book” together, along with a secondary textbook about the twelve steps. Tr. at 32. They also work through the twelve steps and talk about their lives. Tr. at 32-33. The sponsor asserted that the Individual is working on the ninth step and remains sober. Tr. at 37. She reiterated that the Individual intends to abstain from alcohol, and she has shown a lot of dedication and consistency in working the AA program. Tr. at 35. She concluded, “And the best predictor of future sobriety is doing what she has done, which is sticking with it, going to meetings, working the steps, having a sponsor, actually doing the fundamentals of the program, which she’s doing.” Tr. at 37.

The Individual’s fellow EAP maintenance group attendee, who also introduced the Individual to a self-help support group, testified that he met the Individual in October 2021, when she joined the EAP maintenance program. Tr. at 20. She showed an interest in the self-help group, he testified, so he invited her. Tr. at 20. In addition to meeting at the self-help support group, they talk through text, email, and on the telephone about sobriety tips and plans for the weekend. Tr. at 21-22. Although the Individual has not reached out to him for help with maintaining her sobriety when she has had “hard times,” he indicated that she shared that information with the group. Tr. at 23-24. He indicated that she is a willing participant and always comes to the group and shares. Tr. at 24. He reiterated that she wishes to remain sober long-term. Tr. at 27. He concluded that she is honest and straightforward with her feelings. Tr. at 28. He perceives that she takes her sobriety seriously. Tr. at 28.

In her report, the DOE Psychologist opined that the Individual was suffering from AUD, Severe, in early remission. Ex. 13 at 8. She continued that she is not exhibiting adequate evidence of rehabilitation or reformation. Ex. 13 at 8. The DOE Psychologist further opined that to achieve reformation or rehabilitation, the Individual would need to continue with her one-on-one counseling, AA attendance, working with a sponsor, and attendance in the EAP support group for twelve months to change the diagnosis from in early remission to sustained remission. Ex. 13 at 8.

At the hearing, the DOE Psychologist confirmed the diagnosis she had made in her report. Tr. at 75. She continued that everything she heard at the hearing about the Individual was positive. Tr. at 76. She asserted that “this is . . . probably the most thorough, comprehensive and persuasive example of the steps that someone has taken to demonstrate their -- not just rehabilitation, not just that they’re not drinking, but the reformation and their life changes, than I have maybe seen in all those years.” Tr. at 76. She opined that it is not just the number of meetings, but also that the Individual is honest, open, and consistent. Tr. at 76. The quality of her conduct and behavior is persuasive, the DOE Psychologist stated. Tr. at 76. The DOE Psychologist’s only concern was the pain doctor’s prescription of the pain killer, but since the physician is aware of the Individual’s alcohol history and the amount of pain killer has titrated down to half of the initial dosage with the intention to stop the medication, her concerns were alleviated. Tr. at 77. When asked whether she believes the Individual had demonstrated reformation or rehabilitation, the DOE Psychologist replied, “I do in spades.” Tr. at 77. She concluded that the Individual’s prognosis is excellent, and her risk of relapse is “low, very low.” Tr. at 77-78.

V. ANALYSIS

The LSO properly raised security concerns under Guidelines G and J based on the Individual's diagnosis of AUD, Severe, in early remission; her two alcohol-related arrests; and her one larceny charge.

A. Guideline G

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).

I find that the mitigating conditions (b), (c), and (d) of Guideline G are applicable in this case. The record unequivocally establishes that the Individual recognizes that her alcohol use was maladaptive. Acting in accordance with this realization, the Individual began abstaining from alcohol immediately after her August 2021 DUI and voluntarily submitted to PEth testing beginning in October 2021 to provide evidence of her sobriety. The Individual has been attending alcohol recovery groups at EAP since September 2021, AA since October 2021, and the AA auxiliary group since November 2021. In addition, the Individual goes to one-on-one counseling. All her PEth test results have been negative. The Individual intends to remain abstinent forever. All her assertions are supported by either her exhibits or her witnesses. Based on the information elicited at the hearing and the Individual's exhibits, the DOE Psychologist determined that the Individual had demonstrated rehabilitation and reformation, and that her prognosis was excellent. In addition, she opined that the Individual's risk of relapse was "very low." Accordingly, I find that the Individual has met the mitigating conditions set forth under Guideline G at ¶ (b)-(d).

B. Guideline J

Conditions that could mitigate security concerns under Guideline J include:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) 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).

Two of the Individual's criminal charges were a direct result of her maladaptive alcohol use. "Once the Individual resolves the security concerns raised by his use of alcohol, the associated [Guideline J] concerns pertaining to his alcohol-related arrests will also be mitigated." *Personnel Security Decision*, OHA Case No. PSH-13-0062 at 7 (2013).⁴ Because the Individual has resolved the security concerns raised by her use of alcohol, as described above, I find that the concerns associated with the alcohol-related criminal charges are mitigated as well. Furthermore, as the Individual has remained sober since August 2021 and has diligently obtained appropriate treatment for her maladaptive alcohol use, I conclude that adequate time has passed since the criminal behavior outlined in the SSC occurred and that it happened under such circumstances that it is unlikely to recur.

In addition to her alcohol-related arrests, the Individual also had a 2006 Larceny charge. Given the amount of time that has elapsed since that charge, over 16 years, the circumstances under which it occurred, her resignation from a teller job, and the fact that the only other two arrests the Individual has had are alcohol related, the 2006 larceny charge does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Therefore, I find that the Individual has mitigated the Guideline J concerns pursuant to the mitigating factors at ¶ 32(a) and (d).

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and J 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

⁴ Decisions issued by OHA are available on the OHA website located at <http://www.energy.gov/OHA>.

evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the SSC. Accordingly, the Individual has demonstrated that restoring her 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.

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