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**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing )  
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Filing Date: May 26, 2022 ) Case No.: PSH-22-0093  
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Issued: September 27, 2022

**Administrative Judge Decision**

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) for 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.”<sup>1</sup> For the reasons set forth below, I conclude that the Individual’s security clearance should be restored.

**I. BACKGROUND**

The Individual is employed by a DOE Contractor in a position which requires that he hold a security clearance. Derogatory information was discovered regarding the Individual’s alcohol use. The Local Security Office (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 in order to resolve the substantial doubt regarding his eligibility to continue holding 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 OHA Director 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), the Individual presented the testimony of four witnesses and testified on his own behalf. The LSO presented the testimony of the DOE-Contractor Psychologist who had evaluated the Individual. *See* Transcript of Hearing (hereinafter cited as “Tr.”). The LSO submitted 12 exhibits, marked as Exhibits 1 through 12 (hereinafter cited as “Ex.”). The Individual submitted five exhibits, marked as Exhibits A through E.

<sup>1</sup> 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.

## II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline G (Alcohol Consumption) of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. 10 C.F.R. § 710.7.

Guideline G states that 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. Conditions that could raise a security concern under this guideline include:

- (a) Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;
- (b) Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder;
- (c) Habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;
- (d) Diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;
- (e) The failure to follow treatment advice once diagnosed;
- (f) Alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder; and
- (g) Failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

*Id.* at ¶ 22.

The LSO alleges that, in August 2021, the Individual was arrested and charged with Aggravated Driving Under the Influence (DUI). In January 2022, a DOE-Contractor psychologist (the Psychologist) diagnosed the Individual with Unspecified Alcohol-Related Disorder and opined that the Individual habitually consumed and binged alcohol. Accordingly, the LSO's security concerns under Guideline G are justified.

### 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 entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The protection of national security is the paramount consideration. 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), 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 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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

### IV. FINDINGS OF FACT

On August 29, 2021, the Individual was arrested for DUI at a DUI Checkpoint. Ex. 6. He had consumed two to three beers in one to two hours before driving his girlfriend's car to the mechanic's shop. Ex. 8 at 1. He performed poorly on field sobriety tests and the arresting report stated that he had refused to submit to a breathalyzer test. Ex. 6. In response to a letter of interrogatory, the Individual stated that while he was reading an informed consent statement, the officer's breathalyzer machine timed out and the officer, unable to perform the test, told him he would mark it as a refusal. Ex. 8 at 2.

At the hearing, the Individual presented the testimony of his Employee Assistance Program Counselor, his sister, his brother-in-law, and his Alcoholics Anonymous sponsor.

The Employee Assistance Program (EAP) Counselor first met the Individual in September 2021, when he entered individual counseling after his DUI. Tr. at 9–10. She stated that during these sessions, the Individual identified ways he used alcohol to cover emotions and deal with interpersonal and family difficulties. *Id.* at 12. She stated she believed the Individual had benefitted from their counseling sessions, had become more aware himself, and was able to open up without

feeling judged. *Id.* at 12–13. She testified that the Individual did not want his daughter to see him drinking and did not want to use alcohol to deal with his relationship issues. *Id.* at 15. She also testified that the Individual, compared to other people in his group counseling sessions (also through EAP), had above average growth and transformation. *Id.* at 17–18. The Individual told her he intends to continue attending Alcoholics Anonymous (AA) meetings and working with his sponsor, regardless of the hearing’s outcome. *Id.* at 12. Her last meeting with the Individual was in August 2022. *Id.* at 14–15.

The Individual’s sister testified that their family had a history of alcohol use. Tr. at 38. Growing up, the Individual lived with their dad and the sister lived with their mom, so the alcohol use each of them observed may have been different. *Id.* at 41. She stated that when they were kids, both of their parents drank alcohol regularly, but she did not remember either of her parents being drunk. *Id.* at 40–41. She testified that when they were kids, drinking was not really talked about in the family. *Id.* at 38. As adults, the sister, the Individual, their partners, and their children held lots of family events, such as attending concerts, barbecuing, playing games, and visiting local attractions. *Id.* at 30–31. She testified that during these family events, the Individual did drink. *Id.* at 31. She stated that before the Individual’s DUI, she did not think the Individual drank too much. *Id.* at 34. She recalled that, with the exception of this incident, the Individual would not drive home if he had been consuming alcohol and that the Individual typically used rideshare services when he was drinking. *Id.* at 39. The sister testified that the Individual quit drinking “pretty quickly” after his DUI. *Id.* at 42–43. She stated the Individual told her about his counseling and his group meetings and told her that he felt the meetings were helping him. *Id.* at 33.

The Individual’s brother-in-law testified that he has known the Individual since 2006, about the time he met the Individual’s sister. Tr. at 46. He stated that before the Individual’s arrest for DUI, he would see the Individual once or twice a month for dinners or sports events, during which the Individual would sometimes drink. *Id.* at 47–48. He never felt the Individual’s drinking was out of control. *Id.* at 48. He stated that since the Individual’s arrest for DUI, he has not seen the Individual use alcohol, and has not seen alcohol in the Individual’s house. *Id.* at 49, 51. The Individual had shared with him about his AA meetings and individual counseling sessions. *Id.* at 51–52. The brother-in-law stated that he had not noticed changes in the Individual’s behavior since he stopped drinking. *Id.* at 53. He stated the Individual is a reliable person and is one of the most honest people he knows. *Id.*

The Individual’s sponsor met the Individual in an AA meeting about 6 months before the hearing date. Tr. at 58. He stated the Individual asked him to be his sponsor, which involved seeing the Individual during the weekly AA meetings and talking about sobriety, how to deal with family issues, and “whatever helps us to stay sober.” *Id.* He stated that, having witnessed serious alcohol addiction in AA, he would not call the Individual’s alcohol issues “serious,” but noted that any time a person goes to AA, they need help. *Id.* He testified that the Individual was working through the 12 Steps and that the Individual was on the eighth Step—making a list of all persons he has harmed. *Id.* at 62–63. The sponsor stated that besides AA, he is not aware of other forms of treatment the Individual is receiving. *Id.* at 63–64. He believed the Individual planned on not drinking in the future and testified that they had discussed staying sober. *Id.* at 64. The Individual’s AA attendance demonstrated to the sponsor that he “wants to be sober and he wants to change.” *Id.*

The Individual testified about the various forms of treatment he had received since his DUI. After he reported his DUI to his employer, the employer placed him in a Fitness for Duty Program and he enrolled in individual and group counseling sessions with the EAP Counselor. Tr. at 73–74. He testified that during the individual counseling sessions, he discussed issues that were not covered in group settings. *Id.* at 77. The Individual also enrolled in a 6-week alcohol awareness group offered by his employer’s EAP that discussed risky behavior, the characteristics of alcoholism and binge drinking, and other topics. *Id.* at 74–75.

The Individual also participated in a 12-week EAP course called, “Maintaining Changes and Substance Use.” Tr. at 76. As of the hearing date, he was still enrolled in the course and had last attended a session in August 2022. The Individual testified that he participated in 90 AA meetings in 90 days. *Id.* at 77, 79–80. He started documenting his attendance at AA meetings in March 2022. *Id.* At 83. The Individual testified that he also participated in an AA “back to basics” program outside of his regular meetings as an accelerated way of getting familiar with the Steps. *Id.* at 83–84. The Individual’s AA attendance record was submitted into evidence before the hearing and was marked as Exhibit C.

The Individual underwent drug testing as part of his employer’s Fitness for Duty Program. Tr. at 84. He took daily breathalyzer tests at a mobile lab unit, and random urine tests to screen for alcohol consumption, ending in January 2022. *Id.* He stated the Psychologist recommended he undergo monthly blood testing to screen for alcohol use in the preceding four weeks, which he began doing in February 2022 (about four weeks after he underwent such a test as part of the Psychologist’s evaluation). *Id.*; Ex. A. The sample for the Individual’s most recent blood test included in the record was collected in the hours before the hearing. Tr. at 90; Ex. E. All of the Individual’s test results, including breathalyzer, urine, and blood tests, were negative for alcohol use. Ex. 2 at 23–102; Ex. A; Ex. A Addendum; Ex. E. The Individual expressed that it was important to him that there be no lapse in testing while he was in the administrative review process. Tr. at 88–89. The Individual testified that his sobriety date was August 29, 2021, and that he would have one year of sobriety a few weeks after the hearing. *Id.* at 93–94. He stated he didn’t want to say he would never drink again but testified that he wants to remain abstinent now, and that he would only consider drinking in the future after discussing it with his family and his sponsor. *Id.* at 94, 153. He stated that he did not want to drink now because he wants to maximize his time with his daughter on weekends and that, even prior to his DUI, he typically refrained from alcohol consumption during the work week. *Id.* at 95. The Individual also testified that he wanted to finish the 12 Steps. *Id.* at 94.

The Individual described his past use of alcohol and stated that before his DUI, he would drink 3–4 beers a day on weekend days, twice a month. Tr. at 109, 111. He explained he did not drink on a specific schedule, but he would typically drink during certain events, like mud volleyball or while camping, and his consumption was not consistent. *Id.* at 112. He stated he also drank in social settings. *Id.* at 112–13. This was discrepant from his description as written in the Psychologist’s report, which he attributed to the different way that questions were asked. *Id.* at 114–16. He stated that he may drink in the future, but not now, and he has not yet discussed this with his AA sponsor. *Id.* at 117. He stated that he is willing to continue seeking outside treatment because he finds opening up and talking about his emotions and alcohol use very helpful. *Id.* at 121. He stated he is trying to change the way he communicates because that has caused problems in his personal relationships in the past. *Id.* at 121–22.

The Individual was evaluated by the Psychologist in January 2022. In her report, the Psychologist stated that the Individual's drinking increased during 2021. Ex. 9 at 6. The report stated that during 2021 the Individual would drink alcohol on one weekend day (Friday or Saturday) per week and on that day would consume between one and six cans or bottles of beer in two to four hours. *Id.* The report stated that a male of the Individual's "height, weight and age who consumes a 6-pack of 4.2% 12-ounce beers over a period of 2 to 4 hours would reach estimated BACs of .06 to .09 g/210L, with intoxication reached at .08 g/210L." *Id.* The Psychologist defined binge drinking as "five or more drinks for a male, and reaching intoxication." *Id.* In support, she cited to definitions from the National Institute on Alcohol Abuse and Alcoholism (NIAAA) and from the Substance Abuse and Mental Health Services Administration (SAMHSA) contained in a 1998 scholarly journal. *Id.* at 9. She also wrote that "[b]ecoming intoxicated on a monthly basis has been accepted as 'habitual' drinking." *Id.* at 6. In support, she cited to an OHA opinion in a personnel security case. *Id.* at 10.

Currently, NIAAA defines binge drinking as "a pattern of drinking alcohol that brings blood alcohol concentration (BAC) to 0.08 percent—or 0.08 grams of alcohol per deciliter—or higher. For a typical adult, this pattern of alcohol misuse corresponds to consuming 4 or more drinks (female), or 5 or more drinks (male) in about 2 hours." *Understanding Binge Drinking*, NIAAA (December 2021), <https://www.niaaa.nih.gov/publications/brochures-and-fact-sheets/binge-drinking>. SAMHSA defines binge drinking for males as "drinking five or more drinks on the same occasion on at least 1 day in the past 30 days." Center for Behavioral Health Statistics and Quality, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2019 National Survey on Drug Use and Health HHS Publication No. PEP20-07-01-001, NSDUH Series H-55*, SAMHSA 12 (2020), <https://www.samhsa.gov/data/sites/default/files/reports/rpt29393/2019NSDUHFRRPDFWHTML/2019NSDUHFRR1PDFW090120.pdf>.

In her report, the Psychologist diagnosed the Individual with Unspecified Alcohol-Related Disorder<sup>2</sup> due to his habitual and binge drinking and his history of alcohol consumption. She recommended that he remain in the Maintaining Changes course in which he was enrolled for at least nine months and undergo monthly blood tests<sup>3</sup> to confirm his abstinence. The Individual was directed to undergo a blood test as part of the evaluation, which returned a negative result. *Id.* at 6.

The Psychologist testified that the Individual substantially complied with her treatment recommendations. Tr. at 126–27, 129. She considered the Individual's sobriety date to be one month before her evaluation, which occurred in January 2022, because the Individual's blood test from that day showed that he had not consumed alcohol in the preceding month. *Id.* at 131–32. The Psychologist testified that the Individual's daily breathalyzers, from September 2021 through January 2022, did not affect her judgment of the Individual's sobriety date for the purpose of her recommendations, because she had recently attended a seminar that demonstrated circumstances

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<sup>2</sup> The diagnostic criteria used for Unspecified Alcohol-Related Disorder states that this diagnosis applies to "presentations in which symptoms characteristic of an alcohol-related disorder that cause clinically significant distress or impairment in social, occupational, or other important areas of functioning predominate but do not meet the full criteria for any specific alcohol-related disorder or any of the disorders in the substance-related and addictive disorders diagnostic class." Ex. 9 at 8.

<sup>3</sup> The Psychologist specifically recommended Phosphatidylethanol blood tests, which under the proper circumstances can detect certain patterns of alcohol consumption over the preceding 28-30 days. The term "blood tests" in this decision indicates Phosphatidylethanol testing.

under which a person could drink on a daily basis and still pass a breathalyzer test. *Id.* at 151–54. She also stated she was uncomfortable relying on ETG (urine) tests because the test can show alcohol use in the preceding two to seven days and her practice group had deemed that variability to lack scientific rigor. *Id.* at 154–56. The Psychologist declined to specify the minimum length of time her research indicated that an ETG test could monitor for alcohol use. *Id.* at 156.

The Psychologist testified that for a male, binge drinking is “five or more drinks in two hours.” Tr. at 135. The Psychologist explained that during the evaluation, the Individual reported drinking four to six beers in two to four hours, which “would meet the description of binge drink[ing] adequately.” *Id.* at 137–8.

The Psychologist did not feel confident making a prognosis because she viewed the Individual’s testimony about his alcohol history as discrepant from his description during her evaluation and because she believed the Individual did not have clarity about what would indicate to him that future alcohol consumption would be acceptable. *Id.* at 127–128. However, she testified that she no longer considers the Individual to be a habitual or binge drinker and that he no longer fits the criteria for Unspecified Alcohol-Related Disorder. *Id.* at 138–39. She further testified that in her clinical opinion, the Individual is reformed and rehabilitated. Tr. at 139. She stated that the Individual’s participation in his EAP counseling group “had been excellent,” and that he showed commitment by making the effort to attend an AA meeting on a Sunday when he was traveling with his family. *Id.* at 140–41. She also noted that the Individual attended 90 AA meetings in 90 days and made a financial commitment in taking PEth tests, for which the Individual had paid hundreds of dollars out of pocket every month. *Id.* at 140–1. She stated she the Individual is “doing this in good faith, and being very conscientious.” *Id.*

## V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a commonsense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching my decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO’s security concerns have been mitigated such that restoring the Individual’s clearance is not an unacceptable risk to national security.

Under Guideline G, conditions that could mitigate security concerns 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; or

(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.

Mitigating factors (b) and (d) apply in this case. The Individual has acknowledged his problematic drinking and taken appropriate steps to address that problem. He has completed, and continues to participate in, multiple alcohol treatment programs since his arrest for DUI and has done so consistently. The EAP Counselor testified that the Individual's personal growth, compared to others in his group sessions, has been "above average." The Individual's sponsor credibly testified to the Individual's progress in working through the 12 Steps and to the Individual's commitment to maintaining sobriety. The Individual has remained in an appropriate aftercare program, the Maintaining Changes course. The Psychologist testified that the Individual had substantially completed her recommendations and opined that he is rehabilitated and reformed. Additionally, during the hearing, the Individual's AA sponsor, sister, and brother-in-law testified as to the positive impact the counseling sessions have had on the Individual and his consumption of alcohol.

In addition, I find that there is sufficient evidence to establish the Individual's pattern of abstinence and to establish that he had been abstinent for just under one year as of the hearing date. For the past seven months, the Individual has undergone monthly PEth testing, showing negative results. The Individual also underwent several months of random ETG testing, showing negative results. Prior to that, the Individual underwent several months of near daily breathalyzer testing, showing negative results.

For the foregoing reasons, I find that the Individual has mitigated the security concerns set forth by the LSO under Guideline G.

## **VI. CONCLUSION**

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for access authorization under Guideline G of the Adjudicative Guidelines. I further find that the Individual has succeeded in fully resolving those



concerns. Therefore, I conclude that restoring DOE access authorization to the Individual “will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should restore access authorization to the Individual.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Kristin L. Martin  
Administrative Judge  
Office of Hearings and Appeals