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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: October 18, 2022)	Case No.: PSH-23-0011
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Issued: February 7, 2023

Administrative Judge Decision

Phillip Harmonick, 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

In 2010, the Individual was arrested and charged with Driving While Intoxicated (DWI). Exhibit (Ex.) 13 at 66.² The Individual was granted access authorization in 2012. Ex. 11 at 33. On January 28, 2022, the Individual was arrested and charged with Aggravated DWI. Ex. 6 at 3.

The Individual met with a DOE-contracted psychologist (DOE Psychologist) for a clinical interview on May 12, 2022. Ex. 9 at 3. During the clinical interview, the Individual represented that she had consumed two alcoholic drinks in the four weeks prior to the clinical interview. *Id.* at 5. However, alcohol testing conducted at the request of the DOE Psychologist provided evidence that the Individual had consumed more alcohol in the four weeks prior to the clinical interview than she had reported to the DOE Psychologist. *Id.* at 6, 12. The DOE Psychologist issued a psychological assessment (Report) in which she opined that the Individual presented symptoms

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 The internal pagination of numerous exhibits offered by the LSO does not correspond to the number of pages included in the exhibits. For example, numerous pages within Exhibit 13 are marked with multiple page numbers. This Decision cites to pages in the order in which they appear in exhibits without regard for their internal pagination.

consistent with a diagnosis of Unspecified Alcohol-Related Disorder (UAD) under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. *Id.* at 7.

The local security office (LSO) issued the Individual a letter notifying her that it possessed reliable information that created substantial doubt regarding her eligibility for access authorization. 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 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 thirteen exhibits (Exs. 1–13). The Individual submitted ten exhibits (Exs. A–J). The Individual testified on her own behalf and offered the testimony of four coworkers and three personal friends. Hearing Transcript (Tr.) at 3–4, 11–12, 27–28, 36, 45, 53–54, 64, 74, 86. The LSO offered the testimony of the DOE Psychologist. *Id.* at 4, 153.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the basis for its suspension of the Individual’s access authorization. Ex. 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 SSC cited the DOE Psychologist’s opinion that the Individual presented symptoms consistent with a diagnosis of UAD under the *DSM-5* and the Individual’s two arrests for DWI. Ex. 1. The LSO’s allegation that the Individual engaged in alcohol-related incidents away from work and the DOE Psychologist’s diagnosis of the Individual with UAD justify its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (d).

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 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) (strong presumption against the issuance of a security clearance).

An 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). An individual is afforded a full opportunity to present evidence supporting his or her 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. *Id.* at § 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 December 2010, a law enforcement officer stopped the Individual after having observed her driving her vehicle with the headlights off and “straddling two lanes.” Ex. 13 at 163. The Individual submitted to a breathalyzer test which estimated her blood alcohol content (BAC) at .15. *Id.* The Individual was arrested and charged with DWI. *Id.* at 66, 163. The charges were dismissed on July 8, 2011, due to the prosecution’s inability to proceed. *Id.* at 165.

On February 27, 2012, the Individual submitted a Questionnaire for National Security Positions (QNSP) in connection with seeking access authorization. Ex. 12 at 42. The Individual disclosed her arrest for DWI on the QNSP. *Id.* at 33. In June 2012, the LSO issued the Individual a letter of interrogatory (LOI) concerning her arrest and alcohol use. Ex. 8. In her response to the LOI, the Individual represented that she consumed an average of two alcoholic drinks per sitting twice monthly, that she intended “to only drink alcohol in moderation in social environments” in the future, and that she would “always have a designated driver or [not] drink” when driving to social events where alcohol would be consumed. *Id.* at 1, 4. The Individual was subsequently granted access authorization. *See* Ex. 11 at 33 (summarizing the Individual’s history of clearance investigations).

On January 27, 2022, the Individual attended a party at a coworker’s home where she consumed alcohol. Tr. at 110; *see also* Tr. at 18, 30–31 (reflecting the testimony of two of the Individual’s coworkers who were present at the party that the Individual did not appear visibly intoxicated at the time). After the party, the Individual decided to drive herself home but hit a curb while texting and suffered a flat tire. *Id.* at 106. The Individual pulled into a parking lot where she tried calling for help changing the tire. Ex. 7 at 1. At approximately 1:30 AM on January 28, 2022, a law enforcement officer observed the Individual’s vehicle running in the parking lot, damage to the front of the vehicle, and the Individual unconscious in the driver’s seat. Ex. 6 at 2. When confronted by the officer, the Individual denied knowledge of how the damage to her vehicle occurred and refused a breathalyzer. *Id.* The Individual was subsequently arrested and charged with Aggravated DWI. *Id.* at 3.

The LSO issued the Individual an LOI on March 9, 2022. Ex. 7. In her response to the 2022 LOI, the Individual asserted that she had consumed “several glasses of red wine from [] 3pm [to approximately] 10 pm” at a coworker’s home the evening prior to her arrest. *Id.* at 1. She claimed that she suffered the flat tire due to being “distracted by [her] phone” and fell asleep after unsuccessfully calling for help in changing the tire. *Id.* The Individual represented that, prior to her arrest, she usually consumed two to three drinks per sitting “socially and on weekends” but that she had not consumed alcohol since her arrest. *Id.* at 4.

The Individual began meeting with a Licensed Professional Clinical Counselor (LPCC) on March 10, 2022, for biweekly counseling. Ex. H. The LPCC concluded that the Individual did not meet sufficient criteria under the *DSM-5* for an alcohol-related diagnosis. *Id.* at 2. The counseling focused primarily on managing stressors and trauma associated with the Individual’s prosecution

for DWI and other events in the Individual's life, and was not specifically focused on treating an alcohol-related condition. Tr. at 118. The LPCC found the Individual to be compliant with all treatment recommendations and requirements, and discharged the Individual from her care on July 28, 2022, after the Individual completed the recommended course of counseling. Ex. H at 2.

On March 21, 2022, the Individual voluntarily provided a sample for a Phosphatidylethanol (PEth) test, the results of which were negative for traces of alcohol consumption.³ Ex. B at 1; *see also* Tr. at 142 (indicating that the Individual obtained the PEth test at the recommendation of a psychologist employed at the DOE site at which she works). In April 2022, the Individual consumed alcohol with members of her family while celebrating her brother's birthday and on two occasions with a boyfriend. Tr. at 128, 130. The Individual consumed approximately six craft beers total across these three occasions. *Id.* at 149. According to the Individual, she "let [herself] believe that this wasn't going to be a problem." *Id.* at 129.

On May 12, 2022, the Individual met with the DOE Psychologist for the clinical interview. Ex. 9 at 3. The Individual reported to the DOE Psychologist that she had consumed two alcoholic drinks since April 15, 2022, and that her future intentions were to abstain from drinking alcohol around her coworkers and "never do this again." *Id.* at 5. At the request of the DOE Psychologist, the Individual provided a blood sample for a PEth test, the results of which were positive at 53 ng/mL. *Id.* at 6, 12–13. According to the Medical Doctor who interpreted the results of the PEth test, the results were "congruent with significant alcohol consumption" and exceeded the mean PEth level of female subjects in a study who consumed an average of 4.2 alcoholic drinks weekly for four weeks. *Id.* at 12.

The DOE Psychologist issued her Report on May 22, 2022. *Id.* at 7. In the Report, she opined that the Individual's symptoms were consistent with a diagnosis of UAD under the *DSM-5*. *Id.* She recommended that the Individual demonstrate rehabilitation by abstaining from alcohol, attending counseling for alcohol rehabilitation or Alcoholics Anonymous meetings twice weekly, and undergoing monthly PEth testing for six months. *Id.*

In July 2022, the Individual pleaded guilty to DWI, and was sentenced to one year on supervised probation. Ex. E at 1. Pursuant to the terms of her probation, the Individual completed DWI school, a Mothers Against Drunk Driving victim impact panel, and 24 hours of community service, and paid to have an ignition interlock device installed on her vehicle. Ex. C; Ex. D; Ex. E at 1; Ex. F. The Individual was also subject to random Ethyl Glucuronide tests and provided eight urine samples for testing from July 2022 to January 2023, each of which was negative for traces of alcohol consumption. Ex. B at 3–10; Tr. at 133–34. On January 17, 2023, the Individual's probation officer consented to her being moved to unsupervised probation. Ex. J at 3.

In September 2022, the Individual began participating in a weekly women's group through her church in which attendees share experiences and learn strategies for dealing with addiction. Tr. at 97; Ex. I. The Individual has enrolled in an upcoming program through her church which will provide additional services for more advanced participants in the faith-based recovery program.

³ A PEth test measures the presence of the PEth biomarker, which is formed from a chemical reaction occurring in blood when a person consumes alcohol. Ex. 9 at 12–13.

Ex. I. The Individual made a New Year's resolution to commit to "a life of sobriety" and as part of this effort began attending AA meetings in January 2023. Tr. at 99.

At the hearing, the Individual's coworkers and friends testified that they have found her to be a reliable and trustworthy person. *Id.* at 15, 29, 38, 46–47, 75–76. Two personal friends of the Individual, with whom she used to consume alcohol, testified that the Individual has not consumed alcohol with them since her arrest for DWI in 2022 and that they have observed her refuse alcohol in settings where it is served. *Id.* at 67–68, 77–79, 82–83. Another personal friend of the Individual testified that she and the Individual regularly consumed alcohol together in the past, but have not done so for over one year. *Id.* at 55–56. This personal friend indicated that the Individual has not attended parties she hosted during that time to avoid being around situations in which alcohol is served. *Id.* at 57; *see also id.* at 138–39 (reflecting the Individual's testimony that she is no longer comfortable around the amount of drinking at the personal friend's parties).

The Individual has also attended events with coworkers where alcohol has been served without consuming alcohol herself. Tr. at 89–90; *see also* Tr. at 19–20, 31, 41, 48 (corroborating the Individual's account of refusing alcohol at these gatherings). The Individual has shared her experience related to the 2022 DWI with her colleagues and has acknowledged her responsibility for her poor judgment. *Id.* at 32, 47, 87–88. The Individual's friends and coworkers have observed her demonstrate greater compassion, positivity, and engagement since her 2022 DWI. Tr. at 21–22, 58.

The Individual testified that she has adopted hobbies that provide her with opportunities to manage stress and socialize without the presence of alcohol, such as jogging, meditating, praying, participating on a workplace volleyball team, training for a triathlon with a friend, and socializing with friends in places where alcohol is not served. *Id.* at 89, 102–03. She has also developed personal and professional goals, such as completing a triathlon and a workplace training program that will allow her to take on new projects, to focus her attention away from alcohol. *Id.* at 103–04.

The Individual denied believing that she is an alcoholic or that she had "an overall problem with alcohol." *Id.* at 100, 105. However, she perceives that there are physical, mental, and professional benefits to refraining from alcohol consumption and she intends to abstain from alcohol permanently. *Id.* at 104–05. The Individual indicated that she learned from her April 2022 alcohol consumption that she must avoid "escap[ing] for a minute" to indulge in alcohol or succumbing to social pressure to maintain her sobriety. *Id.* at 132–33, 136.

The DOE Psychologist opined at the hearing that the Individual had established reformation and that her UAD was under control.⁴ *Id.* at 160. The DOE Psychologist cited the Individual's abstinence from alcohol since May 2022, participation in counseling, alcohol refusal skills, support network, positive coping skills, and corroborating testimony from coworkers and friends who had observed her refuse alcohol in settings where she previously consumed it as positive factors supporting her finding of reformation. *Id.* at 160–63.

⁴ The DOE Psychologist differentiated reformation, in which a person engages in actions demonstrating that they have the ability to control an alcohol-related condition and do so for an appropriate period of time, from rehabilitation, in which a person completes a formal alcohol treatment program. Tr. at 160–61.

Although the Individual did not follow the DOE Psychologist's treatment recommendations in the Report, the DOE Psychologist nevertheless concluded that the Individual had established the skills that the DOE Psychologist would have expected for her to develop through alcohol treatment. *Id.* at 167. Specifically, the DOE Psychologist noted that the Individual's ability to attend social gatherings where alcohol was served without consuming it herself and avoidance of social settings where she might be tempted to drink established that she had developed alcohol refusal skills. *Id.* at 167–68. She also indicated that the Individual had established relapse prevention skills through physical and social outlets for resolving stress without alcohol, and the ability to recognize triggers that led her to drink. *Id.* In light of these positive factors, the DOE Psychologist opined that the Individual had a good prognosis for avoiding a return to problematic alcohol consumption. *Id.* at 163, 166.

V. ANALYSIS

The Individual's two arrests for DWI and the DOE Psychologist's opinion that the Individual presented symptoms consistent with a diagnosis of UAD under the *DSM-5* justify the LSO's invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (d). Conditions that could mitigate a security concern 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; 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.

Id. at ¶ 23.

The passage of only one year since the Individual's 2022 arrest for DWI is insufficient for me to conclude that the passage of time alone has mitigated the security concerns raised by the incident, particularly since the Individual has not fully resolved the legal consequences stemming from the incident and will remain on probation until July 2023. Moreover, in light of the routine circumstances of the Individual's alcohol consumption leading to her arrest and the Individual's prior arrest for DWI in 2010, I find that the circumstances giving rise to the security concern were neither so infrequent nor unusual as to mitigate the security concerns. Thus, I find the first mitigating condition under Guideline G inapplicable. *Id.* at ¶ 23(a).

The Individual has never enrolled in counseling or treatment specifically for alcohol misuse. Although she participated in counseling with the LPCC, there is no indication in the record that the LPCC had any training or experience in substance abuse treatment, and the Individual

acknowledged that the counseling only addressed alcohol as a component of the broader life issues the Individual sought to resolve through counseling. Thus, I find the third and fourth mitigating conditions under Guideline G inapplicable. *Id.* at ¶ 23(c)–(d).

However, the Individual has acknowledged her problematic behavior while consuming alcohol and has brought forth documentation and testimony establishing that she has taken significant steps to overcome her problem. Among other things, the Individual has removed herself from environments in which she would feel social pressure to consume alcohol, surrounded herself with persons who will support her efforts to abstain from alcohol, participated in faith-based support programs, and established healthy outlets for resolving stress without resorting to alcohol, including exercise, meditation, and social activities. Moreover, the Individual has reportedly abstained from alcohol for approximately nine months, provided alcohol testing to support her claimed abstinence, and successfully moved from supervised to unsupervised probation by complying with the terms of her probation. The DOE Psychologist opined that the Individual's efforts were sufficient to establish reformation and that the Individual had a good prognosis for avoiding a return to problematic alcohol consumption. For these reasons, I find that the Individual has satisfied the second mitigating condition under Guideline G. *Id.* at ¶ 23(b).

In light of the positive prognosis from the DOE Psychologist, the Individual's support network to aid her in her recovery, the evidence of the Individual's abstinence from alcohol for approximately nine months, and the Individual's positive lifestyle changes, she has resolved the security concerns related to her diagnosis with UAD and I am convinced that she is unlikely to engage in problematic alcohol consumption in the future. Accordingly, I find that she has resolved the security concerns asserted by the LSO under Guideline G.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline G of the Adjudicative Guidelines. After considering all the relevant information, 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 Summary of Security Concerns. Accordingly, I have determined 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.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals