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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 4, 2022)	Case No.: PSH-23-0002
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Issued: March 2, 2023

Administrative Judge Decision

Richard A. Cronin, Jr., 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 security clearance should not be restored.

I. Background

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. On January 18, 2022, the Individual reported to the Local Security Office (LSO) that he had been arrested on the previous day for Driving Under the Influence (DUI) (2nd Offense), among other charges. Exhibit (Ex.) 6. Subsequently, the LSO sent the Individual a Letter of Interrogatory (LOI) asking the Individual to provide further details surrounding his arrest. Ex. 9. In his response to the LOI, the Individual stated that he had consumed approximately four beers and a shot of liquor between 5:00 p.m. and 12:00 a.m. and had waited a sufficient length of time such that the alcohol in his system would be metabolized. Ex. 9 at 1. At the bar, where he consumed the described alcohol, he agreed to drive an alcohol impaired woman to her home a short distance away. Ex. 9 at 1. He was then pulled over by local police and was scared because he believed that he was the subject of harassment. Ex. 9 at 4. The Individual asserted that he did "pretty good" on

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.

a field sobriety test administered by the police officer. Ex. 9 at 4; Ex. 10 at 3; He was then asked to take a breathalyzer test to which he refused and was subsequently arrested. Ex. 9 at 1.

As a result of the information contained in the Individual's response to the LOI, the Individual was instructed to undergo a psychological evaluation conducted by a DOE consultant Psychologist (DOE Psychologist) in May 2022. Ex. 8. In his May 19, 2022, report (Report), the DOE Psychologist found that the Individual would regularly consume five alcoholic drinks at a time and opined that the Individual met the criteria for a diagnosis of Alcohol Use Disorder as defined in the Diagnostic and Statistical Manual 5th Edition.² Ex. 10 at 5.

Due to unresolved security concerns regarding the Individual's alcohol consumption and a prior history of criminal arrests, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines G (Alcohol Consumption) and J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual exercised his 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 review hearing. The Individual submitted four exhibits (Exs. A through D) into the record and presented the testimony of four witnesses, including his own testimony. The DOE Counsel submitted 13 numbered exhibits (Exs. 1 through 13) into the record and presented the testimony of the DOE Psychologist at the hearing.

II. Notification Letter and Associated Security Concerns

As indicated above, 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 and informed the Individual that his security clearance had been suspended. Ex. 1. That information pertains to Guidelines G and J of the Adjudicative Guidelines. Ex. 1. 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. With respect to Guideline G, the LSO alleged that the DOE Psychologist, in his Report, determined that the Individual suffers from Alcohol Use Disorder, without evidence of rehabilitation or reformation. The LSO also referenced the Individual's 2022 DUI arrest and a March 2016 DUI arrest. Ex. 8 at 2. Given the Individual's

² During his interview with the Individual, the DOE Psychologist requested that the Individual take a blood test for Phosphatidylethanol (PEth), a biological marker for alcohol use. Ex. 10 at 9-10. The results of the test, 110 ng/mL, indicated that the Individual approximately consumed more than four alcoholic drinks per day. Ex. 10 at 10. This contrasted with Individual's claim during the interview that in a month's period he would consume typically four beers and one mixed drink. Ex. 10 at 4, 10.

recent DUI arrests and the DOE Psychologist Report, I find that the LSO was justified in invoking Guideline G.

Guideline J of the Adjudicatory Guidelines notes that “[c]riminal 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 Local Security Office noted the Individual’s history of criminal arrests detailed below:

<u>Date</u>	<u>Charge</u>
January 2022	DUI Incapable of Safely Operating, Driving on Roadways Laned for Traffic and Motor Vehicle Head Lamps
March 2016	DUI
July 2011	Domestic Battery
September 2003	Misdemeanor Theft
May 2003	Felony Robbery

Ex. 1 at 2; Ex. 8; Ex. 3 at 6-7; Ex. 13 at 13.

Considering the Individual’s arrest record detailed above, the LSO had sufficient grounds to invoke Guideline J in this case.

III. Regulatory Standards

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

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

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

IV. Findings of Fact and Hearing Testimony

The incident leading to the suspension of the Individual's clearance is detailed in Section II of this decision. In his response to the LOI, the Individual reported that prior to his 2022 DUI arrest he had consumed four beers and one shot of liquor over a seven-hour period but that typically he would consume alcohol twice a month and on special occasions. Ex. 9 at 4.

The Individual was referred for an examination by the DOE Psychologist. Ex. 10. After interviewing the Individual and reviewing the Individual's PEth test results, the DOE Psychologist found that the Individual suffered from Alcohol Use Disorder. Ex. 10 at 4. In making this finding, the DOE Psychologist noted that the Individual would consume five alcoholic drinks at a time and that the Individual had demonstrated alcohol-impaired judgment and decision-making abilities. Ex. 10 at 4. Further, the Individual's PEth test results indicated a level of alcohol consumption greater than the Individual previously reported. *See infra* at n.2. He also found that the Individual was also "binge drinking" alcohol and such behavior was a harmful risk behavior associated with multiple diseases including substance abuse disorder. Ex. 10 at 4. The DOE Psychologist further opined in his Report that for the Individual to demonstrate adequate evidence of rehabilitation or reformation the Individual should: (1) stop consuming alcohol; (2) participate in substance abuse treatment with a provider specifically trained in substance abuse treatment; (3) participate in weekly group therapy sessions for 24 weeks; (4) participate in a monthly maintenance or relapse prevention group therapy for "the remainder of one year"; and (5) attend a weekly support group such as Alcohol Anonymous or Rational Recovery weekly for a period of six months. Ex. 10 at 5.

At the hearing, a friend (Friend) of the Individual testified that the last time he had observed the Individual consume alcohol was around Christmas 2022 while shooting pool. Tr. at 13-14. The Friend also testified that on occasion he had seen the Individual alcohol-impaired to the extent that the Individual was not "shooting [pool] as great." Tr. at 16. The friend testified that the Individual's alcohol consumption increased in the spring and summer 2022, and the Individual was going through a difficult time with his then-girlfriend. Tr. at 21. He also testified that the Individual, regarding consuming alcohol, stated to him "I've got to do something different." Tr. at 17. He also testified that beginning in the fall of 2022, the Individual has been working out at the gym more often and participating in playing baseball. Tr. at 18, 21. Since the fall of 2022, when they go to shoot pool, the Friend does not see the Individual consume as many beers. Tr. at 20. The Friend highly commended the Individual's judgment and reliability. Tr. at 24.

The Individual's personal fitness trainer (Trainer) testified that she has interacted with the Individual on almost a daily basis. Tr. at 29. She noted that during the first part of 2022 when coming to the fitness center, the Individual would "be dragging" and she speculated that he may have been feeling the effects of a "hangover." Tr. at 31. She also testified that his increased consumption of alcohol was related to some "personal hardship" the Individual was experiencing.

Tr. at 35. However, during late summer the Individual talked less to her about going out and drinking and had increased his visits to the fitness center. Tr. 32. He also asked her to create a fitness plan, and while talking to him about the plan, the Trainer found that the Individual was making “positive changes” with his health habits. Tr. at 32-33. She also noticed more recently that when she asked the Individual about social activities, he would often answer that he just “hung out at home.” Tr. at 33.

The Individual’s mother (Mother) testified that during the first half of 2022, the Individual was living with her. Tr. at 44. She was concerned about the Individual’s alcohol consumption when he was arrested in 2022. Tr. at 41-42. However, the Individual’s Mother also testified that she thought the Individual did not “overindulge” in his alcohol consumption. Tr. at 42. As to the Individual’s 2022 DUI arrest, she believed that the Individual had been subject to racial profiling because, after leaving the bar, the Individual had not done anything to justify a traffic stop. Tr. at 43. She confirmed that her son’s alcohol consumption has decreased. Tr. at 45.

The Individual’s mother testified as to her belief that the Individual’s past criminal arrests did not reflect a problem with the Individual obeying the law. Tr. 45-46. As for the May 2003 felony robbery charge, the Individual became involved with people who “came up with a bad decision and included [the Individual] in that part.” Tr. at 47. She asserted that the charges associated with this incident were dropped. Tr. at 47. The Individual’s September 2003 Misdemeanor Theft arrest was due to a bad decision that the Individual made while a youth to steal a package of T-shirts. Tr. at 47-48; Ex. 2 at 1. Regarding the July 2011 Domestic Battery charge, the Mother testified that the Individual struggled to take his then-girlfriend away from a situation at a party that might have resulted in a physical confrontation. Tr. at 55. Other attendees at the event, however, informed police that the Individual had been involved in a physical struggle with his then-girlfriend. Tr. at 55.

The Individual’s Mother testified that the Individual was a loving single parent who is raising two teenagers who themselves have not been in trouble. Tr. at 48. She also believes that the counselling the Individual has received along with the Individual’s realization that his prior conduct was not good for him has motivated the Individual to change his behavior and reduce his alcohol consumption. Tr. at 49-50. Regarding the Individual’s current alcohol consumption, she testified that the Individual occasionally consumed a beer at family events. Tr. at 51.

The Individual testified regarding his 2022 DUI arrest. Tr. at 71. While he was consuming beers at a bar on the date of the incident, he deliberately spaced the drinks out based upon the alcohol metabolism rate he had learned as part of a court-mandated program pursuant to his 2016 DUI arrest. Tr. at 71. He agreed to drive his friend home because he believed he was not alcohol impaired based upon his calculation of the metabolism of alcohol in his system. Tr. at 71. When he was pulled over by police, he believed had had done nothing to support being pulled over. Tr. at 71. Notwithstanding his prior claims that he did well on the field sobriety test, he testified that he may have done poorly on the field sobriety test because he was tired and was recovering from COVID, and he became concerned because he was driving with a Caucasian woman and “the cop was going to have a problem with that.” Tr. at 72; *compare* Ex. 9 at 1 (Individual’s LOI response asserting that he “did pretty good” on field sobriety test). Because he thought that the police stop was not for a legitimate purpose, he refused to take the breathalyzer test. Tr. at 72.

The Individual testified that his increased consumption of alcohol in the first half of 2022 was triggered by a breakup with his then-girlfriend. Tr. at 97. He was very affected by this event for a long time and the situation was aggravated by the fact that his then-girlfriend took many of his and his children's belongings. Tr. at 97. As a result, he had to replace many items. Tr. at 98.

The Individual testified that he read the DOE Psychologist's Report and his recommendations for the Individual to follow to demonstrate rehabilitation or reformation from his Alcohol Use Disorder. Tr. at 62-63. Around the time he was evaluated by the DOE Psychologist, the Individual realized that he was drinking excessively and that he agreed with the DOE Psychologist's assessment. Tr. at 77-78. Consequently, he reduced his alcohol consumption and resolved to not consume alcohol when he must drive. Tr. at 78, 88. His future intention is to maintain his current reduced alcohol consumption. Tr. at 78, 87. However, if DOE required him to cease alcohol consumption he would do so. Tr. at 79. The Individual believes that he had a problem with alcohol, but he does not now have a problem with alcohol. Tr. at 91.

The Individual is also currently undergoing individual counselling. Tr. at 79. In his sessions with the therapist, the Individual learned about the standard for binge drinking and that he tended to use alcohol to deal with issues in his life. Tr. at 80-81. His therapy sessions do not just deal with his alcohol use but with other issues in his life. Tr. at 84. The Individual testified that his therapist did not believe that "alcohol is [the Individual's] demon." Tr. at 84-85. Specifically, he testified that his therapist believed that his excessive alcohol use "was situational" since the Individual was dealing with a significant amount of stress regarding the breakup with his then-girlfriend and having his property taken by her and the potential loss of his security clearance. Tr. at 86. He learned that he could use techniques such as working out and communicating with his loved ones to cope with problems and issues. Tr. at 81. He was unable to begin the services of his therapist until November 2022 due to problems with his insurance carrier. Tr. at 82. As of the date of the hearing, the Individual has not engaged in any type of group therapy or Alcoholics Anonymous (AA) group. Tr. at 79-80, 86.

As for his criminal record, the Individual testified that regarding his two theft offenses in 2003, he was younger and socialized with people who would get into trouble. Tr. at 89. As for the felony robbery charge, the Individual asserted that he was not involved in the crime. Tr. at 89. Additionally, the Individual testified that for the past 19 years he no longer has any involvement with the individuals associated with either of the arrests. Tr. at 89. About the Domestic Battery charge, he is not in a romantic relationship with his then-girlfriend although they have a child together. Tr. at 89. He does not associate with her since he believes she is an obstacle to his goals in life. Tr. at 89-90.

The Individual's therapist did not provide testimony at the hearing. The Individual introduced a letter from his therapist that indicated that she had met with the Individual on nine occasions and stated her belief that only one more session would be needed to complete treatment. Ex. C. Specifically, she stated "[s]essions have included treatment regarding anxiety, relationship issues and substance-abuse information." Ex. C.

The DOE Psychologist, after having an opportunity to listen to the witnesses and ask any questions he thought appropriate, testified as to his current assessment of the Individual. Tr. at 104. The DOE Psychologist testified that despite the Individual's testimony and documentary evidence presented at the hearing he believes that the treatment recommendations he made in this Report are still valid and that the Individual has not complied with the recommendations. Tr. at 106. Significantly, the Individual does not fully recognize the role his alcohol misuse has played in his life. Tr. at 106. The DOE Psychologist noted that the Individual's alcohol problem has been apparent since his 2016 DUI but that the Individual has not receive treatment. Tr. at 108. Instead, the Individual only underwent court-ordered alcohol education pursuant to that arrest. Tr. at 108. Regarding the Individual's pattern of reduced consumption of alcohol, the DOE Psychologist opined that the option of "controlled drinking" as a matter of treating alcohol use disorders is unsupported by current professional literature. Tr. at 108. Further, in the opinion of the DOE Psychologist, the Individual, despite his visits to his therapist, had not received adequate substance abuse treatment at the time of the hearing. Tr. at 106.

V. Analysis

The adjudicative process is "an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept." Adjudicative Guidelines, Appendix A at ¶ 2(a). "All available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a national security eligibility determination." *Id.* "Each case must be judged on its own merits[.]" *Id.* at ¶ 2(b).

A. Guideline G

Specifically, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if:

- (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.

After considering the record in this case, I find that the Individual has not mitigated the Guideline G concerns listed in the SSC. As an initial matter, the Individual has presented testimony to challenge the allegation that he was alcohol impaired at the time of the 2022 DUI arrest. Specifically, the Individual argues that he may have been the subject of racial harassment and the record contains the Individual's assertion in the LOI that he did well on the field sobriety test. Nonetheless, there is substantial evidence supporting a finding that the Individual was alcohol impaired when stopped for the 2022 DUI arrest, such as the fact he had been consuming alcohol at a bar prior to getting into the car and his hearing testimony asserting that he, in fact, may have failed the field sobriety test due to being ill with COVID. In this regard, I note that the Individual failed to take a breathalyzer test that could have supported his claim that he was not alcohol impaired. As such, I cannot find that the Individual's evidence outweighs the other available evidence as to his alcohol impairment at the time of the 2022 DUI arrest or that he was inappropriately charged with DUI.

The Individual's 2022 DUI arrest prevents any finding that the Individual's alcohol misuse is sufficiently distant in time to invoke the mitigating factor described in ¶ 23(a). Further, the Individual has also been arrested in 2016 for DUI. Consequently, I cannot find that the Individual's conduct is infrequent for purposes of applying ¶ 23(a). Neither can I find that the DUI arrests happened under unusual circumstances such to justify application of ¶ 23(a). Thus, the mitigating factor described in ¶ 23(a) of the Adjudicatory Guidelines is inapplicable in this case.

The mitigating factor described in ¶ 23(b) is inapplicable since the Individual's current limited consumption of alcohol is relatively short in duration at approximately 6 months and is not in accordance with the treatment advice from the DOE Psychologist that he abstain from alcohol. In this regard, I note that the Individual has not participated in substance abuse treatment with a provider specifically trained in substance abuse treatment. Nor has the Individual meaningfully engaged in a recommended group therapy program such as AA. I also find it significant that, as the DOE Psychologist testified, the Individual has not fully acknowledged the fact that he suffers from an alcohol use disorder.

Further, I find that the mitigating factors described in ¶ 23(c) and (d) are inapplicable. As an initial matter I do not find that the Individual's engagement with his therapist to consist of a substance abuse treatment program as described in ¶ 23(c) and (d). This is confirmed by the letter from his therapist in which she states "[s]essions have included treatment regarding anxiety, relationship issues and substance-abuse information." This description does not reference substance abuse treatment. Nor has the Individual fully engaged with a group therapy program such as AA. In sum, I do not find the mitigating factors described in ¶ 23(c) and (d) to be relevant in this case.

For the reasons stated above, I cannot find that the Individual has resolved the Guideline G concerns raised in the SSC.

B. Guideline J

The Adjudicative Guidelines provide the following mitigating factors for information raising Guideline J security concerns:

- (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.

Upon my review of the evidence, I cannot find that any of these mitigating factors are applicable. The Individual was arrested as recently as 2022, and I do not find that the criminal behavior happened under such unusual circumstances that it is unlikely to reoccur under mitigating factor ¶ 32(a). Further, even assuming *arguendo* that he was innocent of the 2003 felony robbery arrest, there is no substantial evidence that the Individual was pressured or coerced in committing any of the other offenses thus the mitigating factor described in ¶ 32(b) is inapplicable. Again, even if I accept the Individual's claim that he was innocent of the 2003 felony robbery charge, there is sufficient evidence regarding the validity of the remaining charges, including the Individual's and his Mother's own statements and testimony regarding the remaining charges, that I find that there is evidence to conclude that he committed the remaining criminal conduct listed in the SSC. Consequently, I find that the mitigating factor described in ¶ 32(c) is inapplicable. Lastly, regarding mitigating factor described in ¶ 32(d), I note that the two theft charges and the Domestic Battery charge were over 10 to 20 years ago and that alone such a time span might justify mitigation. I find that the possibility of the Individual committing a theft or violent offense is low given the passage of time since he committed this type of criminal offense. However, his two most recent offenses involve DUI charges. Given my finding above under Guideline G, I cannot discount the potential recurrence of future criminal alcohol-related conduct. In sum, I cannot find that the Guideline J security concerns have been resolved.

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 evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the SSC. 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, I find that 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.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals