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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: November 8, 2022) Case No.: PSH-23-0025
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Issued: March 14, 2023

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. In July 2022, the Individual was arrested and charged with Driving While Intoxicated (DWI) after consuming eight beers and a shot of tequila. Exhibit (Ex.) 1 at 1. The Local Security Office (LSO) subsequently issued a Letter of Interrogatory (LOI) to the Individual, which sought additional information related to the Individual's alcohol-related arrest. Ex. 11. The Individual responded to the LOI in July 2022. *Id.* at 7.

In August 2022, the Individual underwent a psychological evaluation by a DOE-consultant Psychologist (DOE Psychologist). Ex. 12. In completing his evaluation of the Individual, the DOE Psychologist conducted a clinical interview, reviewed the Individual's personnel security file, had the Individual complete the Minnesota Multiphasic Personality Inventory-Second Edition, and had the Individual undergo a Phosphatidylethanol (PEth) laboratory test to detect recent alcohol consumption. *Id.* at 2.

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.

On September 12, 2022, the DOE Psychologist issued a report (Report) explaining the results of the Individual's evaluation. *Id.* at 8. In the Report, the DOE Psychologist wrote that at the time of the July 2022 DWI arrest, the Individual had consumed eight twelve-ounce beers and one shot of tequila between approximately 6 p.m. and 10 p.m. *Id.* at 3. The DOE Psychologist compared the Individual's reported alcohol consumption to his height and weight and calculated the Individual's Blood Alcohol Content (BAC) to be .13 grams/210 Liters at the time of his DWI arrest.² *Id.* During his clinical interview, the Individual reported to the DOE Psychologist that he last consumed alcohol on the date of his DWI. *Id.* at 5. The results of the Individual's PEth test were negative at a level of less than 20 ng/mL, which was consistent with "little or no alcohol consumption over approximately three preceding weeks." *Id.* at 6.

The DOE Psychologist opined that the Individual consumes "alcohol to a point where impaired judgment is an issue of concern as evidenced in his recent DWI." *Id.* at 8. The DOE Psychologist continued that the Individual did not demonstrate adequate evidence of rehabilitation because the Individual did not believe he had an alcohol-related problem. *Id.* The DOE Psychologist recommended that the Individual first enroll in an eight-week Intensive Outpatient Program (IOP), consisting of both Individual and group counseling. *Id.* Following the successful completion of IOP, the Individual should continue with aftercare and attend Alcoholics Anonymous (AA) at least twice a week. *Id.* The DOE Psychologist asserted that the Individual should continue his aftercare for a year from July 2022, along with remaining abstinent. *Id.* Finally, the DOE Psychologist recommended ongoing random drug testing, which should include random PEth tests at about six-week intervals. *Id.*

Due to the unresolved security concerns related to the Individual's alcohol consumption, the LSO informed the Individual, in a Notification Letter, 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 Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines. Ex. 1.

In November 2022, the Individual requested an administrative hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of a co-worker who attended IOP with him, his current supervisor, his friend of 28 years, his wife, and one of his counselors. *See* Transcript of Hearing, Case No. PSH-23-0025 (hereinafter cited as "Tr."). The Individual submitted 5 exhibits, marked as Exhibits A through E. Counsel for the DOE submitted 14 exhibits, marked as Exhibits 1 through 14, and presented the testimony of the DOE Psychologist.

II. The Summary of Security Concerns

The SSC informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance under Guideline G (Alcohol Consumption)

² The DOE Psychologist stated that he utilized the internet site www.rupissed.com to gain objective estimates of his BAC levels. Ex. 12 at 2.

of the Adjudicative Guidelines. Ex. 1. 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 Guideline G include: “[a]lcohol-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”; “[h]abitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder”; and a “[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical DOE Psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder.” *Id.* at ¶ 22(a), (c), and (d).

In citing Guideline G, the LSO relied upon the opinion of the DOE Psychologist that the Individual has “does binge consume alcohol to the point . . . [of] impaired judgment.” Ex. 1 at 1. The LSO also relied upon the Individual's July 2022 DWI arrest. *Id.*

Based on the conduct noted above, I find 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 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 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.* § 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 Individual reported that he was arrested for DWI in July 2022. Ex. 10. His report was made the day after he was released following the arrest. *Id.* at 2. In the July 2022 LOI, he claimed that

he consumed eight beers and one shot between 6 p.m. and 10 p.m. on the night of his DWI. Ex. 11 at 4. The Individual acknowledged that he had previously been arrested in December 2002 for public intoxication after leaving a bar.³ *Id.* at 2. He also stated that he began consuming alcohol in high school. *Id.* at 3.

During the psychological evaluation, the Individual reported that he began consuming alcohol at approximately age 17. Ex. 12 at 4. After graduating from high school, the Individual served in the Marine Corps, between 2000 and 2004, during which he consumed beer twice a month on Saturdays. *Id.*; Ex. 14 at 26. After leaving the Marine Corps, he asserted, his alcohol consumption decreased, which he attributed to starting a family. Ex. 12 at 4.

The Individual testified that he currently meets with his Veterans Administration counselor (VA Counselor) once a week. Tr. at 71. The VA Counselor submitted a letter stating that the Individual has been meeting with her since early December 2022 and that his “active participation in therapy sessions shows a commitment to learn and grow. [He has] shown willingness to continue living a sober healthy lifestyle.” Ex. E. The Individual testified that he agreed with the accuracy of the DOE Psychologist’s Report. *Id.* at 72. He admitted that any misfortune in his life right now that has resulted from his DWI is his responsibility. *Id.* He further testified that he completed an eight-week IOP and did not miss a session. *Id.* at 74. Originally, when he began IOP, he thought they would be discussing alcohol and nothing else. *Id.* at 75. But he soon realized IOP was about more than just alcohol, and he began to feel more comfortable attending. *Id.* at 76. They talked about the twelve-step process, and they had paperwork and assignments to complete. *Id.* He asserted that everyone had to participate at IOP. *Id.* at 77. He asserted that he enjoyed attending and benefited more than he expected. *Id.* at 78. He completed IOP in mid-December 2022. *Id.* at 79; Ex. A.

He attends aftercare twice a week. Tr. at 80. The other IOP and aftercare attendees have become his support group, along with his IOP and aftercare counselors and his family.⁴ *Id.* at 81, 89. Although the DOE Psychologist recommended that he attend AA, the Individual, after consulting with his counselor at IOP, decided that AA attendance was not feasible because he resides in a small, remote town. *Id.* at 82. Together, he and his counselor decided that attendance at aftercare twice a week would be more beneficial than attempting to attend AA. *Id.* He admitted that he enjoys the structure of aftercare. *Id.* He asserted that he intends to continue meeting with his VA counselor and attending aftercare. *Id.* at 86. After attending IOP and aftercare, he testified, he now understands how his alcohol consumption affected him. *Id.* at 74.

The Individual began undergoing monthly PEth tests in August 2022, the results of which he submitted into the record. Ex. D. All of these tests, including the one administered at the request of the DOE Psychologist, were negative. In addition to the monthly PEth tests, the Individual was administered random breath tests and one random urinalysis at his employment. Tr. at 88; Ex. E. All of the random breath tests were also negative, as was the urinalysis. Ex. E. The Individual testified that he loves being abstinent. He said,

³ This charge was not raised by the LSO in the SSC. Ex. 1.

⁴ The Individual lives in a small, remote town and is surrounded by his immediate and extended family. Tr. at 92.

Oh, I -- I love it. I mean, I feel so much better. I mean, I don't have to worry about, you know, going places and then worrying about having to drive back or, you know, worrying what I'm going to do next. And of course, I like to go see all the [children's] basketball stuff, so I've been, you know, interacting with them a lot more.

Tr. at 98. The Individual concluded his testimony by asserting that his abstinence has been a "huge benefit." *Id.* at 88. He avowed that he had missed a lot of experiences with his family. *Id.* at 89, 102. He claimed that his DWI was a "blessing in disguise" because he has learned what alcohol does to his body and that his alcohol consumption could have caused many negative effects in his life and body. *Id.* at 89.

The Individual's co-worker, with whom he attended IOP and aftercare, his current supervisor, his friend, his wife, and his aftercare counselor testified on his behalf. *Id.* at 11, 24, 30, 44, 104. The Individual's co-worker testified that the Individual is always willing to interact with their aftercare counselor and share his stories with the group. *Id.* at 13. He asserted that the Individual is always welcoming with new students in the group and is viewed as one of the leaders. *Id.* at 13–14. He claimed that the Individual is never in a bad mood. *Id.* at 14. The co-worker testified that he had heard the Individual assert that he will not consume alcohol again because the "negatives obviously outweigh the positives." *Id.* at 15. The Individual shared that the most positive aspect of his abstinence is that he is more interactive with his family, and that his family is happier. *Id.* The co-worker concluded that the Individual is reliable at work and always on time, and he never questioned the Individual's reliability or judgment. *Id.* at 17. The Individual's supervisor confirmed the Individual's co-worker's opinion that the Individual is reliable at work. *Id.* at 27. He further testified that the Individual shows drive and determination to complete every task that is assigned to him. *Id.*

The Individual's friend testified that they have known each other for 28 years, stating that they have a close relationship. *Id.* at 31. He said that they see each other a few times a week. *Id.* Although they consumed alcohol together in the past, they do not now. *Id.* The friend testified that he had heard the Individual assert that he needed to make changes in his life and that he has been loyal to that. *Id.* at 32. He claimed that the Individual's relationship with his wife and children has improved and "he's become a lot better person and I've seen a big change in him." *Id.* The friend stated that in addition to being friends with the Individual, their families are friends, and their children socialize together. *Id.* at 32. The friend asserted that prior to the DWI, the Individual would miss family events. *Id.* at 33. Since the DWI, the Individual has not missed a family event and the entire family, including the Individual and his wife, appears happier. *Id.* The friend claimed that the Individual realizes what alcohol was doing in his life and has expressed that he feels better and does not intend to consume alcohol again. *Id.* at 34.

The Individual's wife testified that they have known each other for 24 years and have been married for 20 years. *Id.* at 44. She claimed that she asked him not to drive the night he received his DWI. *Id.* at 46. The day after his DWI, the Individual was silent, very sad, and did not want to talk about the situation. *Id.* She stated that he knew he made a mistake, and although some co-workers suggested that he have fun during the remainder of the weekend and consume alcohol, he did not act on their advice. *Id.* at 47. She claimed that since the DWI he has changed significantly. *Id.* at

48. He is purposeful in how he spends his time because he does not have a lot of time between work, his aftercare attendance, and his counseling. *Id.* She claimed that he has been more present and engages with his family and teaches them skills. *Id.* at 48–49. She sees his abstinence as a permanent change. *Id.* at 49. She further testified that he is also purposeful in his focus on family, and he is open when something is bothering him. *Id.* at 52. His wife claimed that they communicate better. *Id.* at 54. She also claimed that their entire family is supportive of the Individual’s abstinence, especially his mother. *Id.* at 53. She testified that, although his DWI occurred after a family function:

he can be around them [when they’re drinking], and it doesn't affect him like I thought it would . . . He’s still laughing with them and joking with them and having a good time. He’s just doing it sober. And he's waking up in the morning ready to tackle another day.

Id. at 53–54. She said that they do not keep alcohol in their house. She said that there was alcohol at a family gathering in January, but the Individual did not consume any. *Id.* at 67. She also said that she knows he has not consumed any alcohol since his DWI. *Id.* at 58. She concluded that “we all enjoy this version of him so much more.” *Id.* at 62.

The Individual’s aftercare counselor testified that she has known him since he started IOP. *Id.* at 105. She stated that,

[I]nitially he was very anxious, which I believe is very common in situations like this, but within, you know, a few minutes, maybe up to 10 minutes of me introducing who I was and explaining what this process was going to look like, I observed that he became a little bit more relaxed and was actually like physically leaning into gaining more insight about what was going to be happening.

Id. at 106. The counselor claimed that the Individual was more observant than involved in IOP at the beginning, but that he very quickly became more vocal. *Id.* at 107. She indicated that he asks appropriate questions to confirm that he understands everything, which is beneficial because the questions show that he is being honest with himself and is utilizing his resources. *Id.* at 107–08. The counselor indicated that the Individual’s background and small community gave him “expectations for [him] to act, perform, [and] not be affected by certain things.” *Id.* at 109. She added that he is making great strides in breaking out of those stereotypes that he was raised within. *Id.* at 110. She asserted that his family is the main focus of everything, even in his questions during IOP and aftercare. *Id.* at 111. The counselor noted that in the beginning the Individual was very anxious. *Id.* at 113. But she has seen an improvement in his self-esteem and self-awareness, which she equates to an improved prognosis moving forward. *Id.* at 113–14.

The aftercare counselor confirmed the Individual’s testimony that they agreed that he should attend aftercare twice a week rather than AA, as recommended by the DOE Psychologist, because his small town does not offer AA. *Id.* at 115–16. She concluded that the Individual’s prognosis is very good. *Id.* at 117.

The DOE Psychologist asserted that the hearing testimony did not change his opinion that the Individual consumed alcohol to the point of impaired judgment. *Id.* at 126. He claimed that rehabilitation is a process, and he was impressed with the Individual's level of progress. *Id.* at 126. The DOE Psychologist testified that "I see a radical and positive change and I really applaud [the Individual] for the change that he has made, and I applaud the treatment team that afforded him that opportunity. It appears to have been very positive for his life and the life of his family." *Id.* at 127–28. He stated that reformation is measured by willingness to "go out and . . . fix the problem." *Id.* at 128. The DOE Psychologist continued that the Individual has "done essentially everything that was doable within—within the list of things that I recommended." *Id.* He gave the Individual a good prognosis. *Id.* at 129.

The DOE Psychologist asserted that the Individual's support is excellent and his dedication to and the suitability of his aftercare is obvious. *Id.* at 130. He continued that "he's presented with a very strong support basis, which is, I think, very central to every successful individual who is trying to get through an addictive issue." *Id.* at 131. The DOE Psychologist opined that the Individual is reformed and has a low risk of relapse. *Id.* at 131, 132–33.

V. Analysis

The Individual's arrest for DWI and the DOE Psychologist's opinion that the Individual consumed alcohol to a point of impaired judgment justify the LSO's invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (d). The Adjudicative Guidelines set forth four factors that may mitigate security concerns under Guideline G:

- (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.

The passage of less than one year since the Individual's July 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. *Id.* at ¶ 23(a). However, the Individual has acknowledged his problematic alcohol consumption and has brought forth documentation and testimonial evidence establishing that he

has taken significant steps to overcome his problem. He provided evidence through the testimonies of his wife and friend that he has not consumed alcohol since his DWI. Moreover, the Individual provided alcohol testing to support his claim of abstinence. Further, his co-worker and his aftercare counselor testified that he completed an IOP and is regularly attending aftercare twice a week. He also provided a certificate showing that he completed IOP. 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. The aftercare counselor also testified that the Individual had a very good prognosis. For these reasons, I find that the Individual has satisfied the second and fourth mitigating condition under Guideline G. *Id.* at ¶ 23(b)-(d).

In light of the positive prognosis from the DOE Psychologist, the Individual's support network to aid him in his recovery, the Individual's abstinence from alcohol as evidenced by the PEth test results and his witnesses' testimony, and the Individual's positive lifestyle changes, he has resolved the security concerns related to his DWI and maladaptive pattern of alcohol use and I feel confident he is unlikely to engage in problematic alcohol consumption in the future. For the reasons stated above, I find that the Individual has mitigated the security concerns raised by the LSO under Guideline G.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G 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 brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, I find the Individual has 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 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