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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: December 23, 2022	)	Case No.: PSH-23-0038
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Issued: May 4, 2023

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**Administrative Judge Decision**

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Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an 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> 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 not be restored.

**I. Background**

On May 14, 2022, police arrested and charged the Individual with Aggravated Driving Under the Influence of Alcohol (ADUI) after a one vehicle automotive accident. Exhibit (Ex.) 7 at 1. A blood sample obtained by the police two hours after the Individual’s arrest indicated that her blood alcohol level (BAL) was .14 g/mL. Ex. 6 at 2.

On August 17, 2022, the Individual responded to a Letter of Interrogatory (LOI) issued to her by the Local Security Office (LSO) on July 29, 2022. Ex. 8 at 1, 9. In her response to the LOI, the Individual indicated that the ADUI charge had been dismissed. Ex. 8 at 2–3. The Individual further claimed that she would “never drink and drive again!” Ex. 8 at 4. However, she reported that she continued to consume one to two vodka and water drinks once or twice a week. Ex. 8 at 4. She reported that she had last consumed alcohol three days earlier. Ex. 8 at 5. She also reported that she had attended a six-week alcohol education class at the behest of her employer. Ex. 8 at 7. She stated that her future intentions concerning alcohol use were: “I plan to drink responsibly and will stop after one or two drinks.” Ex. 8 at 8.

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<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.

Because of the security concerns raised by the Individual's ADUI arrest, the LSO requested that the Individual undergo an evaluation by a DOE contractor psychologist (Psychologist), who conducted a clinical interview (CI) of the Individual on September 19, 2022. Ex. 9 at 2. In addition to interviewing the Individual, the Psychologist reviewed the Individual's personnel security file, administered the Minnesota Multiphasic Personality Inventory-Third Edition to the Individual, and had her undergo a Phosphatidylethanol (PEth) laboratory test to detect alcohol consumption. Ex. 9 at 2-3. During the CI, the Individual informed the Psychologist that during the three weeks prior to her ADUI arrest her consumption of alcohol had increased to three or four vodka and sodas on three or four days a week. Ex. 9 at 4. The Individual's September 19, 2022, PEth test was positive at a level of 358 nanograms per milliliter (ng/mL), suggesting that the Individual had engaged in heavy alcohol consumption during the previous three to four weeks. Ex. 9 at 5. The Psychologist issued a report of his findings (the Report) on September 25, 2022. Ex. 9 at 7. In the Report, the Psychologist opined that the Individual's PEth test result indicated that she was consuming more alcohol than she reported in her LOI response. Ex. 9 at 5. The Psychologist concluded that the Individual "is drinking heavily, likely regularly, to an extent that has been found to impair judgment." Ex. 9 at 6. He further concluded that the Individual's automotive accident, PEth test result, and "lack of candor about how much she is drinking" indicated that she is not yet rehabilitated. Ex. 9 at 6. The Psychologist recommended that the Individual: "prove she is not dependent on alcohol by becoming alcohol abstinent for nine months," undergo monthly PEth testing during that period, attend an intensive outpatient alcohol treatment program (IOP), and attend weekly counseling with an alcohol counselor for at least six months. Ex. 9 at 7.

After receiving the Report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding her eligibility to hold 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 Director of OHA 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), I took testimony from the Individual, two of her friends, and the Psychologist. Transcript of Hearing, Case No. PSH-23-0038 (hereinafter cited as "Tr."). The DOE Counsel submitted 11 exhibits, marked as Exhibits 1 through 11. The Individual submitted one exhibit, marked as Exhibit A.

Exhibit A is a letter, dated April 13, 2023, from the Individual's counselor to Whom It May Concern, which states in pertinent part:

[The Individual] has been regularly attending SMART Recovery meetings here . . . since January of 2023.<sup>2</sup> [The Individual] has been an asset to our group therapy setting. She is engaged during meetings and always has valuable insights and thoughts to add to the conversation topics. [The Individual] has been open and honest regarding her commitment to sober living now and in the future. Our group

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<sup>2</sup> SMART stands for Self-Management and Recovery Training. It is an alternative to Alcoholics Anonymous and other twelve-step programs. The SMART approach is secular and research-based and uses cognitive behavioral therapy and non-confrontational motivational methods. See [www.smartrecovery.org](http://www.smartrecovery.org).

topics focus on building and maintaining motivation, coping with urges, managing thoughts, feelings, and behaviors, and living a balanced life. Many of our discussions are geared toward the development of personal insight with the goal of creating a long term relapse prevention plan. [The Individual] has been open and forthright regarding her plans to achieve a significant life change and sustain the change for the betterment of herself and her family.

Ex. A at 1.

## **II. The Summary of Security Concerns (SSC)**

Attached to the Notification Letter was an SSC, in which the LSO raises security concerns under Adjudicative Guideline G (Alcohol Consumption). Under Adjudicative Guideline G, the LSO cites the Individual's ADUI arrest, as well as the Psychologist's finding that the Individual is drinking heavily, likely regularly, to an extent that has been found to impair judgment. This information adequately justifies the LSO's invocation of Guideline G. 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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are "alcohol-related incidents away from work, such as driving under the influence . . . regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder," and "habitual . . . consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder." Adjudicative Guidelines at ¶ 22(a) and (c).

## **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 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. Hearing Testimony**

At the hearing, the Individual had two friends testify on her behalf. Her first friend testified that she has known the Individual since the early 1990s. Tr. at 15. She communicates with the Individual “every couple of weeks.” Tr. at 17. Their interaction is almost always online. Tr. at 16–17. She indicated that the Individual was her co-worker and was never difficult to work with. Tr. at 15. She opined that the Individual would never be a threat to national security. Tr. at 15. The Individual testified that she was unaware that the Individual had any issues with alcohol. Tr. at 17.

Her second friend testified that he has known her since 2001 or 2002. Tr. at 23. He testified that he had been her coworker. Tr. at 24–25. He has also spent a lot of time with her in social situations. Tr. at 25–27. He further testified that he has never known the Individual to be a threat to national security. Tr. at 23–24. The Individual testified that he was not aware of the Individual having any issues with alcohol. Tr. at 27. He has never observed her being intoxicated. Tr. at 27. He is aware of her arrest. Tr. at 28.

The Individual testified that her ADUI occurred at a particularly stressful time in her life and that she had increased her alcohol consumption in response to this stress. Tr. at 37–39. She admitted that, during that time, she was drinking every other night and sometimes every night. Tr. at 40. She could not recall how much she was consuming but characterized it as “too much.” Tr. at 40. She admitted that she was consuming alcohol while she was driving on the night of the ADUI. Tr. at 42. While the ADUI charge had been dismissed, it was reinstated in December 2022. Tr. at 47. The Individual initially admitted that she still consumes alcohol “on occasion” but does not drink and drive. Tr. at 51. The Individual testified that she has been attending an “alcoholics class” (the SMART Recovery meetings documented in Exhibit A) since January. Tr. at 51, 60, 62. She estimated that she has consumed “two drinks” since she started that class, when she had a “slip up.” Tr. at 51, 53. She then testified that she still consumes alcohol, but in moderation, but never before she drives. Tr. at 52. She subsequently testified that she has been abstaining from alcohol use since February because she is “making the commitment to this class and to the people in this class.” Tr. at 55–56. She testified that she wants to be sober and save her marriage. Tr. at 52. She realized that she had to address her alcohol issues in October 2022, when her attitude towards her alcohol problem changed. Tr. at 52. The Individual has not had any additional PETH tests since the one ordered by the Psychologist in September 2022. Tr. at 56. The Individual did not attend an IOP because she did not agree with the Psychologist’s recommendation that she attend one. Tr. at 57. She is not attending individual counseling because she does not believe in psychologists and psychiatrists. Tr. at 57–58. She thinks that attending her SMART class is the best approach because she finds that the peer pressure is effective for her. Tr. at 58, 62. She had also attended a six-week alcohol education class provided by her employer. Tr. at 58–59. She began attending the SMART class because she realized that she needed to learn some tools to abstain and stay sober. Tr. at 60–61. She believes that the SMART class is working for her. Tr. at 61. If she felt like using alcohol again, she would think about her SMART classmates. Tr. at 63. The Individual believes she has a problem with alcohol. Tr. at 63–64. She further testified “I have learned to

control it.” Tr. at 64. The Individual testified: “I am sober.” Tr. at 66. She defined being sober as “not drinking, abstaining.” Tr. at 67. She intends to permanently abstain from alcohol use and is confident that she will succeed. Tr. at 63, 67. She has support from her husband and her SMART classmates. Tr. at 67.

The Psychologist testified after listening to the three other witnesses’ testimony. He testified that the results of the Individual’s PEth and BAL tests indicated that Individual had been engaged in heavy alcohol consumption. Tr. at 73–76, 86–87. The Psychologist further testified that the Individual’s ability to function with a BAL of .14 indicated that she was accustomed to consuming large quantities of alcohol. Tr. at 75. Her PEth test level was very high, 358 nanograms per milliliter, suggesting that she had been drinking heavily. Tr. at 76. The Individual was obviously minimizing her alcohol consumption during the CI. Tr. at 77. His impression after the evaluation was not that the Individual was an “alcoholic,” but rather that she “was abusing alcohol and needed to pull back.” Tr. at 78. The Psychologist opined that the Individual has begun “a very sincere program of abstinence and alcohol control.” Tr. at 80. However, he further opined that: “It’s only been maybe like three months, four months in length, and that’s not enough time for me to feel confident that she is going to be able to sustain that. She may be able to, but that’s a very positive, very promising beginning on it.”<sup>3</sup> Tr. at 80. The Psychologist further testified that the Individual’s SMART class is “fulfilling much of the same purpose as an IOP, even though it is not as heavy or intense as an IOP.” Tr. at 81. The Psychologist further testified that the Individual has found a treatment group that is a good fit for her and is the appropriate treatment for her alcohol issues. Tr. at 87. The Psychologist testified that he is not able to formulate a prognosis for the Individual since, while she has found a treatment program that is effective for her, she has only been abstaining from alcohol use for three or four months and that is not enough time to form a prognosis. Tr. at 82–83. He further opined that she is neither reformed nor rehabilitated. Tr. at 83.

## V. Analysis

The Individual provided conflicting testimony at the hearing about her present consumption of alcohol, having testified at the hearing that she still consumes alcohol “on occasion,” then subsequently testifying that she still consumes alcohol “in moderation,” and then later testifying that she has been abstaining from alcohol use since February. Tr. at 51–52, 55–56. However, it does appear that the Individual has recently gained a recognition that she needs to address her alcohol issues and to permanently abstain from alcohol use, and she has found an effective and appropriate program for addressing her issues in the form of the SMART class she is attending. But, the Individual’s sobriety is in its early stages, and even if I were to believe that her last consumption of alcohol occurred in February, she would have only been sober for less than three months at the time of the hearing.

The Adjudicative Guidelines set forth four factors that may mitigate security concerns under Guideline G. First, the Adjudicative Guidelines provide that an individual may mitigate security

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<sup>3</sup> The Psychologist’s recollection of the Individual’s hearing testimony is contradicted by the April 18, 2023, hearing transcript which shows that the Individual initially admitted that she still consumes alcohol “on occasion” but does not drink and drive, then testified that she still consumes alcohol in moderation, and then testified that she has been abstaining from alcohol use since February. Tr. at 51–52, 55–56.

concerns under Guideline G if they can show “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.” Adjudicative Guidelines at ¶ 23(a). In the present case, as noted above, at best, the Individual consumed alcohol less than three months before the hearing, which is not a sufficient period of time to demonstrate that her excessive alcohol consumption has been resolved and that her alcohol consumption is unlikely to recur. Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 23(a).

Second, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if “[t]he 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.” Adjudicative Guidelines at ¶ 23(b). In the present case, the Individual has acknowledged her pattern of problematic alcohol use, has been attending SMART Recovery meetings, and may have been abstaining from using alcohol for almost three months. However, as attested to by the Psychologist, a three-month period of abstinence is not sufficient to demonstrate a clear and established pattern of abstinence from alcohol. Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 23(b).

Third, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if “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.” Adjudicative Guidelines at ¶ 23(c). In the present case, the Individual is participating in a treatment program to address her alcohol issues, as recommended by the Psychologist. However, because the Individual’s last use of alcohol was relatively recent, it is too early in the course of her treatment to determine whether she has shown satisfactory progress. Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 23(c).

Fourth, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if “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(d). As noted above, the Individual has neither completed a treatment program nor established a pattern of modified consumption or abstinence from alcohol. Accordingly, I find that the Individual has not satisfied the mitigating condition set forth at ¶ 23(d).

I therefore find that the security concerns raised by the Individual under Guideline G have not been resolved.

## **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 commonsense manner, I find that the Individual has not mitigated the security concerns raised under Guideline G. Accordingly, the Individual has not demonstrated that restoring her security

clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, 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.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals