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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 14, 2022) Case No.: PSH-23-0035
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Issued: May 19, 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 be restored.

I. Background

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. On March 26, 2022, the Individual was arrested and charged with driving while intoxicated (DWI). Exhibit (Ex.) 6 at 3. As a result of this incident and two other past alcohol related charges (both minor in possession of alcohol charges), the Individual was asked to complete a letter of interrogatory (LOI) in May of 2022. Ex. 9. In July of 2022, the Individual was asked to undergo an evaluation with a DOE contractor psychologist (DOE Psychologist). Ex. 10.

Due to unresolved security concerns, 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 Guideline G (Alcohol

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.

Consumption) and Guideline 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. 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 three exhibits into the record (Ex. A through C) and presented his own testimony as well as that of a friend, a temporary supervisor, a coworker, his spouse, and a clinical director from an intensive outpatient program (IOP) he attended. The DOE Counsel submitted twelve numbered exhibits (Ex. 1 through 12) into the record and presented the testimony of the DOE Psychologist.

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. Ex. 1. That information pertains to Guideline G and Guideline J of the Adjudicative Guidelines. *Id.* Guideline G indicates that “[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. Under Guideline J, “[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.” *Id.* at ¶ 30.

As a basis for citing Guideline G, the LSO cited the Individual’s 2022 DWI charge, his minor in possession of alcohol charges, and the DOE Psychologist’s diagnosis of the Individual as meeting the criteria for Unspecified Alcohol-Related Disorder. Ex. 1 at 1. Specifically, in support of her diagnosis, the DOE Psychologist noted that the Individual’s arrest for DWI occurred after an episode of binge drinking, and her conclusion that the Individual has had frequent binge drinking episodes. Ex. 10 at 5. Regarding Guideline J, the LSO cited the Individual’s 2022 DWI arrest and his two-prior minor in possession of alcohol charges. Ex. 1 at 2. The derogatory information cited by the LSO justifies the invocation of Guideline G and Guideline J.

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

In August 2008 and July 2009, the Individual was charged with minor in possession of alcohol. Ex. 3 at 1.

In March 2022, the Individual was charged with DWI. *Id.* As a result of this charge, DOE asked the Individual to complete an LOI in May of 2022. Ex. 9. In the LOI, the Individual stated that on the day of his arrest he had consumed one mimosa, four mixed bourbon drinks, and two beers between 10:00 AM and his arrest at approximately 9:00 PM. *Id.* at 1.

After the Individual completed the LOI, he was asked to undergo an evaluation with the DOE Psychologist. Ex. 10. After this evaluation, the DOE Psychologist diagnosed the Individual with Unspecified Alcohol-Related Disorder and concluded that he binge consumed alcohol to the point of impaired judgment. *Id.* at 5. The DOE Psychologist explained that the Individual could demonstrate rehabilitation or reformation by completing an IOP program, continuing in aftercare for a minimum of six months, and completing his already-planned program of monthly Phosphatidylethanol (PEth) tests for 12 months to support an agreement he entered with his DOE Contractor employer and the DOE facility requiring that he be abstinent for 12 months.² *Id.* at 4–6.

Exhibits submitted by the Individual established that he entered an IOP in October 2022 and completed the program in December 2022. Ex. A, C. Further, the Individual submitted an exhibit documenting his attendance in the IOP and his continuing attendance in the aftercare program of the IOP. Ex. C. The Individual has also submitted records of monthly negative Peth tests from May 2022 to February 2023.³ Ex. B.

The Individual’s friend, a former colleague, testified that he would usually be in contact with the Individual once a week through text messages and phone calls. Tr. at 14. He found the Individual to be a reliable person. *Id.* at 18. In talking to the Individual about his DWI arrest, he came to

² The Phosphatidylethanol (PEth) test indicates whether an individual has engaged in any significant alcohol use over the prior three or four weeks. Ex. 10 at 4-5.

³ The Individual also submitted a Peth test conducted in April 2022 that reported a marginal positive test result, 27ng/ml, which was above the standard for a positive test of 20ng/ml. Ex. B at 1.

believe that the Individual “was beating himself up pretty good about it,” especially since the Individual had been employed in law enforcement. *Id.* at 15. The Individual informed him that his intention was to be totally abstinent, since consuming alcohol would ruin the Individual’s life. *Id.* at 23. The friend also stated he believes that when the Individual sets a course of action, he can be trusted to carry it out. *Id.* at 16. Further, he stated, the Individual accepted full responsibility for his actions resulting in the DWI arrest. *Id.* at 17. The friend also testified that he has attended many social events with the Individual since his DWI, and although other people consumed alcohol at these events, the Individual did not. *Id.* at 19.

The Individual’s temporary supervisor testified that he has worked with the Individual since the Individual’s clearance was suspended as a result of the DWI. *Id.* at 29. When assigned to the temporary supervisor, the Individual had a good attitude, was motivated, and sought out work assignments. *Id.* at 31-32. The temporary supervisor also stated that the Individual took full responsibility for the DWI; and, in the time he has worked with the Individual, he has had no reason to question the Individual’s judgment, reliability, or trustworthiness. *Id.* at 34.

A coworker testified that the Individual helped him to cope with his own alcohol consumption issues and the problems that those issues brought up at work. *Id.* at 38, 46. The coworker’s participation in IOP and aftercare overlapped with the Individual’s, and he explained that from his observations many of the younger members of those groups looked up to the Individual and saw him as a role model. *Id.* at 39–42. In the coworker’s case, the Individual helped him accept the fact that he needed to participate in IOP and had a positive effect on the coworker’s life. *Id.* at 38. The Individual told the coworker that the problems arising from his DWI arrest were the Individual’s own fault. *Id.* at 39. Despite this, the Individual maintained a positive attitude. *Id.* During the time they both attended the IOP program, the Individual made himself available to new participants to inform them about the program. *Id.* at 40–41.

The Individual’s spouse testified that she met her husband approximately five years ago and they have been married for about three years. *Id.* at 49. On the day the Individual was arrested for DWI, she observed the Individual feeling upset, disappointed, and especially disappointed that he had let her down. *Id.* at 50. He immediately began to contact all the officials he was required to contact regarding the DWI arrest, and she has not seen him consume any alcohol since that day. *Id.* at 51. The Individual’s spouse testified that the Individual was very dedicated to his IOP classes. *Id.* at 51, 55–56. She believed that the Individual was learning something from each of his IOP classes and that, as a result, their communication has improved, and the Individual is more attentive to her and her needs. *Id.* at 56. The Individual’s spouse also explained that the Individual has a support system and resources available to him if he has any future struggles with alcohol. *Id.* at 57. She believes that she, his family, his friends, and the resources he’s learned about in IOP would be available if he had a desire to consume alcohol. *Id.*

At the hearing, the Individual testified that because of his IOP classes he realized that he consumed more alcohol than he believed. *Id.* at 67. The Individual also testified that one of the hardest things that he has been forced to deal with is that he let down the people with whom he was closest. *Id.* at 69. The Individual was extremely motivated to take any steps he could to reestablish trust with the federal government so he can resume his job and rejoin his team. *Id.* at 70. He meets with the

Human Reliability Program psychologist regarding his alcohol use every month and finds these meetings beneficial. *Id.* at 70-71.

The Individual also confirmed that he had completed his IOP in December of 2022 and has been in aftercare since then. *Id.* at 71, 74; Ex. A, C. Through his IOP participation, he learned that his main trigger for alcohol misuse was his going to bars to watch college football. Tr. at 84. Consequently, he believes a way to avoid that trigger is to stay home and watch from his house. *Id.* He verified that he had been completing monthly PEth tests since his arrest and that after a low but positive result on the first test in April 2022, the rest had all been negative. *Id.* at 72; Ex. B. The random breath alcohol tests that the Individual has been subject to while at work have all been negative as well. Tr. at 73; Ex. D. The Individual testified that his last consumption of alcohol was on the night of his DWI arrest in March 2022. *Id.* at 74. The Individual believes that as a result of abstaining from alcohol he is a better person. *Id.* at 79.

The Individual also testified that he intends to continue attending aftercare indefinitely and remain abstinent from consuming alcohol. Tr. at 78, 85–87. He stated that he felt like sobriety, along with the IOP and aftercare, have made him a better husband and friend and that everyone in his life supports his decision to remain abstinent from alcohol. *Id.* at 79–80.

The clinical director from the Individual’s IOP and aftercare programs testified that he conducted an initial assessment of the Individual and worked with the Individual on at least a weekly basis as part of the Individual’s IOP. *Id.* at 88–89. He stated that that the Individual “seems to be a rule-based individual, so until he learns kind of what parameters are, he doesn’t really thrive. . . . [O]nce [the Individual] figure[d] out the rules, he . . . [thrive[d] in the IOP].” *Id.* at 90–91. The clinical director noted that the Individual would ensure that the Individual’s IOP group would stay on topic and that the group members would challenge one another. *Id.* at 93. He also noted the Individual’s efforts in the aftercare program went beyond expectations. *Id.* at 94. The clinical director explained that in his professional opinion, the Individual’s period of sobriety, 12 months, is significant and that there is a “greater than chance probability that [the Individual is] going to stay sober for a long time.” *Id.* at 100–01.

The DOE Psychologist testified that based on her observations during the hearing, the Individual no longer “warrants an alcohol-based diagnosis.” *Id.* at 104. The DOE Psychologist testified that she believes that the Individual is reformed and rehabilitated from his alcohol-misuse problem. *Id.* at 105. In making this finding she cited the Individual’s completion of the IOP as evidence of rehabilitation. *Id.* Regarding reformation, the DOE Psychologist cited the Individual’s abstinence from alcohol, his lifestyle changes, and his perception that abstinence from alcohol has made him a better person. *Id.* She also noted the change in the Individual’s attitude from his initial examination, where the Individual was still entertaining thoughts of continuing to consume alcohol, to his present intention after 12 months of abstinence to remain abstinent. *Id.*; see Ex. 10 at 4 (describing the Individual’s then-stated intention during the DOE Psychologist’s examination not to plan to “completely stop” his alcohol consumption).

V. Analysis

The adjudicative process is “an examination of a sufficient period and a careful weighing of several 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 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).

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.

Id. at ¶ 23.

After considering the record in this case, I find that the Individual has mitigated the stated Guideline G concerns in this case. Mitigating factor (b) clearly applies here. The Individual has acknowledged that his previous alcohol use was maladaptive. He has provided testimony from his wife, friends, and medical professionals that he has taken steps to deal with his maladaptive alcohol use and followed treatment recommendation. He has also provided multiple forms of laboratory evidence to corroborate the testimony that he has refrained from alcohol consumption since his DWI, a period of more than 12 months.

Mitigating condition (d) applies here as well. The Individual has successfully completed an IOP program and continues to participate in the recommended aftercare. As noted previously, he has provided significant laboratory test results that demonstrate he has not consumed alcohol for more than 12 months, in accordance with treatment recommendations. Consequently, given the record before me, I find that the Guideline G security concerns have been resolved.

The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline J if:

- (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.

I find that the Individual has mitigated the Guideline J concerns in this case. The Individual's completion of the IOP and aftercare, as well as his continued sobriety, are evidence of successful rehabilitation pursuant to mitigating factor (d). All the criminal acts cited as Guideline J security concerns center around alcohol misuse. As discussed above, I find that the Individual has resolved the Guideline G alcohol related security concerns. Consequently, I find that the probability of the Individual reengaging in criminal activity is low. Accordingly, after reviewing the record in this matter, I find that the Individual has mitigated the security concerns raised by the Guideline J derogatory information.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G and Guideline 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 brought forth sufficient evidence to resolve the security concerns set forth in the SSC. Accordingly, 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 security clearance should 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