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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-23-0039  
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Issued: May 24, 2023

**Administrative Judge Decision**

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) for 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> For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored.

**I. BACKGROUND**

The Individual is employed by a DOE Contractor in a position which requires that he hold a security clearance. The Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility to continue holding 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), the Individual presented himself as a witness. The LSO presented the testimony of the DOE psychiatrist (“Psychiatrist”) who had evaluated the Individual. *See* Transcript of Hearing (hereinafter cited as “Tr.”). The LSO submitted fourteen exhibits, marked as Exhibits 1 through 14 (hereinafter cited as “Ex.”). The Individual submitted five exhibits, marked as Exhibits A through E, each with numbered subsections.

**II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS**

<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.

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. According to the Summary of Security Concerns that accompanied the Notification Letter, that information pertains to Guidelines G and J of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. 10 C.F.R. § 710.7.

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 include:

- (a) Alcohol-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;
- (b) Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder;
- (c) Habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;
- (d) Diagnosis by a duly qualified medical or mental health professional (*e.g.*, physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;
- (e) The failure to follow treatment advice once diagnosed;
- (f) Alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder; and
- (g) Failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

*Id.* at ¶ 22.

In the Summary of Security Concerns, the LSO alleges that:

1. In August 2022, the Psychiatrist diagnosed the Individual with Alcohol Use Disorder, Moderate Severity, without adequate evidence of rehabilitation or reformation.

2. On April 29, 2022, the Individual was arrested and charged with Driving Under the Influence of Alcohol (DUI) and DUI based on Blood Alcohol Content (BAC) .08 percent or greater (“DUI 0.08 percent”);
3. On August 16, 2014, the Individual was arrested and charged with DUI and DUI 0.08 percent;
4. On July 31, 2010, the Individual was arrested and charged with DUI and DUI 0.08 percent;
5. On May 25, 2010, the Individual was arrested and charged with DUI and DUI 0.08 percent;
6. On January 23, 2003, the Individual was arrested and charged with DUI;
7. On December 30, 2000, the Individual was charged with Possession of Open Container on Streets/Public Place; and
8. On September 4, 1998, the was arrested and charged with DUI.

Ex. 1 at 1–2.

Guideline J states that criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness and that, 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. Conditions that could raise a security concern include:

- (a) A pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual’s judgment, reliability, or trustworthiness;
- (b) Evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted;
- (c) Individual is currently on parole or probation;
- (d) Violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program; and
- (e) Discharge or dismissal from the Armed Forces for reasons less than “Honorable.”

*Id.* at ¶ 31.

The LSO alleges that:

1. On April 29, 2022, the Individual was arrested and charged with DUI;

2. On August 16, 2014, the Individual was arrested and charged with DUI;
3. In his response to a letter of interrogatory (LOI) dated January 21, 2021, the Individual admitted that in approximately 2010 or 2011, he cultivated marijuana and that from 2010 to 2011, he used marijuana twice a week;
4. On September 30, 2010, a warrant was issued for the Individual's arrest for Failure to Appear in Court for a July 31, 2010, arrest for DUI and Driving While License Suspended;<sup>2</sup> on December 3, 2010, he was taken into custody;
5. On July 31, 2010, the Individual was arrested and charged with DUI and Driving While License Suspended;
6. On May 25, 2010, the Individual was arrested and charged with DUI;
7. On April 28, 2009, the Individual was charged with Driving while Using a Wire (driving while using a cell phone);
8. On January 23, 2003, the Individual was arrested for DUI and Hit and Run;
9. On December 30, 2000, the Individual was charged with Possession of Open Container on Streets/Public Place;
10. On October 21, 1999, The Individual was charged with Driving on Suspended License and Failure to Use Seatbelt;
11. On May 9, 1999, the Individual was arrested and charged with Possession of a Controlled Substance for Sale and Possession of Marijuana for Sale; and
12. On September 4, 1998, the Individual was arrested and charged with DUI.

Ex. 1 at 2–3. Accordingly, the LSO's security concerns under Guidelines G and J 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 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 entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. The regulatory standard implies that there is a presumption against granting or

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<sup>2</sup> The warrant was issued on September 30, 2010, per the exhibits cited by the Summary of Security Concerns. In the Summary of Security Concerns, the month was listed as "November," which appears to be a typographic error.

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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

#### **IV. FINDINGS OF FACT**

On September 4, 1998, the Individual was arrested and charged with DUI. Ex. 7 at 3. The Individual pled guilty pursuant to a plea agreement and was convicted; he served three days in jail and attended court-mandated DUI classes. *Id.* at 4. The Individual was also arrested and charged with DUI in January 2003, May 2010, July 2010, and August 2014.<sup>3</sup> Ex. 3 at 1.

On May 9, 1999, the Individual was arrested and charged with possession of a controlled substance and possession of marijuana. *Id.* at 4. This charge was eventually dismissed. *Id.*

On April 28, 2009, the Individual was charged with Driving While Using a Wire (using a phone while driving). Ex. 10 at 31. He paid a fine and the matter was resolved. *Id.*

In May 2010, the Individual was arrested and charged with DUI. Ex. 14 at 84. He spent seven days in jail and was required to complete DUI classes and pay fines. *Id.* Before finishing these requirements, the Individual was arrested and charged with DUI again in July 2010. *Id.* His driver’s license was suspended, and he was later arrested and charged with Driving With a Suspended License in September 2010 and December 2010. *Id.* at 84–85.

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<sup>3</sup> The Individual’s January 2003 DUI charge resulted in a sentence of 30 days in jail and DUI school. Ex. 7 at 3. In lieu of completing his jail sentence, he participated in an Alternative Work Program (AWP). *Id.* The July 2010 DUI resulted in a sentence of 150 days in jail and 36 months of probation. *Id.* at 3. The Individual served in the AWP in lieu of serving the jail time. *Id.* at 2. He also completed “DUI School.” *Id.* As a result of the August 2014 DUI, the Individual was sentenced to 120 days in jail and placed on probation for five years. *Id.* at 1. He completed another AWP in lieu of jail time. *Id.* Additionally, the Individual was required to pay fines and enroll in an 18-month Drinking Driver Offender Program. *Id.*

On September 30, 2010, a warrant was issued for the Individual's arrest due to his failure to appear in court for his July 2010 DUI arrest. Ex. 14 at 92. The Individual had confused his court dates but went to the courthouse and put himself on the calendar, which resolved the issue. *Id.*

In his January 2021 LOI response, the Individual admitted that from 2010 to 2011 he cultivated marijuana at his home and consumed marijuana approximately twice a week. Ex. 10 at 3. The Individual had been using the drug to alleviate back pain but after about six months discovered that this use of the drug, while legal under the laws of his home state, was still federally illegal. Ex. 14 at 91. He discontinued his use at that time. *Id.*

On April 29, 2022, the Individual was arrested and charged with DUI. Ex. 9 at 1. On May 2, 2022, the Individual self-reported to his employer that he had been arrested under suspicion of DUI. Ex. 8 at 1.

The Individual was asked to complete an LOI in July of 2022. Ex. 9. As a result of the answers he provided, the Individual was referred to the Psychiatrist and underwent a psychological evaluation in August 2022. Ex. 11. The Psychiatrist diagnosed the Individual with Alcohol Use Disorder, Moderate Severity. *Id.* at 9. He recommended that the Individual "enroll in an intensive and highly structured alcohol recovery treatment program" (IOP), attend daily meetings of a substance recovery group for at least twelve months, and, for twelve months after, attend meetings at least three times a week. *Id.* The Psychiatrist specified that the IOP should have a "minimum of nine hours of therapeutic and educational meetings per week, usually in three-hour sessions, for between 12 to 16 weeks." *Id.*

Approximately every three weeks from early February 2023 to the time of the hearing, the Individual underwent a blood test that can show whether the subject has consumed alcohol in the preceding month. Exs. C1–C3; Ex. E1. Each of these tests returned a negative result, showing the Individual had not consumed alcohol. *Id.* Starting on February 4, 2023, he also underwent weekly urine tests in conjunction with the IOP he began around the same time, which also all came back showing no signs of alcohol consumption. Exs. D1–D9.

At the hearing, the Individual testified that the last time he had consumed any alcohol at all was in January of 2023. Tr. at 11. He continued on to explain that on that date he only had a sip of beer before he realized that it did not even taste good to him and stopped. *Id.* Prior to the sip of beer in January 2023, the last time he consumed alcohol was in October of 2022. *Id.* The Individual testified that he had poorly characterized his LOI response about his alcohol use prior to his 2022 DUI. He explained that when he wrote that he had been sober for the preceding five years, he meant that he had consumed alcohol rarely during that time, and never to intoxication. *Id.* at 64–66. He testified that prior to the 2022 DUI, he had not consumed any alcohol for about 18 months. *Id.*

The Individual stated that he began attending Alcoholics Anonymous (AA) in June of 2022. Tr. at 18. He felt "it would be helpful to get [his] mind right." *Id.* at 19. He attended an in person meeting every Saturday morning since June 2022 and participated in discussions. *Id.* at 20–21. The Individual testified that AA had taught him about skills and tools people use to avoid consuming alcohol, but he had not gotten a sponsor or worked on the Twelve Steps. *Id.* at 23. The Individual

explained that he did not feel he had the time to attend the daily meetings recommended by the Psychiatrist because his AA group did not have meetings that he was allowed to attend every day and because of his long commute to and from work. *Id.* at 21.

The Individual completed his IOP in April of 2023. Tr. at 25, 41. In order to complete the ten-week program, the Individual was required to attend twenty 90-minute group meetings. *Id.* at 35, 41. He testified that he planned to begin attending the IOP's weekly relapse prevention classes after he had completed the DUI class that he was taking pursuant to his most recent DUI. *Id.* at 42. He had not considered how long he will want to continue to attend the relapse prevention classes. *Id.* at 62.

The Individual testified that he has a strong support system from his family and coworkers. Tr. at 58. He also said that he would use his "self-discipline" to prevent himself from consuming alcohol in the future. *Id.* at 60.

The Psychiatrist testified that, at the time of the hearing, he would still diagnose the Individual with Alcohol Use Disorder, Moderate Severity but would add the modifier "in early remission," because the Individual has laboratory confirmation that he has not consumed alcohol since early January 2023. *Id.* at 95–96. However, he also stated that he did not believe that the Individual had displayed adequate evidence of rehabilitation or reformation. *Id.* at 96–97, 109. The Psychiatrist explained that while the Individual had attended weekly AA meetings and approximately twelve weeks of IOP classes, the Individual did not meet the Psychiatrist's recommendations, which were made based on research into what gives a person the best chance of remaining sober over the long term. *Id.* at 97. He further testified that the Individual's prognosis is mixed or moderate because, while the Individual has taken some steps to address his alcohol use, he has a long history of maladaptive alcohol use that has not been solved by past DUI-related court-ordered classes and treatment programs. *Id.* at 104–05.

## V. ANALYSIS

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a commonsense manner. "Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security." Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I

am not convinced that the LSO's security concerns have been mitigated such that restoring the Individual's clearance is not an unacceptable risk to national security.

Conditions that may mitigate security concerns under Guideline G include:

- (a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) The individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) The individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; or
- (d) The individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23.

For the following reasons, I find that the Individual is neither rehabilitated nor reformed and that none of the mitigating conditions described above apply here.

Regarding mitigating condition (a), the Individual has been arrested and charged with a DUI at least six times in his life. The most recent arrest happened less than a year prior to the date of the hearing. This behavior is too frequent and recent to be mitigated under mitigating condition (a). Moreover, due to the Individual's long history of DUI arrests, I cannot find that the situation is unlikely to recur if the Individual is not rehabilitated or reformed from his alcohol use disorder, which I find he is not, as described below. Mitigating condition (a) cannot be applied.

The Individual's non-testimonial evidence showed only that he had been sober for a period of about three months at the time of the hearing. Throughout the Administrative Review process, the Individual has given a variety of responses about previous periods of sobriety, including that he consumed alcohol during those periods but did not reset his sober date. As such, it is unclear whether the time prior to the time covered by the testing included drinking alcohol. I conclude that the Individual only proved his abstinence during times covered by PEth testing. Given the Individual's decades of maladaptive alcohol use, this three-month period is not sufficient to demonstrate that a period of abstinence is a pattern at all. Furthermore, the Individual's IOP did not meet the standards for the treatment program recommended by the Psychiatrist, which contributed to the Psychiatrist's opinion that the Individual was not reformed or rehabilitated from his alcohol use disorder. The mitigating conditions (b) and (d) cannot be applied.



Regarding mitigating condition (c), although the Individual has completed an IOP and has been attending AA meetings, he has a long history of treatment and relapse. The Individual has taken court mandated DUI classes in the past and testified to remaining abstinent for periods of months in the past, but nevertheless, he has returned to alcohol, and alcohol-related criminal activity. Mitigating condition (c) cannot be applied.

Conditions that may mitigate security concerns under Guideline J include:

- (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.

The LSO's Guideline J concerns are inextricably tied to the Guideline G concerns about the Individual's alcohol consumption. The majority of the Individual's criminal charges stemmed from his alcohol use either directly—the DUIs—or indirectly—the citations for driving with a license that was suspended pursuant to a DUI charge. The actions that give rise to the Guideline J concerns are, for the most part, the very actions that gave rise to the Guideline G concerns, or at least a consequence of them.

Mitigating factors (a)<sup>4</sup> and (d) cannot be applied because as discussed above, there is not sufficient evidence of the Individual's rehabilitation or reformation from his alcohol use disorder, and I cannot find that a future DUI charge is unlikely if the Individual is not rehabilitated or reformed from his alcohol use disorder. Though slightly less proximate, if a DUI charge cannot be ruled out, I cannot find that a charge for driving with a suspended license, or any of the other criminal behavior related to the Individual's alcohol consumption, is unlikely to recur either.

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<sup>4</sup> Mitigating factor (a) can be applied to the Guideline J concerns regarding marijuana. The Individual's 1999 charge occurred over 20 years ago and he has had no involvement with the sale of a controlled substance since then. He was in his 20s at the time and has grown and changed over the years such that it is unlikely he would decide now to sell a controlled substance. Regarding his use of marijuana in 2010 and 2011, the Individual believed that his marijuana use was legal because his state had legalized cultivation and use of marijuana and he had complied with state law regarding his activities. Upon learning that his activities were federally illegal, he immediately discontinued his use and destroyed his plants, indicating that, in regard to marijuana, the Individual is a rule-follower and is unlikely to return to his previous behavior.

Mitigating factors (b) or (c) are not relevant in this case because no argument has been raised that the Individual did not commit the crimes or that the Individual was coerced into committing the crimes.

Having applied the Adjudicative Guidelines' mitigating factors to the evidence presented, and having considered such evidence in light of the whole person concept, I cannot find that the Individual has mitigated the Guideline G or J concerns.

## **VI. CONCLUSION**

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for access authorization under Guidelines G and J of the Adjudicative Guidelines. I further find that the Individual has not succeeded in fully resolving those concerns. Therefore, I cannot conclude that restoring DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore access authorization to the Individual.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Kristin L. Martin  
Administrative Judge  
Office of Hearings and Appeals