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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: January 10, 2023 ) Case No.: PSH-23-0048  
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Issued: May 26, 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.”<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**

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. In June 2022, the Individual was arrested and charged with Driving While Intoxicated (DWI)/Open Alcohol Container after consuming “a few drinks with dinner.” Exhibit (Ex.) 6; Ex. 7 at 3. The Local Security Office (LSO) subsequently issued a Letter of Interrogatory (LOI) to the Individual, which sought additional information related to the Individual’s arrest. Ex. 8. The Individual responded to the LOI in August 2022. *Id.* at 8.

In the August 2022 LOI, the Individual reported that before his June 2022 arrest, he consumed two to four mixed drinks about once a week. Ex. 8 at 9. He also reported his last consumption of alcohol was on August 20, 2022, when he consumed “3 beers, 2 shots of tequila and 1 mixed drink of vodka cranberry sprite.” *Id.* at 9–10. He also reported that he did not feel like he had a problem with alcohol and had never sought alcohol-related counseling or treatment. *Id.* at 13–14.

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<sup>1</sup> 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.

In October 2022, the Individual underwent an evaluation by a DOE-consultant Psychologist (DOE Psychologist). Ex. 9. In conducting the evaluation, the DOE Psychologist conducted a clinical interview of the Individual, reviewed the Individual's personnel security file, and had the Individual undergo a Phosphatidylethanol (PEth) laboratory test to detect recent alcohol consumption. *Id.* at 2–3.

On October 14, 2022, the DOE Psychologist issued a report (Report) explaining the results of the Individual's evaluation. *Id.* In the Report, the DOE Psychologist wrote that the Individual reported that, prior to his arrest, he consumed “two Yuengling Flight 16-ounce beers and one Long Island Iced Tea” while at a bar with friends. *Id.* at 2–3. The DOE Psychologist also wrote that after the Individual's arrest, he was transported to a hospital and required to undergo a “blood draw to test for alcohol levels.” *Id.* at 3. At the time of the DOE Psychologist's Report, the results of the Individual's blood test were not available. *Id.* The DOE Psychologist compared the Individual's report of his alcohol consumption to his height and weight and estimated that the Individual's blood alcohol level was .09 g/210L when he was stopped. *Id.* at 5.

During his clinical interview, the Individual reported to the DOE Psychologist that since 2018, he had consumed alcohol on Saturdays, but “not every Saturday.” *Id.* at 4. He also reported that for three months, from his alcohol-related arrest in June 2022 until his birthday in August 2022, he did not drink. *Id.* He also reported that the last time he consumed alcohol was on August 20, 2022. *Id.* He did not report undergoing any alcohol treatment. *Id.* However, the results of the Individual's October 2022, PEth test were positive at a level of 109 ng/mL, which, according to the Report, is consistent with “significant alcohol consumption.” *Id.* at 5. The DOE Psychologist articulated that there was “considerable difference” between what the Individual reported and the level of alcohol consumption indicated by his PEth test results, which “contradicts [the Individual's] self-report that he had not had any alcohol before the test since his birthday” and raised “questions about the lack of candor in [the Individual's] self-reports of his alcohol consumption.” *Id.*

The DOE Psychologist opined that the Individual had an Unspecified Alcohol-Related Disorder and “has been consuming alcohol at a significant level, either by bingeing or drinking significant amounts of alcohol on a frequent basis (habitually).” *Id.* at 6. The DOE Psychologist also opined that the Individual did not demonstrate adequate evidence of rehabilitation. *Id.* The DOE Psychologist recommended that the Individual “abstain from alcohol for a period of not less than six months and attend alcohol rehabilitation counseling which has both individual and group components.” *Id.* As an alternative, the DOE Psychologist recommended that the Individual “attend Alcoholics Anonymous [(AA)] meetings at least three times weekly, obtain the support of a sponsor to work through the 12 steps, and document his attendance and participation.” *Id.* Lastly, the DOE Psychologist recommended the Individual undergo “at least three PEth tests” to provide evidence of abstinence from alcohol. *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 December 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), I took testimony from the Individual, as well as two additional witnesses that he presented: the Individual's wife, and one of the Individual's co-workers. *See* Transcript of Hearing, Case No. PSH-23-0048 (Tr.). The Individual did not submit any exhibits. Counsel for the DOE submitted 11 exhibits, marked as Exhibits 1 through 11, and presented the testimony of the DOE Psychologist.

## II. The Summary of Security Concerns

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 cited the Individual's June 2022 arrest for DWI and Open Container and the opinion of the DOE Psychologist that the Individual has Unspecified Alcohol-Related Disorder and has been “consuming alcohol at a significant level, either by bingeing or drinking significant amounts of alcohol on a frequent basis (habitually).” Ex. 1 at 1. Based on these allegations, 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 (9<sup>th</sup> 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**

At the hearing, the Individual's wife testified that she and the Individual have been together for 15 years. Tr. at 11. She explained that in June 2022, she got a new job and she and the Individual went to a bar to celebrate. *Id.* She stated that at some point, she left the Individual at the bar, went home, and later found out the Individual was stopped by a police officer while driving. *Id.* at 12–13. She stated that she drove to the location where the Individual had been stopped and saw he was under arrest. *Id.* at 13. She further testified that the Individual was concerned about his job after his arrest because he heard from other people that once you have a “drinking-related incident . . . it doesn't usually turn out very well.” *Id.* at 14.

The Individual's wife further testified that the Individual still drinks. *Id.* at 14. She stated the Individual drinks at home, two times a month, and on a Saturday, when he doesn't have to work the next day. *Id.* at 14. She stated the Individual also drinks when they have family and friends over. *Id.* She stated she usually prepares a cocktail of “one-ounce to an ounce-and-a-half of tequila, and then [she'll] fill the cup up with [soda], pineapple juice, and then ice” for the Individual. *Id.* at 16. She stated the Individual drinks “[m]aybe two[, or t]hree, [at] the most” of these cocktails a couple of times per month. *Id.* at 16–17. She stated that the Saturday before the hearing, she prepared “two mixed drinks of tequila with [soda]” for the Individual, and the Individual also had “three [gelatin] shots that a friend made.” *Id.* at 22. She also stated the last time she saw the Individual intoxicated was on his birthday, August 20, 2022. *Id.* at 21–22. She stated the Individual has taken this process seriously but has not gone to AA or participated in any other type of alcohol treatment or counseling. *Id.* at 19, 23.

The Individual's co-worker testified that he and the Individual have been friends for over ten years. Tr. at 26. He stated he and the Individual see each other four to five times a year at children's events and picnics. *Id.* at 27. He claimed that during these events, the Individual drinks alcohol, but the Individual does not get drunk. *Id.* at 28. He stated the last time he saw the Individual drink was at the Individual's house at a crawfish boil, but he did not see how many drinks the Individual consumed. *Id.* at 33. He said the Individual told him he does not drink “outside the house” and that he is going to make smarter decisions overall. *Id.* at 29–30. He stated that the Individual, as an employee, is reliable, and he has never had a reason to question the Individual's judgment or honesty. *Id.* at 30–31. He also specified that he does not know if the Individual ever went to work drunk or hungover. *Id.* at 33.

The Individual testified that after he met with the DOE Psychologist, he made an appointment to see a counselor to discuss participating an intensive outpatient program (IOP); he stated that initially the counselor did not recommend an IOP for him. *Id.* at 40–41. But later, in February 2023, after the counselor received a copy of the DOE Psychologist's Report, the counselor did recommend that he enroll in an IOP, but the Individual declined to do so, because he believed “it

would look like [he] pushed it off just to the last minute.” *Id.* at 41. He stated that since his DWI arrest, he has modified his drinking habits to show he could control his drinking. *Id.* at 42, 48. He stated his wife always made his drinks, so they decided together that she would make the drinks with less alcohol, “You know, two or three . . . just have a couple . . . while I’m cooking outside.” *Id.* On cross examination, the Individual admitted that he was drinking as much alcohol as he was before his DWI arrest “at the house.” *Id.* at 48. He stated he does not intend to increase the amount he drinks or the frequency with which in drinks. *Id.* Regarding his DWI, the Individual stated he refused to take a Breathalyzer test when requested by a police officer because he does not trust the test. *Id.* at 53. He initially refused to take a field sobriety test, but then agreed. *Id.* at 54; Ex. 9 at 3. The Individual stated he is required to appear in court once every week and he is not under a court-ordered restriction to abstain from drinking alcohol. Tr. at 44.

The Individual further testified that he read the DOE Psychologist’s treatment recommendations in the Report, but he did not follow the recommendations. *Id.* at 49. He stated he did not plan to enroll in an IOP because, “[t]he class is four nights a week, three hours, [which] would put me back home by 10:30 or 11:00 four nights out of the week. . . . Now I’m limiting myself to maybe three, four hours a night, of sleep . . . and I just thought that that was a drastic no[.]” *Id.* He stated he chose not to attend AA for the same reasons. *Id.* He stated he intends to continue drinking in the “controlled” manner he described earlier. *Id.* at 50.

When questioned by the DOE Psychologist, the Individual testified that when he met with the counselor, she told him he did not have “a problem.” *Id.* at 51. However, he stated that when he provided the counselor with a copy of the DOE Psychologist’s Report, the counselor changed her opinion. *Id.* at 51–52.

The DOE Psychologist testified that after her evaluation, she determined the Individual had an Alcohol-Related Disorder and she recommended the Individual abstain from alcohol for “a period of not less than six months,” attend alcohol rehabilitation counseling, and undergo three additional PEth tests. *Id.* at 58–59. She stated when people are trying to change their habits around alcohol consumption, research shows that the “most effective way for them to make those kinds of changes is to abstain for a period of time and then if they are going to reintroduce alcohol, they have a better probability of being able to do that in a controlled manner.” *Id.* at 59. The DOE Psychologist also testified that after hearing the Individual’s testimony, she did not believe the Individual was rehabilitated or reformed from his alcohol disorder. *Id.* at 59–60. She stated that for evidence of reformation, “what you want to see are cognitive and lifestyle changes,” and she had concerns because the Individual “drank in what would be considered a binge episode” two days before the hearing. *Id.* at 64. She stated that behavior is contradictory to reformation. *Id.* at 65.

## V. Analysis

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.

Regarding factor (a) above, the Individual's June 2022 DWI arrest occurred after he consumed alcohol during dinner; the arrest did not occur under unusual or unique circumstances. Further, the Individual admitted he continues to consume alcohol, and did so as recently as a few days before the hearing, and at the same frequency as before his DWI arrest. Lastly, the Individual was diagnosed with AUD seven months before the hearing, and he has not taken any actions to satisfy the DOE Psychologist's treatment recommendations to resolve his AUD or history of binge or habitual consumption of significant amounts of alcohol. Therefore, I find the Individual has not shown that his behavior is unlikely to recur, and he has not mitigated the security concerns under ¶ 23(a).

Regarding factor (b), the Individual does not believe his alcohol consumption is a problem: he sees his DWI arrest as a lapse in judgment, which he characterized as a mistake, rather than evidence that he should seek treatment for his alcohol consumption. The Individual admitted he consumes as much alcohol now as he did before his DWI arrest, just only while at home. After his DWI arrest, the Individual continued to consume alcohol and testified to doing so as recently as a few days before the hearing. The Individual also failed to enroll in an alcohol treatment program after being advised to do so by both his counselor and the DOE Psychologist. Lastly, the Individual failed to undergo three PEth tests and, in fact, admitted his alcohol consumption has not changed. Therefore, the Individual has not mitigated the security concerns under ¶ 23(b).

Regarding factor (c), the Individual has not dedicated the time necessary to enroll in an IOP. Instead, the Individual asserts he can control his alcohol consumption. Also, the Individual did not follow the DOE Psychologist's recommendations to participate in an alcohol treatment program or undergo PEth testing to provide reliable evidence of his alcohol consumption. Therefore, the Individual has not mitigated the security concerns under ¶ 23(c).

Regarding factor (d), as discussed above, the Individual has not participated in an alcohol treatment program, as recommended by the DOE Psychologist, and as discussed above, the Individual continued consumption of alcohol at the same level as prior to his DWI. This is sufficient to preclude the application of factor (d). Therefore, the Individual has not mitigated the security concerns under ¶ 23(d).

For the reasons stated above, I cannot 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 not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, I find the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should not 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