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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 24, 2023) Case No.: PSH-23-0053
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Issued: July 13, 2023

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (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.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should be granted.

I. BACKGROUND

The Individual is employed by a DOE Contractor in a position which requires that he hold a security clearance. The Individual completed a Questionnaire for National Security Positions (QNSP) as part of his application for a security clearance. Exhibit (Ex.) 9. In his QNSP, the Individual disclosed that he had been arrested for Driving Under the Influence (DUI) in 2010 and in 2011 pleaded guilty to Driving While Intoxicated (DWI) to resolve the charges associated with his arrest. *Id.* at 26–27.

The Local Security Office (LSO) referred the Individual to a DOE-Consultant Psychologist (Psychologist), who performed a psychological evaluation of the Individual in August 2022. Ex. 7. The Psychologist opined that the Individual habitually consumed alcohol to the point of having impaired judgment. *Id.* at 5. The 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 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

¹ 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.

in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual presented the testimony of three witnesses. The LSO presented the testimony of the DOE psychologist who had evaluated the Individual. *See* Transcript of Hearing (hereinafter cited as “Tr.”). The LSO submitted 10 exhibits, marked as Exhibits 1 through 10. The Individual submitted four exhibits, marked as Exhibits A through D.

II. THE NOTIFICATION LETTER AND THE 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. That information pertains to Guideline G 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. The LSO alleges that the Individual was arrested and charged with DUI in 2010, after which he pled guilty to misdemeanor DWI in 2011. Ex. 1 at 1. The LSO also alleges that the Psychologist opined that the Individual habitually consumed alcohol to the point of impaired judgment. *Id.* Accordingly, 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 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 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. 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.

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

The Psychologist performed a lengthy evaluation of the Individual in August 2022 that involved many psychological tests and inventories, as well as an interview with the Individual. Ex. 7. He also directed the Individual to submit to a blood test that could detect alcohol use over the preceding four weeks. *Id.* at 4. The Psychologist provided the LSO with a report based on his evaluation of the Individual. Ex. 7. In the report, the Psychologist opined that the Individual habitually consumed alcohol to the point of impaired judgment. *Id.* at 5. He stated that, based on lab test results, the Individual underestimated how much alcohol he was consuming and likely consumed to the point of impairment frequently. *Id.* The Psychologist also gave treatment recommendations in his report, which the Individual received in late December 2022. Ex. 7; Tr. at 105. The Psychologist recommended that the Individual abstain from alcohol and participate in a substance abuse treatment program that involved, at a minimum, participation in weekly group therapy sessions on a consistent basis for 12 weeks. Ex. 7 at 5. He further recommended that the

Individual then participate in relapse prevention or aftercare group therapy sessions for the remainder of a year. *Id.* He also recommended that the Individual attend Alcoholics Anonymous (AA) or a similar program at least weekly for a year. *Id.* Finally, the Psychologist recommended random alcohol monitoring through breathalyzer, urinalysis, blood, sweat patch, or another acceptable option. *Id.*

The Individual's therapist, testifying as an expert in the field of licensed clinical social work with specializations in addiction and mental health treatment, first met the Individual in February 2023 when he came to her clinic seeking treatment for his alcohol issues. Tr. at 17–18. She saw him for weekly group therapy sessions, which used a psychotherapy method, and weekly individual therapy sessions, which used a cognitive behavioral therapy method. *Id.* at 18–20. She described the Individual as being open minded and willing to follow instructions for treatment; she also testified that the Individual had acknowledged his maladaptive pattern of alcohol use. *Id.* at 24, 28. She diagnosed the Individual, as of the hearing date, with Substance Abuse Disorder, mild, in sustained (as opposed to early) remission. *Id.* at 20. While in the therapist's treatment program, the Individual had been subject to random urine tests that screened for alcohol and no alcohol was detected in any of his samples. *Id.* at 22–23. The therapist believed that the Individual had stopped consuming alcohol in mid-January 2023. *Id.* at 21–22. She gave the Individual a good prognosis for remaining abstinent and testified that he was rehabilitated from his problematic alcohol use. *Id.* at 25–27. The Individual submitted into evidence a letter from his treatment program stating that he had not yet completed the program but had made significant improvement in his recovery. Ex. F2.

The Individual's fiancée testified that she had known the Individual for about four years and that they had lived together for about three and a half years. Tr. at 31–32. She had not seen the Individual consume alcohol since mid-January 2023. *Id.* at 33. She had started abstaining with the Individual at that time to support the Individual, had maintained that abstinence for its health benefits, and intended to remain abstinent indefinitely. *Id.* at 33–38. Prior to his abstention, she had seen the Individual have one or two drinks occasionally on a worknight and three to four drinks on a weekend day. *Id.* at 34. She had never seen him drink alcohol on a daily basis. *Id.* She believed she could tell if the Individual was under the influence of alcohol because the Individual became tired and often dozed off on the couch after drinking. *Id.* at 34–35.

The fiancée testified that she had been the main supporter for a close friend who suffered from alcoholism and that she was familiar with the behaviors and attitudes of active alcoholics. Tr. at 39. She had never seen the Individual exhibit those behaviors and attitudes. *Id.* The fiancée was somewhat familiar with AA and had offered to attend with the Individual for support. *Id.* at 42–43. She testified that, if the Individual relapsed, she would prioritize his safety and then support and encourage him in his return to sobriety. *Id.* at 43–44.

The fiancée was unaware of any interactions between the Individual and law enforcement during the time she had known him. Tr. at 49. She testified that the Individual had never missed work or failed to meet an obligation due to his alcohol consumption. *Id.* at 44–45. She testified that the Individual had never done anything while under the influence of alcohol that caused her to doubt his trustworthiness and judgment. *Id.* at 44. She testified that she was surprised by the Psychologist's report but understood that the results of the blood test administered after the

evaluation may have been high because they had just come back from a vacation during which they had consumed more alcohol than usual. *Id.* at 46.

The Individual's friend testified that he had been the Individual's former manager from 2015 to 2016. Tr. at 52. They became friends over the years and spent time together socially, often working on personal construction projects together before going to dinner. *Id.* at 52–53. In the past, they rarely consumed alcohol while working on projects and had not consumed any alcohol together in the past six months. *Id.* at 54. In the past, the friend had seen the Individual consume one beer, two on rare occasions, with dinner from time to time. *Id.* He had never seen the Individual intoxicated, which he described as being louder, looser, and out of control. *Id.* at 54–55. The friend had been abstaining from alcohol for over six months due to health concerns and testified that he had not seen the Individual consume alcohol during that time. *Id.* at 56–57. The friend noted that the Individual still enjoyed social activities without consuming alcohol. *Id.* at 56. He described being like a mentor to the Individual and described him as “a good kid, . . . a good guy.” *Id.* at 57–58.

The Individual testified that, at age 19, he had pled guilty to misdemeanor DWI pursuant to his arrest in 2010. Tr. at 60–62, 64–65. He testified that he had several drinks of liquor at a college party and chose to drive himself and his friends home. *Id.* at 61. He pleaded guilty to the lesser alcohol offense to avoid the possibility of being convicted of a felony. *Id.* at 64–65. He completed his probation and all the requirements imposed by the court. *Id.* at 65–67. He also completed the community service and research paper his university assigned him after his conviction. *Id.* at 67.

After his DWI conviction, the Individual took greater care in his actions, planning for situations and examining the potential consequences of his actions. Tr. at 69. He testified that the ordeal had a profound and lasting impact on his daily life and that his only subsequent encounter with law enforcement had been for a speeding ticket. *Id.*

The Individual testified that in the five years leading up to August 2022, he would typically consume either two mixed drinks, two to three beers, or a similar combination of mixed drinks and beers one to three times per week. Tr. at 70–71, 76. The Individual had a part-time job that he did after finishing work at the DOE facility, so most evenings he would eat dinner and go straight to bed after arriving home. *Id.* at 71. He had consumed alcohol on his days off from the part-time job, usually on Saturdays and sometimes on Tuesday or Wednesday nights. *Id.* at 73. He had considered it a reward and did not drink because he felt cravings. *Id.* At that time, he drank to intoxication one or two times per month. *Id.* at 75–76.

The Individual had started abstaining from alcohol on January 14, 2023. Tr. at 81. He submitted into evidence the results of alcohol screenings (seven urine tests and another blood test measuring alcohol use over the preceding weeks), all of which were negative, spanning from mid-February 2023 to mid-May. Ex. G1; Ex. G2. The Individual had enrolled in an outpatient treatment program, as well as an alcohol education course. Tr. at 80–81. The Individual also attended two or three AA meetings per week, which he began going to in January 2023, and identified himself as an alcoholic when speaking there. *Id.* at 81, 104; Ex. B1; Ex. B2. The Individual admitted that initially, he did not believe he would receive a therapeutic benefit from following the Psychologist's recommendations, though he had chosen to follow them regardless. Tr. at 82. However, he testified, he had changed his opinion as he went through the treatment process. *Id.* at 82–83. He

testified, “I got in touch with a side of me that I haven’t experienced in a long time, simply for the fact that I had been drinking for years . . .” *Id.* at 83. He further testified, “I wouldn’t change this experience [for] anything in the world because if you want to define rehabilitation, it’s more than just drinking, it’s reforming your mind.” *Id.* The Individual testified that the recommendations had become a way of life for him and that he was growing as a person as a result. *Id.* at 83–84. He did not “have any plans to . . . give up sobriety.” *Id.* at 99.

The Individual testified that one-on-one therapy helped him identify personal issues with emotions and that group therapy showed him not only the potential consequences of alcohol abuse, but also showed him how others had overcome challenges during their recovery. *Id.* at 85–86. The Individual saw parts of himself in other group members and felt a sense of solidarity because they were all dealing with similar issues. *Id.* at 85. The Individual also met with a peer recovery coach once or twice a month to channel his growth and new knowledge into actionable steps in his life. *Id.* at 90.

The Psychologist testified that he believed the Individual to be rehabilitated and reformed from the maladaptive alcohol use described in his report. *Id.* at 120–21. He testified that the Individual had achieved a “significant level of sobriety,” and that he was impressed by the Individual’s “ability to explain what he had learned through treatment in the group sessions and in the individual sessions, and his willingness to participate in AA sessions.” *Id.* at 120. He believed the Individual had made real changes and was encouraged by the positive comments from the Individual’s therapist. *Id.* at 121–22. He testified that he believed the Individual had “provided evidence of actions taken to overcome his alcohol problem.” *Id.* at 121. He also testified that he believed the Individual had “demonstrated a clear and established pattern of modified consumption or abstinence, in accordance with treatment recommendations.” *Id.* at 122. He gave the Individual a “fairly good prognosis.” *Id.* at 122–23.

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 granting the Individual’s clearance is not an unacceptable risk to national security.

Guideline G concerns may be mitigated 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; 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. Mitigating conditions (a), (b), and (c) apply in this case.

Regarding condition (a), the Individual's DWI was over a decade ago and he has had no further issues with driving under the influence since that time. Moreover, he was quite young when he made the choice to drive while intoxicated and has matured significantly in the intervening years, holding multiple jobs, maintaining lasting adult relationships, and taking responsibility for his actions. He did not attempt to minimize or justify his behavior and acknowledged that it was wrong. I find that the Individual is unlikely to repeat this behavior and that it no longer casts doubt on his judgment, reliability, and trustworthiness. Accordingly, I find that condition (a) is applicable.

Regarding condition (b), the Individual began his treatment process with skepticism, believing that he would not benefit from it. However, as he learned more, heard others' stories, and examined his own behavior, he found that by abstaining, he had regained a part of himself that he had lost due to alcohol consumption. He identifies himself as an alcoholic and has no plans to return to alcohol consumption. He is participating in an outpatient treatment program and AA and completed an alcohol education course. The Individual presented testimonial and documentary evidence of a pattern of abstinence, which was supported by the Psychologist's testimony. He has support from his fiancée, who is also abstaining, and from ongoing group therapy and AA meetings, which he pursued in accordance with the Psychologist's recommendations. Accordingly, I find that condition (b) is applicable.

Regarding condition (c), the Individual enrolled in an outpatient treatment program that included individual and group therapy. He also began attending AA meetings and an alcohol education course. The Individual has not yet completed his treatment program but had made significant progress, as evidenced by his therapist's testimony and the letter from his treatment program. His therapist is satisfied with his progress and he is learning from his peers. He is learning how to cope with his emotions and noting how others have dealt with challenges in their recovery. He is also

applying what he has learned to his life with the help of his peer coach. Moreover, the Psychologist opined that the Individual is rehabilitated and has a good prognosis. This program is the first substance abuse program the Individual has attended, outside of the general courses mandated by the court after his DWI, and he has no history of relapse. Accordingly, I find that condition (c) is applicable.

For the foregoing reasons, I find that the Individual has mitigated the concerns under Guideline G.

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 Guideline G of the Adjudicative Guidelines. I further find that the Individual has succeeded in fully resolving those concerns. Therefore, I conclude that granting 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 grant 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