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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: March 30, 2023	)	Case No.: PSH-23-0068
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Issued: July 19, 2023

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**Administrative Judge Decision**

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Phillip Harmonick, 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."<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**

The Individual was granted access authorization in 2017 in connection with his employment by a DOE contractor. Exhibit (Ex.) 12 at 34, 55. On September 6, 2022, the Individual submitted a Personnel Security Information Report to the local security office (LSO) in which he disclosed that he had been arrested and charged with Driving While Intoxicated (DWI). Ex. 8 at 1–2.<sup>2</sup> The LSO issued the Individual a letter of interrogatory (LOI) concerning his alcohol consumption and the circumstances of his arrest. Ex. 9. The Individual's response to the LOI did not resolve the LSO's security concerns. *See* Ex. 4 at 1 (summarizing the LSO's review of the Individual's eligibility for access authorization).

The Individual met with a DOE-contracted psychiatrist (DOE Psychiatrist) for a psychiatric evaluation on December 28, 2022. Ex. 10 at 3. Following the evaluation, the DOE Psychiatrist

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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.

<sup>2</sup> The internal pagination of numerous exhibits offered by the local security office does not correspond to the number of pages included in the exhibits. For example, the pagination of Ex. 8 begins at 20 due to the material contained therein having been excerpted from another document. This Decision cites to pages in the order in which they appear in exhibits without regard for their internal pagination.

issued a report (Report) in which he concluded that the Individual met sufficient diagnostic criteria for a diagnosis of Alcohol Use Disorder (AUD), Severe, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)* and that he habitually consumed alcohol to the point of impaired judgment. *Id.* at 10.

The LSO issued the Individual a letter notifying him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. 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 Consumption) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. 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 hearing. The LSO submitted twelve exhibits (Exs. 1–12). The Individual submitted five exhibits (Exs. A–E). The Individual offered the testimony of two character witnesses<sup>3</sup> and testified on his own behalf. Hearing Transcript (Tr.) at 3, 10, 25, 34. The LSO offered the testimony of the DOE Psychiatrist. *Id.* at 3, 60.

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

The LSO cited Guideline G of the Adjudicative Guidelines as the basis for its suspension of the Individual’s access authorization. Ex. 1. “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. The SSC cited the DOE Psychiatrist’s opinion that the Individual met sufficient diagnostic criteria for a diagnosis of AUD, Severe, under the *DSM-5* and that he habitually consumed alcohol to the point of impaired judgment, as well as the Individual’s arrest for DWI. Ex. 1. The LSO’s allegation that the Individual engaged in alcohol-related incidents away from work, the DOE Psychiatrist’s opinion that the Individual habitually consumed alcohol to the point of impaired judgment, and the DOE Psychiatrist’s diagnosis of the Individual with AUD justify the LSO’s invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c)–(d).

## **III. REGULATORY STANDARDS**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Dep’t 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

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<sup>3</sup> The character witnesses testified that the Individual is an honest and reliable person and an exemplary employee. Tr. at 19–21, 28–30. However, they lacked personal knowledge of facts relevant to the application of Guideline G, such as whether the Individual had recently consumed alcohol or engaged in alcohol-related treatment. *Id.* at 14, 18, 31.

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).

An 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). An individual is afforded a full opportunity to present evidence supporting his or her 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.* at § 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

On September 2, 2022, the Individual was arrested and charged with DWI after a law enforcement officer observed him asleep in his vehicle on the side of a road and the Individual failed field sobriety tests administered by the officer. Ex. 8 at 1, 4; Ex. 9 at 1. The Individual’s blood alcohol concentration (BAC) was measured at .27 at a jail several hours after his arrest. Ex. 2; Ex. 10 at 4. In December 2022, the Individual entered into a deferred prosecution agreement pursuant to which he agreed to the suspension of his driver’s license for 30 days followed by reinstatement of his driver’s license with restrictions for an additional 60 days. Ex. 6 at 3–4. The Individual was also required to undergo an alcohol-related assessment, following which he was directed to attend an alcohol intervention program for elevated-risk offenders based on the results of the assessment and his BAC when he was arrested. Tr. at 55–56. The Individual was also ordered to pay a fine, attend a victim impact panel, and obtain supplemental automobile insurance. *Id.* at 42–44.

The Individual met with the DOE Psychiatrist for a psychiatric evaluation on December 22, 2022. Ex. 10 at 3. As part of the evaluation, the DOE Psychiatrist conducted a clinical interview during which the Individual reported having consumed at least eighteen 1.5-ounce drinks of spirits in “shots” and mixed drinks prior to driving on the day of his arrest for DWI. *Id.* at 6, 11. The Individual told the DOE Psychiatrist that he had consumed between 84 and 108 standard alcoholic drinks<sup>4</sup> per month and became intoxicated at least twice monthly prior to his arrest for DWI. *Id.* at 10; *see also* Ex. 9 at 4–5 (indicating that the Individual’s alcohol consumption patterns were consistent over the five years prior to his arrest for DWI and that he perceived himself as having become intoxicated approximately twice monthly). The Individual also indicated that he had experienced blackouts and “grey outs” in which his memory of events was impaired due to alcohol consumption. Ex. 10 at 10. The Individual represented that he had “considered” reducing his alcohol consumption following his arrest for DWI, but continued to consume alcohol at home and at social functions. *Id.* at 5–6; *see also* Tr. at 58 (indicating that the Individual continued the pattern of alcohol consumption he described to the DOE Psychiatrist until April 2023).

The DOE Psychiatrist administered a cognitive test to the Individual as part of the evaluation. *Id.* at 8. The DOE Psychiatrist determined that the Individual’s below-average score on the portion of the test related to his capacity for abstraction was substantially lower than expected in light of the

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<sup>4</sup> The DOE Psychiatrist defined “a ‘standard drink’ [as] 1.5 ounces of ethanol. That translates to [one] 1.5-ounce (one shot) of 40% (80 proof) [spirits], one 12-ounce can of 5% beer, or one 5-ounce glass of 12% wine.” Ex. 10 at 7.

Individual's high score on the portion of the test related to vocabulary and the Individual's technically sophisticated profession. *Id.* The DOE Psychiatrist indicated in his Report that the Individual's unexpectedly low score on the abstraction portion of the test suggested alcohol-related damage to his cognition. *Id.* The DOE Psychiatrist found additional evidence of cognitive impairment during the clinical interview; for example, the Individual experienced abnormal difficulty reciting strings of numbers in reverse and lower than expected ability to interpret proverbs. *Id.* at 10. The Individual also provided a sample for a phosphatidylethanol (PEth) blood test, the results of which were positive at 463 ng/mL. *Id.* at 6. In his Report, the DOE Psychiatrist indicated that studies comparing subjects' self-reported alcohol consumption to their PEth levels suggested that the Individual's PEth level was consistent with consumption of approximately seven alcoholic drinks per day. *Id.* at 7.

The DOE Psychiatrist issued his Report on January 21, 2023. *Id.* at 12. In the Report, he opined that the Individual met sufficient diagnostic criteria for a diagnosis of AUD, Severe, under the *DSM-5* and habitually consumed alcohol to the point of impaired judgment.<sup>5</sup> *Id.* at 11. He recommended that the Individual demonstrate rehabilitation by: abstaining from alcohol for at least twelve months; participating in Alcoholics Anonymous (AA) for at least one year, including working the 12 steps of the AA program with a sponsor; completing an intensive outpatient program (IOP) for alcohol treatment; undergoing alcohol testing, including random BAC tests and at least two PEth tests, for one year; and completing all court-ordered interventions related to his DWI. *Id.* at 12. The DOE Psychiatrist recommended that, if the Individual could not abstain from alcohol while completing the abovementioned actions, he receive inpatient treatment for AUD followed by an additional year of outpatient treatment and abstinence from alcohol. *Id.*

On February 26, 2023, the Individual completed the court-ordered alcohol intervention program. Ex. A; Tr. at 43 (indicating that the program was a 20-hour course involving group training related to recognizing maladaptive alcohol consumption and alcohol-related behaviors). The Individual also completed the court-ordered victim impact panel. Ex. D. The Individual's driver's license was restored in March 2023. Tr. at 56–57.

The Individual testified at the hearing that he last consumed alcohol on April 15, 2023, and that he did not “plan on drinking anytime soon.” *Id.* at 37, 53. The Individual represented that, after consuming alcohol on April 15, 2023, he decided that it was “as good a time as any” to stop. *Id.* at 37. On May 22, 2023, the Individual provided a sample for a PEth test. Ex. C at 2. The results of the test were positive at 46 ng/mL. *Id.* at 1; *see also* Tr. at 67 (reflecting the opinion of the DOE Psychiatrist at the hearing that, based on the results of the PEth test, the Individual was either “drinking a huge amount [] right up to April 15” or did not stop consuming alcohol on that date). On June 23, 2023, the Individual provided a sample for another PEth test, the results of which were negative for traces of alcohol consumption. Ex. E.

The Individual contacted an IOP on May 26, 2023, in an effort to comply with the DOE Psychiatrist's treatment recommendations and was placed on an enrollment waitlist. Ex. B. As of the date of the hearing, the Individual had not yet been admitted to the IOP. Tr. at 40. The

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<sup>5</sup> The DOE Psychiatrist found that the Individual having become intoxicated more than twice per month, displayed evidence of alcohol-related cognitive impairment, and experienced blackouts and grey outs all provided evidence of him having habitually consumed alcohol to the point of impaired judgment. Tr. at 66.

Individual did not comply with DOE Psychiatrist's recommendation to attend AA because he has not experienced any cravings to consume alcohol and therefore perceives that he does not "have the need" to attend AA. *Id.* at 39–40.

The DOE Psychiatrist opined at the hearing that the Individual had not fully complied with his recommendations and had not established adequate evidence of rehabilitation. *Id.* at 62. He further opined that, without treatment, the Individual would lack skills and resources to establish "the preventative element" and that "his prognosis for resisting alcohol is not favorable." *Id.* at 68–69.

## V. ANALYSIS

### A. Guideline G

Conditions that could 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; 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.

The Individual began abstaining from alcohol less than three months prior to the hearing after having habitually consumed alcohol to the point of intoxication over a period of at least five years. The Individual's self-described excessive alcohol consumption was neither infrequent nor occurred under unusual circumstances. Considering the Individual's years-long pattern of maladaptive alcohol use, I find that a period of less than three months of abstinence from alcohol, which was significantly less than the twelve months recommended by the DOE Psychiatrist, is insufficient to establish that so much time has passed that the Individual's problematic alcohol-related behavior is unlikely to recur. For these reasons, I find the first mitigating condition inapplicable. *Id.* at ¶ 23(a).

The Individual has acknowledged his pattern of maladaptive alcohol use, completed court-ordered alcohol programming to resolve the charges associated with his arrest for DWI, and voluntarily underwent PEth testing. However, he has not participated in an IOP and AA or established twelve

months of abstinence from alcohol as recommended by the DOE Psychiatrist. Thus, the Individual has not established the applicability of the second mitigating condition. *Id.* at ¶ 23(b).

While the Individual contacted an IOP and has been placed on a waitlist, he is not yet participating in an IOP and therefore the third mitigating condition is inapplicable. *Id.* at ¶ 23(c). The final mitigating condition is inapplicable because the Individual has not completed a treatment program as recommended by the DOE Psychiatrist. *Id.* at ¶ 23(d).

The Individual habitually consumed alcohol to the point of impaired judgment for years, and only stopped doing so within three months of the hearing. The DOE Psychiatrist opined at the hearing that the Individual has not demonstrated rehabilitation and that his prognosis for avoiding a return to problematic alcohol consumption is not favorable unless he complies with the DOE Psychiatrist's treatment recommendations. Accordingly, I find that none of the mitigating conditions are applicable, and that the Individual has not resolved the security concerns asserted by the LSO under Guideline G.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline G of the Adjudicative Guidelines. After considering all the relevant information, 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 Summary of Security Concerns. Accordingly, I have determined 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.

Phillip Harmonick  
Administrative Judge  
Office of Hearings and Appeals