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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: September 18, 2023	)	Case No.: PSH-23-0137
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Issued: January 17, 2024

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**Administrative Judge Decision**

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Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXX (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 be restored.

**I. BACKGROUND**

The Individual has been employed by a DOE contractor in a position that requires him to hold access authorization. Exhibit (Ex.) 1 at 5. In March 2021, the Individual completed a Questionnaire for National Security Positions (QNSP), in which he admitted that he was charged with Driving Under the Influence (DUI) in October 2017. Ex. 12 at 158. The Local Security Office (LSO) sent the Individual a Letter of Interrogatory (LOI) in September 2021, requesting information regarding the Individual's alcohol consumption. Ex. 9 at 80–109. In February 2023, the Individual was again charged with DUI. Ex. 7 at 54–55. The Individual responded to a second LOI in April 2023, indicating that he consumed approximately four to five drinks prior to the DUI. Ex. 8 at 57. The LSO asked that a DOE-consulting Psychologist (DOE Psychologist) evaluate the Individual. Ex. 10 at 110. The DOE Psychologist determined that the Individual binge consumed alcohol in February 2023. *Id.* at 120.

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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.

The LSO subsequently issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines G and J 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 conducted an administrative hearing. The LSO submitted thirteen exhibits (Exs. 1–13). The Individual submitted six exhibits (Exs. A–F). The Individual testified on his own behalf and offered the testimony of two other witnesses. Tr. at 11, 25, 32. The LSO called the DOE Psychologist as a witness to testify. *Id.* at 56.

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

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the first basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1 at 5–6. Guideline G indicates that “[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines at ¶ 21. In addition to the DOE Psychiatrist’s opinion that the Individual binge consumed alcohol in February 2023, the LSO cited the Individual’s October 2017 DUI and February 2023 DUI. Ex. 1 at 5. The LSO’s reliance on the DOE Psychiatrist’s opinion and two DUIs justifies its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (d).

The LSO also cited Guideline J of the Adjudicative Guidelines as the second basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1 at 5. “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. The SSC cited the Individual’s October 2017 and February 2023 DUIs. Ex. 1 at 5. The LSO’s reliance on the Individual’s two charges justifies its invocation of Guideline J. Adjudicative Guidelines at ¶ 31(b).

## **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 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 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 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

The Individual was first employed by the DOE contractor in 2020. Ex. 12 at 142. At the time he completed his QNSP, he admitted that he was charged with DUI in October 2017. *Id.* at 158. In the September 2021 LOI, the Individual stated that his sobriety date was April 2, 2020, and that he was an active member of Alcoholics Anonymous (AA). Ex. 9 at 97–98. In February 2023, the Individual had a second DUI. Ex. 7 at 54–55. He explained that he consumed alcohol on the evening of February 9, 2023, which was the first time he had consumed alcohol since April 2020. Ex. 8 at 57. At the hearing, the Individual claimed that, around the time of this relapse, he was feeling stress from the birth of his son three months earlier and was not attending AA as frequently as he had before. Tr. at 35. He clarified that he was distancing himself from AA because he believed he should be focusing on his family. *Id.* at 36. The Individual testified that his partner, who had been sober for five years at the time of the hearing, and son were out of town the night he consumed the alcohol. *Id.* at 37, 54.

The Individual stated that he began attending AA again the day after his February 2023 DUI. *Id.* at 39. He attends two meetings a week, sometimes speaking and leading the meetings. *Id.* at 39–40. In addition, he works on the AA hotline. *Id.* at 41. He claimed that:

one of the benefits of having experience in relapse and stuff is helping other people get through a relapse or get the help that they need, you know, and being able to be them with experience, and then through my experience, offer them some hope and strength as well. . . . I think being of service is definitely a big part of sobriety, and helping others.

*Id.* The Individual also testified that he is working on step ten of the twelve steps. *Id.* at 40. He claimed that step nine was “great. . . . [M]aking amends is really beneficial to kind of clean up your side of the street and keep it clean. . . . [I]t’s just taking accountability for what you did and . . . making it right. It’s a relief.” *Id.*

The Individual concluded that the difference between his attendance at AA since his February 2023 DUI and his past attendance is that he is working the steps with a different sponsor. *Id.* In addition, he claimed that he gained experience through the relapse.

I think [the relapse] strengthened my recovery and my desire to dedicate my life to maintaining my sobriety and being . . . a better person for myself and my family. I

know the importance of continuing with my recovery program, as opposed to feeling . . . that once you get long-term sobriety that I can stop going to meetings.

*Id.* at 49.

The Individual also testified that he attends long-term sobriety group counseling at his medical provider. *Id.* at 42. He continued that he believes it is important to have different approaches to sobriety. *Id.* He also has individual counseling with the Employee Assistance Program (EAP), which he started in June or July of 2023. *Id.* at 44.

As part of his sentence in response to the February 2023 DUI, the Individual stated that he was required to do two days of community service, pay a fine, install an interlock on his vehicle, and complete an 18-month DUI program. *Id.* at 33. The DUI program is a group meeting every two weeks. *Id.* On the alternating week, the Individual has an individual “check-in,” which can last from five to fifteen minutes. *Id.* at 65. The Individual stated that he last consumed alcohol on February 10, 2023. *Id.* at 52.

The Individual’s AA sponsor, who has been sober for twelve years, testified that he has been working with the Individual since soon after his February 2023 DUI. *Id.* at 14, 22. He asserted that the willingness to work the AA program must come from the Individual. *Id.* He stated that prior to sponsoring a person, he asks if the person is willing to go to any lengths to maintain his sobriety. *Id.* at 16. If the person’s answer is yes, the sponsor tells the person that they must attend meetings regularly, call him every day to check in, and read the first 164 pages of *Alcoholics Anonymous*, also known as *The Big Book*.<sup>2</sup> *Id.* at 16. The sponsor avowed that the Individual completed all his requirements and was “incredibly active” in AA. *Id.* at 17. The sponsor asserted that he would not be at the hearing testifying if he did not believe that the Individual was not “putting in his best effort for his recovery.” *Id.* He testified that he has sponsored dozens of people, and only ten have achieved step ten, which indicated to the sponsor that the Individual was in a higher percentile because he has been more successful than most. *Id.* at 22–23.

The Individual’s supervisor testified that he was surprised by the Individual’s DUI. *Id.* at 25. He continued that he trusts the Individual, who does a good job. *Id.* at 27. He stated that the Individual is friendly and outgoing and communicates well. *Id.* at 28.

In addition to the testimony of his sponsor and supervisor, the Individual presented six exhibits, including a letter of support from his partner, Ex. A; a letter from the EAP Psychologist, Ex. B; the results of three Phosphatidylethanol (PEth) tests,<sup>3</sup> all of which were negative, Ex. C; AA attendance sheets, Ex. D; proof of his attendance at the medical provider’s long-term sobriety

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<sup>2</sup> The “Big Book,” presents the AA program for recovery from alcoholism. First published in 1939, its purpose was to show other alcoholics how the first 100 people of AA got sober. *About The Big Book*, Alcoholics Anonymous, <https://www.aa.org/the-big-book> (last visited January 11, 2024).

<sup>3</sup> Those tests are dated July 28, 2023, September 20, 2023, and October 27, 2023. Ex. C at 1–12. PEth can only be made when consumed ethyl alcohol reacts with a compound in the Red Blood Cell (RBC) membrane. PEth builds up in the RBC with repeated drinking episodes, and a parallel process slowly eliminates the accumulated PEth (with an elimination half-life of about 6 days). Ex. 5 at 28.

program, Ex. E; and his performance appraisals, Ex. F. The partner's letter stated that after the February 2023 DUI:

[The Individual] began by reflecting on his choices, accepting responsibility for his actions, and reaching out for help. [He] prioritized his mental, physical, and spiritual health to guide him in his journey. He utilized resources within his professional community, outpatient support groups, and a 12-step program of recovery. By employing these various modes of rehabilitation, [he] has demonstrated a commitment to his sobriety. He works regularly with his sponsor and is actively working through his ninth step, making amends to those that he has hurt. For most, this step is intimidating and leaves an individual feeling vulnerable, not necessarily a state [he] would ever seek out. However, [his] approach to sobriety has been unwavering, even in the face of difficult tasks. He has shown our family a level of integrity and courage that I've never seen before.

Ex. A.

The DOE Psychologist evaluated the Individual in June 2023, and at that time, she did not diagnose him with Alcohol Use Disorder (AUD). Ex. 10 at 117. In her report, she stated that the Individual told her that his partner gave him an ultimatum in April 2020 regarding his alcohol use, so he began attending AA at that time. *Id.* at 116. The DOE Psychologist stated in the report, based on the Individual's reported alcohol consumption during the evaluation, that prior to his attending AA in April 2020, he was suffering from AUD, severe. *Id.* at 117. She reiterated that opinion at the hearing. Tr. at 57. However, the DOE Psychologist stated that the Individual was able to successfully maintain his abstinence and was in full remission prior to the February 2023 DUI. Ex. 10 at 117. She claimed that he relapsed due to three factors: 1) the stress and challenges of caring for a newborn; 2) his lack of attendance at AA; and 3) the fact that his memory of his addiction faded. *Id.* The DOE Psychologist asserted that the Individual had a single-day relapse. *Id.* She also asserted that he appropriately took responsibility for that relapse by immediately resuming participation in AA, which helped him stay motivated.

The DOE Psychologist concluded in her report that the Individual's February DUI, which resulted from an episode of binge consumption, was sufficient to raise a concern about impaired judgment. *Id.* at 120. She opined that the duration of his abstinence since the February DUI was insufficient. *Id.* She asserted that he needed to have twelve months of abstinence, supported by negative PEth tests every two months. *Id.* She stated that he also needed to attend AA twice a week. *Id.* Finally, she suggested that the Individual could benefit from meeting with an EAP psychologist. *Id.*

At the hearing, the DOE Psychologist asserted that the sponsor's testimony was positive and compelling. Tr. at 60. She noted that the fact that the sponsor has worked with many different people during his long-term sobriety is a positive indicator. *Id.* at 61. She claimed that she also found the Individual's partner's letter of support compelling, because partners can often be quite critical. *Id.* at 63. The DOE Psychologist continued that the partner's letter demonstrated the strength of the partnership. *Id.*

The DOE Psychologist stated that the Individual exceeded her recommendations. *Id.* at 61. She also noted that, although she recommended twelve months of abstinence from the February 2023 DUI, and he only had 10 months at the time of the hearing, an additional two months of sobriety would not change her mind substantially. *Id.* at 62. She testified, “I’m really encouraged by what he’s done since the evaluation, and it gives me a lot more confidence in his long-term recovery.” *Id.* She concluded that she believed that he has sufficiently demonstrated his rehabilitation and reformation. *Id.* at 63.

## V. ANALYSIS

### A. Guideline G

Conditions that could mitigate security concerns under Guideline G include:

(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;

...

(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 (b), (d).

The Individual acknowledges his maladaptive alcohol use. In addition, he provided three negative PEth tests, AA sign in sheets, and proof that he was attending his medical provider’s alcohol long-term sobriety program. The Individual also provided the testimony of his AA sponsor. The sponsor has significant experience with sponsoring individuals and indicated that the Individual has a higher percentile of continuing his sobriety than most of his sponsees. The DOE Psychologist testified that the Individual has been abstinent since April 2020, with a one-day relapse, and that the Individual provided significant evidence that he has maintained his sobriety since February 2023. The DOE Psychologist also noted that the Individual has exceeded her treatment recommendations. Therefore, I find that the Individual has mitigated the Guideline G concern under paragraph (b) of the mitigating factors.

The Individual’s negative PEth tests, along with the persuasive testimony of his sponsor and himself, have convinced me that the Individual has shown a clear and established pattern of abstinence since his one-day relapse in February 2023. The letter from the Individual’s partner, who has been sober for five years, is also persuasive that the Individual has committed to his abstinence. His attendance at AA, his work with his sponsor, and his attendance at the long-term sobriety program provided by his medical provider also show that the Individual is committed to his sobriety. The DOE Psychologist testified the Individual exceeded her recommendations. Therefore, I find that the Individual has mitigated the Guideline G concern under paragraph (d) of the mitigating factors.

Accordingly, I find that two of the mitigating conditions have been satisfied, and that the Individual has resolved the security concerns asserted by the LSO under Guideline G.

## **B. Guideline J**

Conditions that could mitigate a security concern 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; or,
- (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.

*Id.* at ¶ 32.

The Individual's two instances of criminal activity are inextricably linked to his AUD. Both arrests occurred as a result of the Individual's intoxication. They were each clearly symptomatic of his alcohol use. Since the Individual has convincingly shown that he is rehabilitated or reformed from his alcohol misuse, I find that the root cause of his criminal activity has been successfully addressed. Due to the Individual's sobriety, and the changes that he has made to achieve that sobriety, the circumstances surrounding his criminal conduct have been removed. *See* 10 C.F.R. § 710.7(c). Moreover, as evidenced by the DOE Psychologist's testimony, the Individual exceeded her recommendations. Notwithstanding the frequency and recency of the criminal activity, I am still persuaded that the absence of alcohol in the Individual's life make it unlikely to recur.

I therefore find that the security concerns raised by his two arrests under Guideline J have been resolved.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines G and J 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 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 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