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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: April 15, 2024 ) Case No.: PSH-24-0100  
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Issued: October 31, 2024

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**Administrative Judge Decision**

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Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 him to hold a security clearance. Derogatory information was discovered regarding the Individual’s alcohol consumption and related criminal activity, and he was referred to a DOE Contractor Psychologist (the Psychologist) who opined that he habitually or binge drank to intoxication. 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 the testimony of four witnesses and testified on his own behalf. The LSO presented the testimony of the Psychologist. *See* Transcript of Hearing, OHA Case No. PSH-24-0100 (hereinafter cited as “Tr.”). The LSO submitted nine exhibits, marked as Exhibits 1 through 9 (hereinafter cited as “Ex.”). The Individual submitted one exhibit, marked as Exhibit A.

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<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.

## 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 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 Guideline G 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.

Guideline J states that 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. Conditions that could raise a Guideline J security concern and may be disqualifying 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:

- On January 2, 2000, the Individual was arrested and charged with Driving While Intoxicated (DWI). He admitted to consuming three to five beers prior to driving. (Guidelines G and J)
- On September 10, 2023, the Individual was arrested and charged with DWI Prior. He admitted to consuming four beers prior to driving. (Guidelines G and J)
- On December 8, 2023, the Psychologist evaluated the Individual and, in his December 13 report of the evaluation, opined the Individual drank habitually and binge consumed alcohol to the point of impaired judgment on a regular basis. (Guideline G)

Ex. 1 at 1. The LSO's allegations of DWI fall under concerning condition (a) of Guideline G and concerning condition (b) of Guideline J. The LSO's allegations regarding the Psychologist's opinion fall under concerning condition (c) of Guideline G. 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 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**

In January 2000, the Individual had been recently discharged from the military and was consuming alcohol to cope with stress from his time in the service. Tr. at 44. He was also spending time with “certain people that were bad influences as far as alcohol goes.” *Id.* In 2000, the Individual was arrested and charged with DWI, after which he stopped consuming alcohol for the duration of his probation, reflected on his alcohol use, and realized that he needed to cut back on alcohol or stop drinking entirely. *Id.* at 45. The Individual also attended an alcohol education course. Ex. 7 at 4. He resumed drinking two years later, after his probation ended, due to the stress of a job loss. Tr. at 91. Initially, he was drinking a few nights per week, then only on weekends, then, eventually, every other weekend. *Id.* at 75. The Individual would typically consume about four drinks between 5:00 p.m. and 1:00 a.m. on Friday and Saturday night, every other weekend, while playing pool. *Id.* at 49; Ex. 7 at 6. He maintained this pattern until his 2023 DWI. Tr. at 75.

On the night of his DWI in September 2023, he had “a few drinks” and waited several hours before driving. Tr. at 41. He was pulled over for driving with his high beams on and he refused a breathalyzer test because he felt that the officer was being aggressive. *Id.* at 41–42. The Individual entered a diversion program that would result in his charges being dismissed if he successfully completed two years of probation. *Id.* at 42, 77.

The Psychologist evaluated the Individual for alcohol use in December 2023 and issued a report with his conclusions later that month. Ex. 7. The Individual told the Psychologist that he typically consumed four to five beers over a six-to-eight-hour period every weekend or every other weekend. *Id.* at 6. He also told the Psychologist that he last consumed alcohol at an annual party he hosted in late October or early November 2023. *Id.* at 5. He stated that the most alcohol he had consumed in a 24-hour period in the preceding year occurred when, on three occasions, he had consumed twelve beers over eight to twelve hours at a friend’s house and spent the night there instead of driving home. *Id.* at 6–7. The Individual submitted to Phosphatidylethanol (PEth) testing, which tests for alcohol byproduct in the blood and can detect frequent or moderate alcohol use in the month preceding the test. *Id.* at 7, 10–11. The test returned a negative result, consistent

with the Individual's report of abstinence in the preceding 30 days. *Id.* The Psychologist stated in the beginning of his report that:

Government institutions that focus on abuse of alcohol define "binge" drinking for men as the consumption of five or more drinks over two hours. This results in an episode of at least legal intoxication. The research literature tends to define "binge" drinking as episodic intoxication with periods of high consumption followed by periods in which intake is low. For purposes of this evaluation, I will use the phrase "binge drinking" to denote the consumption of alcohol to a level of intoxication that is markedly and episodically higher than what is typical for an employee (in this case [the Individual]).

*Id.* at 5. He assessed the Individual's blood alcohol content for weekend consumption, based on the Individual's self-report of four to five beers over six to eight hours, to be about .02 g/210L.<sup>2</sup> *Id.* at 7; Tr. at 144. He assessed the Individual's blood alcohol content for his maximum consumption over the shortest amount of time, twelve beers over eight hours, to be about .25 g/210L.<sup>3</sup> *Id.* Despite the definition of binge drinking stated in his report, the Psychologist concluded that the Individual habitually and binge consumed alcohol to the point of intoxication. Ex. 7 at 7. He recommended that the Individual abstain from alcohol permanently; participate in a substance abuse treatment program from a licensed provider for at least twelve weeks; attend maintenance/relapse prevention group therapy sessions at least twice a month for three months after completing the treatment program and once monthly for a year after that; and attend support group meetings such as Alcoholics Anonymous (AA) or SMART Recovery, have a sponsor, and work the steps of the program. *Id.* at 7–8.

At the hearing, the Individual presented the testimony of his friend, his father, a former direct supervisor who now manages the department in which he works, and his direct supervisor at the time of his 2023 DWI.

The Individual's former direct supervisor was now the manager overseeing the department in which the Individual currently worked. Tr. at 12. She had known the Individual for about four years. *Id.* at 16. She had directly supervised the Individual for just under one year in 2020 and 2021. *Id.* at 13, 18, 35. In her current role, she saw the Individual once or twice a week in passing. *Id.* at 18. She testified that she never had cause to question the Individual's judgment, reliability, or ability to protect sensitive information. *Id.* at 12–14, 17. She testified that she had never seen the Individual impaired or hungover at work and that the Individual's attendance was good. *Id.* at 13. She testified that the Individual had not had any disciplinary actions to her knowledge. *Id.* at 15, 18.

The Individual's other former direct supervisor had known the Individual for almost two years and was his supervisor at the time of the Individual's 2023 DWI. Tr. at 21–23. He directly supervised

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<sup>2</sup> The report contains an error, corrected by the Psychologist at the hearing, stating .03 g/210L. Tr. at 144. For accuracy and clarity, the correct number given at the hearing is used here.

<sup>3</sup> The report contains an error, corrected by the Psychologist at the hearing, stating .26 g/210L. Tr. at 144. For accuracy and clarity, the correct number given at the hearing is used here.

the Individual for about ten months. *Id.* at 31. He testified that he had never seen the Individual impaired or hungover at work. *Id.* at 25. He further testified that the Individual had never given him cause to question his judgment, reliability, or trustworthiness. *Id.* at 25, 29. He testified that he could trust the Individual to give him his honest opinions and not tell him what he wanted to hear. *Id.* at 29.

The Individual's friend testified that she knew the Individual from playing pool at the same location and had known him for over 15 years. Tr. at 99–100. She testified that she found out the Individual was in AA when she happened to see him at a meeting. *Id.* at 102, 121. She testified that the Individual told her he found the meeting via Google. *Id.* at 121. The friend testified that she told the Individual her story of recovery, including how she was given an alcohol-related diagnosis upon presenting herself for treatment. *Id.* at 116–18.

The friend testified that she is a recovery resource for the Individual. Tr. at 103, 114. She testified that the Individual told her he needed to go to AA because his work thought he had a drinking problem, and he needed to figure out if he did indeed have a problem with alcohol. *Id.* at 104. When asked if she thought the Individual had accepted that his past alcohol use was problematic, the friend answered, "Yes. I think that's what he admitted to me, is that he got in trouble with some alcohol. . . . Got a D[W]I." *Id.* The friend testified that religion is not a requirement for AA participation and that atheists also participate in the program. *Id.* at 106–07. She testified that she rarely saw the Individual outside AA and couldn't remember when she saw him last, but she believed the Individual when he told her he had not consumed alcohol since starting AA and had no issues abstaining. *Id.* at 107, 114. She and the Individual had not discussed his intentions toward alcohol in the future, but she believed that the Individual was committed to abstinence. *Id.* at 107. She had not discussed with the Individual his drinking patterns prior to abstinence. *Id.* at 108.

The Individual's father testified that he had been living with the Individual since October 2013. Tr. at 125. He testified that he was not very aware of the Individual's drinking habits prior to his 2023 DWI, but he believed the Individual did not drink too much during that time. *Id.* at 127. He testified that there is no alcohol in their house to his knowledge. *Id.* He testified that he had not seen the Individual drink alcohol since his DWI. *Id.* at 129. The father testified that the Individual told him he intended to abstain from alcohol indefinitely. *Id.* He testified that the Individual had not discussed AA with him, and to his knowledge, the Individual was not attending AA. *Id.* at 130.

The Individual testified that there was alcohol at his house, but it had not been touched in four years. Tr. at 45. He testified that prior to abstaining from alcohol, he did not consume alcohol at home unless he was having guests over. *Id.* at 45–46. He most often consumed alcohol while playing pool, testifying that alcohol relaxed him. *Id.* at 50. He still played pool, but did not consume alcohol. *Id.* He testified that about 80% of people playing pool at his usual location drank, but there was "a good handful that choose not to drink." *Id.* at 88. He testified that he did not have difficulty abstaining from alcohol. *Id.* at 48.

The Individual abstained from alcohol after his DWI but had "a few drinks" on a day in November 2023 at an annual party he held at his house. *Id.* at 46. He testified that the November 2023 party was the last time he consumed alcohol. *Id.* at 46. The Individual testified that he may not have the party this year, but if he does, he will not serve alcohol. *Id.* at 73–74.

The Individual described his involvement with AA, testifying that he attended once or twice per week since March 2024.<sup>4</sup> Tr. at 51. He presented into evidence an attendance sheet showing the dates of AA meetings he had attended since March 2024. Ex. A. It showed that the Individual attended four AA meetings in March, five in April, three in May, two in June, five in July, three in August, and two in September.<sup>5</sup> *Id.* The exhibit was a handwritten list of dates and times and did not include the signatures of anyone from the meetings. *Id.* The Individual testified that through AA meetings, he learned from other peoples' experiences with alcohol and recovery. *Id.* at 51–52. He testified that he found the meetings helpful in maintaining his abstinence. *Id.* at 53. He testified that some of the stories he had heard in the meetings reinforced his desire to remain abstinent. *Id.* The Individual testified that he may have had an alcohol problem at one point and that prior to abstaining from alcohol, there were occasions where he felt like he needed or should have a drink. *Id.* at 54, 91. The Individual testified that he needed to change and intended to abstain from alcohol indefinitely. *Id.* at 53–54, 60.

The Individual testified that he read the Psychologist's report and recommendations in late January 2024. Tr. at 63–64. He testified that he did not attend therapy because he could not afford it. *Id.* at 63. This was contradicted by the Individual's later testimony stating, "my savings account is actually looking pretty nice right now. I do have plans for taking more trips."<sup>6</sup> *Id.* at 74. The Individual testified that his insurance would not pay for a substance abuse treatment program without a diagnosis. *Id.* at 65. He did not pursue a diagnostic appointment or ask providers what the cost of treatment would be. *Id.* He did not call any treatment programs to ask how he could get the cost of treatment covered or reduced. *Id.* at 80. He testified that he was "not big on technology," that he did not know how to use it, including "Google kind of sources," for "everyday situations of taking care of things," and that when he needed to find a new type of service or store, he would ask a friend for a recommendation or just drive around until he saw something. *Id.* at 81. This was contrary to his previous testimony that he spent significant time on YouTube and "surfing the Internet" to research more about his occupational field while waiting to regain his clearance. *Id.* at 34. He testified that he had used Google to find YouTube videos and other information but had not used it to search for a treatment center. *Id.* at 81–82.

The Individual testified that he began seeking an AA group in January but did not know where to find them. Tr. at 64. He testified that because he was not sure if AA meetings would show up in online search results, he had decided not to try to search using the internet. *Id.* at 83. The Individual testified that, around late January or early February when he received the Psychologist's report, he met a friend who attended AA (the friend who provided testimony at the hearing) and asked her where to find an AA meeting. *Id.* at 51, 64, 83–84. He testified that he waited until March to start attending because he was uncomfortable sharing with others. *Id.* at 84. The Individual testified that

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<sup>4</sup> Specifically, the Individual testified, "I've also been going through AA meetings and stuff, sometimes once a week, sometimes twice a week, I've—I've hit a couple of them. But I have been doing at least once a week." Tr. at 51.

<sup>5</sup> The hearing took place in October 2024.

<sup>6</sup> The Individual also testified that he owned a car, two trucks, and a motorcycle, stating that he needed all four as backup vehicles in case one broke down and he needed to get to work. Tr. at 89. He testified that he was paying for insurance on three vehicles and that all of the vehicles were in good condition. *Id.* at 90.

he intended to continue attending AA and hoped to increase his attendance to once per week, contrary to his prior testimony that he was already attending at least once a week. *Id.* at 67–68. He testified that he had not gotten a sponsor because he did not get along with some of the people he met in the meetings and that he would consider getting a sponsor in the future. *Id.* at 68. The Individual testified that he did not work all of the 12 Steps because he is not religious, but he believed he could still work through the program. *Id.* at 68–69. He could not remember what the 12 Steps were and was not working on them in order. *Id.* at 69–70. The Individual testified that he did not know what the SMART Recovery program mentioned in the Psychologist’s report was and that he did not look it up because he “didn’t think I was going to need that as far as the extensive amount.” *Id.* at 85.

The Psychologist testified that he had felt, at the time of his report, that it was important for the Individual to attend a treatment program because the Individual had done alcohol education in the past because of his previous DWI but continued to binge drink. Tr. at 137. He testified that the Individual needed to learn relapse prevention skills and the theories of addiction. *Id.* at 137–38. He further testified that abstinence alone is not sufficient to recover from an alcohol problem. *Id.* The Psychologist testified that he typically suggests multiple support group options in addition to AA in his recommendations, and in this case, he suggested SMART Recovery, because not everyone responds well to AA’s emphasis on religion and sponsorship. *Id.* at 138–39.

The Psychologist testified that the Individual did not appear to have put effort into his recovery because he had not tried to find ways to fulfill the recommendations in the report and because he eschewed free or low-cost treatment options in favor of vacations and working on one of his vehicles. Tr. at 139, 141. He testified that the Individual was not reformed or rehabilitated from his habitual drinking or binge drinking to intoxication. *Id.* at 141. He testified that alcohol recovery does not appear to be a priority in the Individual’s life, that the Individual was unwilling to spend his own money on treatment, and that, while the Individual admitted to having an alcohol problem in the past, the Psychologist was not convinced that the Individual believed he currently had an alcohol problem. *Id.*

The Psychologist testified that using the Individual’s characteristics, consumption of five cans of beer with 4.2% alcohol over six hours would result in a BAC of .02 g/210L.<sup>7</sup> Tr. at 144. He testified that twelve cans of the same beer over eight hours would result in a BAC of .25. *Id.* He testified that at a .03 BAC, “there is measurable impairment, but it may be inconsequential to most people’s lives.” *Id.* at 167. The Psychologist defined binge drinking as five drinks in a day for males, regardless of the time over which they were consumed, and cited the Substance Abuse and Mental Health Services Administration (SAMHSA) as the source for his definition. *Id.* at 145. He testified that consuming alcohol twice per month met his definition of habitual. *Id.* at 146. The Individual, through his attorney, introduced into the record the SAMHSA definition of binge drinking, which is, for males, five or more alcoholic drinks on the same occasion or sitting, defined as at the same time or within two to three hours, on at least one day in the past month. *Id.* at 181; *see also* Alcohol Use Facts and Resources, SAMHSA at 1, *available at* <https://www.samhsa.gov/sites/default/files/alcohol-use-facts-resources-fact-sheet.pdf> (accessed October 23, 2024);

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<sup>7</sup> The Psychologist testified that he had used an age ten years older than the Individual’s age when calculating the concentration of alcohol in the Individual’s blood (BAC) in the report. Tr. at 144.



Drinking Levels and Patterns Defined, National Institute on Alcohol Abuse and Alcoholism (NIAAA), *available at* <https://www.niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/moderate-binge-drinking> (accessed October 23, 2024). He also introduced the NIAAA definition of binge drinking, which is a pattern of drinking alcohol that brings BAC to .08 percent or .08 g/210L, corresponding to, for a typical male, five or more drinks in about two hours. Tr. at 180–81; Drinking Levels and Patterns Defined, NIAAA, *available at* <https://www.niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/moderate-binge-drinking>.

## 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.

### A. Guideline G

Conditions that may mitigate Guideline G security concerns 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. None of the mitigating conditions apply in this case.

As an initial matter, I turn to the issue of the Psychologist's conclusion that the Individual habitually and binge drank to the point of impaired judgment. Regarding the Individual's alleged habitual drinking to the point of impaired judgment, the Psychologist calculated that the Individual's reported typical weekend drinking, which was specifically the behavior the Psychologist described as habitual, would result in a .02 BAC for the average person with the characteristics of the Individual. He also testified that impairment caused by a .03 BAC would likely be inconsequential. Moreover, most states use a .08 BAC as the legal level of intoxication, which is four times the level likely reached by the Individual. Legal BAC Limits in Different States, Counties, & Cities, American Addiction Centers, *available at* <https://alcohol.org/dui/bac-limits/> (accessed on Oct. 28, 2024); *see also* 23 U.S.C. § 163. Regarding the alleged binge drinking, the definition the Psychologist cited in his report and in the hearing requires that a man consume five or more drinks within two to three hours. The Individual's drinking, according to his self-report, always occurred over many more hours than the time span required to meet the definition of binge drinking. Even considering the inconsistencies in the Individual's testimony that could cast doubt on his self-reports of alcohol consumption, the Psychologist did not identify any basis to conclude that the Individual's self-reported drinking met the definitions. In light of the information provided in the Psychologist's report and at the hearing, I find that the elements of concerning condition (c) under Guideline G—(1) habitual consumption or binge consumption, and (2) to the point of impaired judgment—are not met and therefore, the corresponding concern in the Individual's Notification Letter is dismissed.

Regarding the remaining factors underlying the Guideline G concern, the Individual's two DWI arrests, I find that the Individual has not met any of the mitigating conditions. Because the concerns regarding the Psychologist's conclusions are dismissed, mitigating conditions (b), (c), and (d)—which are related to alcohol treatment—are inapplicable. With the Psychologist's diagnostic opinion removed, there were no treatment recommendations to follow, and, moreover, the Individual did not attend alcohol treatment. Accordingly, those mitigating conditions concerning alcohol treatment are not applicable to this case.

Regarding mitigating condition (a), the Individual's DWI arrests were over 20 years apart, and the most recent of them occurred just over a year prior to the hearing. The Individual has not consumed alcohol for the majority of the time since his 2023 DWI, however, after his first DWI, he returned to drinking after abstaining for two years and eventually reoffended. The record does not indicate whether the Individual was intoxicated at the time of his 2023 arrest because he refused biological BAC testing. Accordingly, doubt remains as to whether the Individual's drinking was illegal or dangerous. Because such doubt must be resolved in the interest of the national security, I must assume that the Individual's alcohol consumption, at least on the night of his 2023 DWI, was problematic. Therefore, the Individual's history of returning to problematic alcohol use raises questions as to his ability to maintain his current sobriety such that another DWI charge and arrest will not occur. The Individual continues to put himself in the same circumstances that led to his

DWI, playing pool at the same bar and with most of the people around him consuming alcohol. The fact that he received a second DWI after so much time casts serious doubt on the Individual's judgment, indicating that he did not learn from his first offense. The Individual's contradictory statements regarding AA and his AA attendance raise questions about the Individual's credibility in his self-reports. That is enough to introduce doubt about the Individual's level of alcohol consumption and likelihood to return to drinking. I cannot say at this time that no doubt remains about the Individual's reliability and judgment or his likelihood of offending a third time. Because all doubt must be resolved in favor of the national security, I cannot find that mitigating condition (a) applies.

For the foregoing reasons, I cannot find that the Individual has mitigated the Guideline G security concerns.

## **B. Guideline J**

Conditions that could mitigate Guideline J security concerns 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. None of the mitigating conditions apply.

Mitigating condition (a) is inapplicable for the same reasons that Guideline G's mitigating condition is inapplicable. The Individual's history shows a return to the behaviors that caused his first DWI and eventually resulted in reoffense. Therefore, doubt still remains regarding the Individual's reliability, judgment, and likelihood of reoffending in the future.

The Individual presented no evidence that he was pressured or coerced into driving after drinking or refusing to submit to alcohol testing when pulled over, the behaviors that led to his DWI arrests. Accordingly mitigating condition (b) does not apply. Mitigating condition (c) does not apply because the Individual admits to having performed those behaviors.

Because doubt remains about his potential to reoffend under Guideline G, the Individual has not been successfully rehabilitated. He continues to spend time with the people and activities that put him in a position to receive his DWI. He testified that 80% of the people around him during his primary social activity are actively consuming alcohol and, given his history of returning to

drinking after a DWI, I cannot be sure that he will not be in the same situation again in the future. As such, I cannot find that he is successfully rehabilitated. Mitigating factor (d) does not apply.

For the foregoing reasons, I cannot find that the Individual has mitigated the Guideline J security 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