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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 2, 2021	)	Case No.: PSH-21-0038
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Issued: July 1, 2021

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**Administrative Judge Decision**

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James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (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 should be granted access authorization.

**I. BACKGROUND**

A DOE contractor employs the Individual in a position that requires the possession of a security clearance. As part of the application for access authorization, the Individual completed a Questionnaire for National Security Positions form. The DOE Local Security Office (LSO) later discovered that the Individual had been receiving treatment for his anxiety and his use of alcohol. The LSO requested that the Individual receive a psychiatric evaluation from a DOE-consultant psychologist (“Psychologist”). Subsequently, in a letter dated July 14, 2020 (“Notification Letter”), the LSO informed the Individual that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns, the LSO explained

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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.

that the derogatory information raised security concerns under Guideline G and Guideline I of the Adjudicative Guidelines.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. 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 review hearing. *See* Transcript of Hearing (Tr.). At the hearing, the Individual testified on his own behalf. The LSO presented the testimony of the Psychologist. The Individual submitted seven exhibits, marked Exhibits A through G.<sup>2</sup> The LSO submitted ten exhibits, marked Exhibits 1 through 10.<sup>3</sup>

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

As indicated above, the LSO cited Guideline G (Alcohol Consumption) and Guideline I (Psychological Conditions) of the Adjudicative Guidelines as the basis for concern regarding the Individual's eligibility to possess a security clearance. Ex. 1.

Guideline G provides 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. Conditions that could raise a security concern include “[a]lcohol-related incidents away from work, such as driving while under the influence,” “[h]abitual or binge consumption of alcohol to the point of impaired judgment,” and “[d]iagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist . . .) of alcohol use disorder[.]” *Id.* at ¶ 25(a), (c), and (d). The Notification Letter cited, in part, the following information: the Psychologist’s conclusion that the Individual met the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), criteria for Alcohol Use Disorder, Mild, without adequate evidence of rehabilitation or reformation; in 2017, the Individual was arrested and charged with Aggravated Driving While Under the Influence, Resist/Evade/Obstruct of an Officer, and Driving on Roadways Laned for [Opposite Direction] Traffic; and the Individual admitted to drinking alcohol to intoxication a few times a week. Ex. 1 at 5. The above allegations justify the LSO’s invocation of Guideline G.

Guideline I provides that “[c]ertain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” Adjudicative Guidelines at ¶ 28. A condition that could raise a security concern is “[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness[.]” *Id.* at ¶ 28(b). The Notification Letter cited the Psychologist’s conclusion that the Individual has a mental condition, namely “Social Anxiety with possible paranoid underpinnings, that impairs his judgement and trustworthiness.” *Id.* at 6. The above allegation justifies the LSO’s invocation of Guideline I.

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<sup>2</sup> The Individual submitted Exhibit G after the hearing.

<sup>3</sup> The LSO’s exhibits were combined and submitted in a single, 234-page PDF workbook. Many of the exhibits are marked with page numbering that is inconsistent with their location in the combined workbook. This decision will cite to the LSO’s exhibits by reference to the exhibit and page number within the combined workbook where the information is located as opposed to the page number that may be located on the page itself.

### 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 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 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.

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 record indicates that following the Individual's 2017 arrest for Driving Under the Influence (DUI), the Individual voluntarily obtained counseling for his use of alcohol. Ex. 7 at 43. He met with a counselor weekly for eleven months, ending in May 2018, and during that period he was diagnosed with Alcohol Use Disorder (AUD). *Id.* at 43. He later returned to monthly counseling in 2019. *Id.*

During his February 2020 evaluation with the Psychologist, the Individual stated that the last time he drank to intoxication was in August of 2019 when he consumed six to eight beers over four or five hours. *Id.* He also stated that he was continuing to consume alcohol in lower amounts and that he "probably wanted to stop" completely. *Id.* at 44. He stated that he realized his alcohol use could jeopardize his job, but he could not answer why he had been unable to stop consuming alcohol given his concerns. *Id.* As part of the evaluation, the Individual took two laboratory tests to determine whether he had consumed alcohol: an Ethyl Glucuronide (EtG) urine test and a Phosphatidylethanol (Peth) test. *Id.* at 45. The results indicated to the Psychologist that the Individual had been consuming alcohol in higher quantities than reported. *Id.* Additionally, the Psychologist reported that the Individual's counselor at the time expressed concern that the Individual minimizes his alcohol consumption. *Id.* at 46. The Psychologist opined that the Individual's habitual "drinking is motivated by his need to attenuate his anxiety and stress." *Id.*

The Psychologist's report contains his opinion that, while the Individual had been previously diagnosed with AUD, the Psychologist could not reach a conclusion whether the Individual still met the criteria for AUD because the Individual's self-reported alcohol consumption "[could not] be trusted." *Id.* at 47. The Psychologist instead concluded that the Individual habitually consumes alcohol to a level of intoxication that impairs judgment. *Id.* As a path to rehabilitation, the Psychologist recommended that the Individual should permanently abstain from alcohol and document his abstinence through regular laboratory testing for a period of nine months; continue counseling on a regular basis that addresses both his alcohol use and his underlying anxiety; develop tools to mitigate stress; and obtain an evaluation from a psychiatrist to determine whether he would benefit from psychiatric medication to treat his anxiety. *Id.* at 47-48. The report also includes the Psychologist's opinion that the Individual meets the criteria for Social Anxiety with possible paranoid underpinnings, which is a condition that impairs the Individual's judgment and trustworthiness. *Id.* at 48. The Psychologist recommended that the Individual address the latter condition through several months of intense, weekly verbal therapy and, potentially, medication. *Id.*

The record includes a letter from the Individual's current counselor who had been treating the Individual's depressed mood, anxiety, and AUD. Ex. A. The counselor reported that the Individual had been consistent in his prescribed therapy treatment and attendance, had largely met all treatment plan goals, and had "markedly reduced symptoms of depressed mood and anxiety." *Id.* In conclusion, the counselor opined that the "[Individual's] prognosis is good." *Id.*

At the hearing, the individual admitted that he had a problematic history with alcohol, and he agreed with the judgement of the Psychologist that he used alcohol habitually at the time of the evaluation. Tr. at 17-18. The Individual testified that he had not been intoxicated since January 2020.<sup>4</sup> *Id.* at 17. He also testified that he had been abstinent from alcohol for fifteen months.<sup>5</sup> *Id.* at 14.

The Individual testified that he intends to remain abstinent and that he stopped consuming alcohol for the sake of his career, family, and himself. *Id.* at 17-18, 20-21. He lives with his fiancée, who does not drink alcohol. *Id.* at 14. He testified that his fiancée is a positive support system for his continued abstinence, and he believed that she would likely leave him if he started consuming alcohol again. *Id.* at 21. The Individual recognized that his alcohol consumption was usually triggered by "stress at work and the opportunity to have fun." *Id.* at 29-30. The Individual no longer socializes with the people with whom he used to drink alcohol. *Id.* at 20. He now spends time helping raise his fiancée's child, building displays with toy construction blocks, and playing games. *Id.* at 38. He also began practicing yoga, meditation, and journaling to mitigate his stress. *Id.* at 35-36.

Turning to his pursuit of treatment, the Individual testified that he had been receiving mental health counseling since his 2017 DUI. *Id.* at 15. For the six months prior to the hearing, he had been attending bi-weekly mental health sessions. *Id.* He had also been seeing a second counselor for weekly group counseling sessions for the same six-month period, and the focus had been on

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<sup>4</sup> This differs from August 2019, which is the date he provided during the February 2020 Psychologist evaluation. See *supra*.

<sup>5</sup> That would put his sobriety date at roughly February 2020.

treating his alcohol use. *Id.* The second counselor also prescribed and manages the Individual's prescription medication for anxiety. *Id.* at 15, 29. The Individual credited the medication with greatly decreasing his anxiety, and he acknowledged that he must continue putting forth effort to fully control his condition. *Id.* at 23. The Individual testified that his second counselor also provided EtG testing as part of the treatment, but that he stopped requesting testing because the second counselor's office pushed back on providing them due to the associated cost.<sup>6</sup> *Id.* at 33, 43. He also testified that he intends to continue his counseling and treatment for both alcohol use and anxiety. *Id.* at 38.

The Individual provided additional information regarding his history of counseling and treatment. He testified that although he started mental health counseling in early 2017, he stopped seeing that counselor after about two years of treatment. *Id.* at 24. During the following year, he started drinking again. *Id.* The Individual explained that, at the time, he had not been taking the counseling seriously and that he had been doing it, in part, to appease his parents. *Id.* at 44. His mindset changed in 2020 after he participated in the Psychologist's evaluation. *Id.* at 26-27. He said that the evaluation frightened him and made him realize that he needed to stop drinking and pursue alcohol treatment again. *Id.* at 45. He also realized that his motivation needed to be to do it for himself instead of for others. *Id.* The Individual testified that he then changed counselors because he felt that he was not making sufficient progress, and he successfully stopped consuming alcohol in January 2020. *Id.* at 24-25, 26-27. He also stated that his realizations inspired him to be more open and honest with his treatment professionals. *Id.* at 45.

The Psychologist testified that the Individual did almost everything that was recommended in the Psychologist's report besides participating in regular PEth testing. *Id.* at 50. The Psychologist testified that the Individual's testimony confirmed that the Individual met the criteria for AUD at the time of the evaluation. *Id.* at 54. The Psychologist further testified that the Individual appeared to have remained abstinent and appeared committed to remaining permanently abstinent; that the Individual had been receiving counseling in line with the Psychologist's recommendations; that the Individual had developed "tools for relaxing" and mitigating stress; and that the Individual had been taking anti-anxiety medication under the care of a psychiatrist. *Id.* at 49-50. As for the failure to obtain the recommended laboratory proof of his abstinence, the Psychologist testified that the difficulty the Individual experienced obtaining EtG testing is understandable because, once a patient demonstrates they are not "cheating[,]," the "treatment programs[s] often will rebel" against additional testing because of the expense. *Id.* at 50. The Psychologist also noted that the Individual's testimony indicated a reduction in defensiveness. *Id.* at 50-51.

The Psychologist then provided two opinions. First, he opined that the Individual demonstrated that his AUD is adequately reformed; that the condition is in full, sustained remission; and that the Individual has a good prognosis. *Id.* at 51-52, 54. Second, the Psychologist confirmed that the Individual had also reformed his psychological condition of Social Anxiety, and he similarly gave the Individual a good prognosis. *Id.* at 53. In reaching the latter opinion, the Psychologist referenced that the Individual's mental condition can be controlled with treatment, that the Individual's current treatment and medication plan is adequate, and that the Individual expressed his intent to continue his current treatment regimen. *Id.*

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<sup>6</sup> The Individual submitted nine EtG test results that cover September 2020 through January 2021. Ex. G. All results were negative. *Id.*

## V. ANALYSIS

### A. Guideline G Considerations

Under Guideline G, a condition that could mitigate security concerns based on alcohol consumption is that “[t]he 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 . . . abstinence in accordance with treatment recommendations[.]” Adjudicative Guidelines at ¶ 23(b).

The record indicates that the Individual has successfully resolved the Guideline G security concerns under ¶ 23(b). The Individual acknowledged, through testimony, that he had a problem with alcohol and that he previously used it to cope with stress. The Individual also provided convincing evidence of the actions he has taken to overcome the problem. He has been under the treatment of two counselors, one of whom is focused on treating his AUD; he no longer associates with people with whom he used to consume alcohol; and he engages in alternative recreational and physical activities to mitigate stress. Furthermore, the Individual provided substantial evidence of a clear and established pattern of abstinence by demonstrating, through his testimony and by providing corroborating laboratory test results, that he has remained abstinent from alcohol for over a year. Lastly, the Individual demonstrated that his actions were in accordance with treatment recommendations because his counselor gave him a good prognosis based on his progress and the Psychologist gave the Individual a good prognosis after concluding that the Individual’s AUD is reformed and in full, sustained remission. Consequently, I find that the Individual has resolved the Guideline G security concern based on his AUD. I further conclude that my findings resolve the security concerns stemming from the Individual’s past habitual consumption of alcohol and his 2017 alcohol-related driving offenses. Accordingly, I find that the Individual has successfully resolved the Guideline G security concerns.

### B. Guideline I Considerations

Under Guideline I, the following relevant conditions could mitigate security concerns based on psychological conditions:

- (a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) The individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional[.]

Adjudicative Guidelines at ¶ 29.

The Individual put forth sufficient evidence to resolve the concerns under ¶ 29(a). I find persuasive the Psychologist’s testimony that the Individual’s condition is readily controllable with appropriate treatment and that the Individual has demonstrated ongoing and consistent compliance with the

treatment recommendations by regularly attending appropriate counseling and taking prescribed medication to address his Social Anxiety.

Furthermore, the Individual put forth sufficient evidence to mitigate the concerns under ¶ 29(b). There is substantial evidence in the record that demonstrates the Individual voluntarily reinitiated individual counseling, began group counseling, and began taking prescription medication to manage his condition in accordance with the Psychologist's recommendations. I also adopt, as stated above, the Psychologist's opinion that the Individual's Social Anxiety is a condition amenable to treatment. Finally, I find that the record demonstrates that the Individual is continuing to receive counseling and treatment for his condition, that he intends to continue doing the same, and that the Psychologist and the Individual's treating mental health counselor gave the Individual a favorable prognosis. Accordingly, I find that the Individual has resolved the Guideline I security concerns.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guidelines G and I of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of 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 should be granted access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

James P. Thompson III  
Administrative Judge  
Office of Hearings and Appeals