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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: May 10, 2021) Case No.: PSH-21-0059
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Issued: September 8, 2021

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “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, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ 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 is employed by a DOE contractor in a position that requires her to hold a security clearance. In April 2019, the Individual was arrested and charged with Driving While Intoxicated (DWI) and was ordered to remain on probation until February 2021. The Individual self-reported the incident, and in response, the Local Security Office (LSO) provided the Individual with a Letter of Interrogatory, which she completed in May 2019. Ex. 10-11. In January 2020, the Individual was again arrested and charged with DWI. She later underwent a psychological evaluation by a DOE consultant psychologist (Psychologist) in September 2020. Ex. 12.

Due to unresolved security concerns related to the Individual’s alcohol use and resulting arrests, the LSO informed the Individual, in a Notification Letter, that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1.

¹ Access authorization is defined 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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

Upon receipt of the Notification Letter, the Individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted fourteen numbered exhibits (Exhibits 1-14) into the record and presented the testimony of the Psychologist. The Individual introduced six lettered exhibits (Exhibits A-F) into the record, and presented the testimony of five witnesses, including herself. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

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 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. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the Individual’s eligibility for access authorization. The information in the letter specifically cites Guideline G and Guideline J of the Adjudicative Guidelines. Guideline G relates to security risks arising from excessive alcohol consumption. 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. Guideline G at ¶ 21. Guideline J addresses criminal activity, which can create doubts about a person’s judgment, reliability, and trustworthiness. Guideline J at ¶ 30. Furthermore, it calls into question a person’s ability or willingness to comply with laws, rules, or regulations. *Id.*

In citing Guideline G, the LSO relied upon the Psychologist’s determination that the Individual met the *Diagnostic and Statistical Manual of Mental Disorders 5th Edition*, (DSM-5) criteria for

Alcohol Use Disorder, Moderate, without adequate evidence of rehabilitation or reformation. Ex. 1. As a basis for citing both Guidelines G and J, the LSO relied upon the Individual's April 2019 and January 2020 arrests for DWI. *Id.*

IV. Findings of Fact

In April 2019, the Individual was arrested for DWI after consuming two double vodka drinks. Ex. 10. Following the arrest, the Individual entered a guilty plea and was permitted to enter a Pre-Trial Diversion Program (Program), which required, in relevant part, that she participate in a drug and alcohol evaluation, successfully complete any recommended treatment, complete an alcohol awareness program, and refrain from consuming alcohol and driving. Ex. 12 at 4. The Program was scheduled to be completed in February 2021; however, upon the violation of any of the conditions, the Individual would be sentenced to 30 days of incarceration. *Id.* Pursuant to the Program, the Individual underwent a substance abuse evaluation by a Licensed Chemical Dependency Counselor (LCDC), who recommended that the Individual complete an Intensive Outpatient Program (IOP), which the Individual successfully completed in September 2019. *Id.* at 6.

In January 2020, the Individual was again arrested for DWI, after consuming several beers, and sentenced to a 30-day jail term for violating the conditions of the Program. *Id.* at 5; Ex. 6. The Individual subsequently met with the LCDC in August 2020. Ex. 12 at 6. The LCDC conducted a second evaluation and noted that the Individual was "accepting full responsibility" for her actions. *Id.* She diagnosed the Individual with Alcohol Use Disorder, Moderate, and recommended that the Individual complete a second IOP "as her attitude and acceptance ha[d] changed." *Id.* The Individual stated that she "didn't get that much out of" the first IOP and would rather attend individual counseling and Alcoholics Anonymous (AA) meetings. *Id.*

In September 2020, the Psychologist conducted an evaluation of the Individual. Ex. 12. The Individual informed the Psychologist that she started attending AA meetings the day after her second DWI and was attending three to four meetings per week until they were suspended in March 2020 due to COVID-19. *Id.* at 6. The meetings resumed in July 2020, and the Individual reported that she had been attending regularly, at least three times per week.² *Id.*

The Individual informed the Psychologist that, five months prior to her April 2019 arrest, she underwent a weight loss surgery. *Id.* at 3-4. The Psychologist noted that the surgery is known to "speed up the absorption of alcohol" in the body. *Id.* The Individual reported that her doctors cautioned her against consuming alcohol and noted that she had heard that many people become alcoholics following the surgery, but she felt that the risk did not apply to her. *Id.* at 7. She noted that she continued to consume alcohol following her April 2019 arrest, but she abstained throughout her participation in the IOP. *Id.* Shortly after completing the IOP, she reported becoming intoxicated upon learning of a family member's death. *Id.* The Individual noted that she continued to consume alcohol sporadically up until her January 2020 DWI, at which point she decided to permanently abstain. *Id.*

The Individual provided the Psychologist with a July 2020 Phosphatidylethanol (PEth) test, which was negative. *Id.* The Psychologist additionally administered a second PEth test, which was also

² The Psychologist noted that the Individual provided documentation of her AA attendance. *Id.* at 6.

negative. *Id.* at 8. A medical doctor informed the Psychologist that the negative PEth test indicated that the Individual had not been consuming alcohol “on a regular, heavy basis within a few weeks of the test.” *Id.* Nonetheless, the Psychologist concluded that the Individual still met the criteria for Alcohol Use Disorder, Moderate, without adequate evidence of rehabilitation or reformation. *Id.* 8-9. To demonstrate adequate evidence of rehabilitation or reformation, the Psychologist recommended that the Individual participate in a second IOP; however, in the alternative, the Psychologist recommended active participation in AA for 12 months, to include attending four meetings per week, working with a sponsor, and engaging in the 12-Step program. *Id.* at 9-10. She additionally advised that the Individual permanently abstain from alcohol and provide evidence of abstinence in the form of “at least six PEth laboratory tests over the 12-month period.” *Id.* at 10.

At the hearing, five witnesses testified on the Individual’s behalf: the chair of her AA group, her stepfather, two coworkers, and the Individual herself. The Individual’s stepfather (Stepfather) of 40 years testified that, prior to the April 2019 DWI, the Individual had never had any alcohol-related problems. Tr. at 39. He noted that, based on his recollection, she has been abstinent from alcohol for approximately 19 months, the amount of time that had passed since her second DWI. *Id.* at 41. He additionally noted that she does not keep alcohol in her home and has indicated that she has no desire to consume alcohol in the future. *Id.* at 39, 44.

The chair of her AA group (Chair) also testified on her behalf. *Id.* at 13. He testified that he has known the Individual through AA for over a year, and he sees her weekly at an AA meeting that he chairs. *Id.* The Chair stated that the Individual was unique in that, unlike typical newcomers to AA, she was not in “denial or blame mode.” *Id.* at 14. He noted that after about 30 days, she settled into the group, owned her condition, and worked on her condition. *Id.* He explained that she was active in the group, asked questions, accepted responsibility, and engaged in the “growth process.” *Id.* The Chair noted that her “growth was pronounced, and when she was going through a hard time, she attended extra meetings.” *Id.* He opined that the Individual was “absolutely committed” to maintaining her abstinence from alcohol. *Id.* at 15.

The Chair explained that the Individual does not currently have a sponsor, as her previous sponsor recently passed away. *Id.* at 16. He noted that the AA group has struggled to find “quality women for sponsorship.” *Id.* As such, he stated that he has essentially stepped into the sponsorship role for the Individual for the time being. *Id.* He explained that the Individual has 19 months of sobriety and is currently working through the 12 Steps of AA. *Id.* at 28, 32. The Chair affirmed that the Individual has been specific in stating that she “has no interest in drinking at all.” *Id.* at 17-18.

The Individual testified that prior to her first DWI, she was a social drinker of beer. *Id.* at 93. However, in November 2018, she underwent a weight loss surgery and was no longer permitted to consume carbonated beverages. *Id.* As such, she switched to liquor. *Id.* She stated that she did not realize that, after her surgery, her body would not process alcohol “the same way,” and it would take less alcohol for her to become intoxicated. *Id.* at 94. Although she told the Psychologist in her evaluation that her doctors warned her about alcohol consumption, she felt that the risk did not apply to her. Ex. 12 at 7. She noted that she has performed some research and found that it is quite common for people to become alcoholics following this surgery. *Id.* She noted that she has performed some research and found that it is quite common for people to become alcoholics following this surgery. *Id.*

The Individual testified that she last consumed alcohol on the day of her second DWI in January 2020. Tr. at 70. She noted that she also considers this date to be her “sobriety date.” *Id.* The Individual stated that since that date she has attended “some aftercare,” which accompanied her previous IOP; she has attended counseling, and she presently participates in frequent and regular AA meetings. *Id.* at 70-71.

The Individual explained that, following her first DWI and the completion IOP, she had not “sworn off” alcohol. *Id.* at 71. She stated that she was “trying not to drink at all and just kind of cold turkey it,” but she relapsed. *Id.* at 71-72. She noted that she did not find the IOP particularly helpful because it was “too much focused on drug abuse,” and she “wasn’t getting a whole lot out of it because [she did not] understand that aspect of addiction.” *Id.* at 74. The Individual explained that because the IOP was not entirely focused on alcohol abuse, she felt that she lost sight of what she was “supposed to be doing,” and lost the “fact that it’s as serious as it is.” *Id.* at 75. She noted that, at that time, she was using alcohol as a coping mechanism when her life circumstances were difficult. *Id.*

The Individual testified that, immediately following her second DWI, she began participating in AA. *Id.* She stated that she attends every Monday night and tries to attend two to three meetings per week.³ *Id.* at 80. She revealed that she does not currently have a sponsor. *Id.* at 76. She explained that, upon starting AA, she was on a “pretty serious search for one,” but then AA was suspended due to COVID-19. *Id.* Upon returning to AA, she struggled to find a sponsor because the female attendees tend to “drop in and out.” *Id.* at 77. She explained that it is challenging to find a person who is a consistent attendee and with whom she felt comfortable. *Id.* Although she did eventually find a sponsor, the Individual testified that the woman passed away a few months prior to the hearing. *Id.* She explained that since her sponsor’s passing, she has been turning to the Chair as a sponsor, but she acknowledged that using a sponsor of the opposite sex is not ideal. *Id.* at 78.

The Individual explained that she has been working through the 12 Steps of AA, and she is currently working on Step Three and beginning Step Four. *Id.* She noted that she has completed some of the Steps out of order, and the Chair told her that the procession through the 12 Steps “just depends on the person.” *Id.* at 79. She described that she approaches the 12 Steps by taking her time to “actually learn stuff before [she] go[es] on to the next thing.” *Id.* The Individual stated that she takes that approach so that “hopefully [she] can help somebody else.” *Id.*

The Individual acknowledged that, after completing her IOP, she began consuming alcohol again. *Id.* at 84-85. She explained that her present life is different because now she is “relating to people in [her] group...[a]nd being able to relate to them and tell [her] story, hear their story helps [her] to stay sober.” *Id.* at 85. The Individual described that, prior to her first DWI, she had never “been in trouble,” and she did not approach the situation as “serious[ly] as [she] should have.” *Id.* She testified that, now, she has significant time invested in staying abstinent from alcohol, and she “want[s] to keep it that way.” *Id.* She affirmed that she has no intention of consuming alcohol in the future, especially because her body “can’t physically handle it.” *Id.* at 92, 94. To document her abstinence from alcohol, the Individual submitted eight negative PEth tests, spanning from July 2020 to July 2021, into the record. *Id.* at 92, 94; Ex. E.

³ The Individual submitted her AA attendance documentation into the record. Ex. C.

The Individual testified that, now, in lieu of using alcohol as a coping mechanism, she utilizes “a lot of praying.” Tr. at 95. Additionally, she remains focused on her granddaughter and spending time with her. *Id.* She noted that since she has become abstinent from alcohol “clarity” has returned to her life, and this has helped her remain focused and steady in her emotions. *Id.* at 96.

After observing all of the hearing testimony, the Psychologist testified. *Id.* at 98. The Psychologist testified that at this time, the Individual has demonstrated adequate evidence of rehabilitation or reformation from the Alcohol Use Disorder, Moderate, albeit “differently” than she had recommended in her report following the evaluation. *Id.* at 100. The Psychologist noted that she “wish[ed]” the Individual would get a “formal sponsor,” but she acknowledged the difficulty in finding a good sponsor and noted the Chair’s interim role as her sponsor. *Id.* She drew attention to the Individual’s strong support system, her engagement in AA, and the positive impact that AA has had on her recovery. *Id.* at 103. The Psychologist stated that one of the most important elements of the Individual’s testimony was her noting that relating to people has aided in her recovery. *Id.* at 103. She explained that people who do not engage in relationships are at a greater risk of substance abuse. *Id.* at 103-104. She opined that the Individual’s prognosis was “good” and that she was at a low risk of relapse. *Id.* at 102, 104.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the Individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual has sufficiently mitigated the security concerns noted by the LSO regarding Guideline G and Guideline J. I find that restoring the Individual’s DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual’s security clearance should be restored. The specific findings that I make in support of this Decision are discussed below.

Due to the interconnected nature of the Guideline G and Guideline J security concerns, I will analyze them together. Regarding Guideline G, 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 is a condition that could raise a security concern and may disqualify an individual from holding a security clearance. Guideline G at ¶ 22(d). Additionally, alcohol-related incidents away from work could raise a disqualifying security concern. *Id.* at ¶ 22(a).

If the behavior occurred under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s judgment, reliability, or trustworthiness, the person may be able to mitigate the security concern. *Id.* at ¶ 23(a). Similarly, if an individual acknowledges the 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, the individual may be able to mitigate the security concern. *Id.* at ¶ 23(b).

Turning to Guideline J, evidence of criminal conduct or a violation or revocation of parole or probation may disqualify an individual from holding a security clearance. Guideline J at ¶ 31(b), (d). An individual may be able to mitigate such a concern if so much time has elapsed since the criminal behavior occurred, 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. *Id.* at ¶ 32(a).

In this case, the Psychologist diagnosed the Individual with Alcohol Use Disorder, Moderate, after the Individual was arrested for two DWIs and violated the terms of her Pre-Trial Diversion Program. *See* Guideline G at ¶ 22(a), (d); Guideline J at ¶ 31(b), (d). However, the DWIs occurred shortly after the Individual underwent a surgery that altered the manner in which her body processes alcohol. Prior to the surgery, the Individual had not engaged in any alcohol related criminal conduct or had any problems with her alcohol use. As such, I find that these DWIs occurred under such unique circumstances that they are unlikely to recur and do not cast doubt on the Individual's reliability, trustworthiness, or good judgment. *See* Guideline G at ¶ 23(a); Guideline J at ¶ 32(a).

Although the Individual did experience a relapse prior to the second DWI, she acknowledged that she was using alcohol to cope with challenging life experiences, including the death of a family member, and immediately following her second DWI, she began actively and frequently engaging in AA. She developed a strong support system within the group, is actively working to complete the 12 Steps, and is utilizing healthy coping mechanisms to address challenges. Additionally, the Individual has conducted research to educate herself about the effects of alcohol on her body post-surgery and understands that her body cannot tolerate alcohol. The Individual has maintained 19 months of abstinence from alcohol and has provided eight PEth tests, spanning a 12-month period, to demonstrate this abstinence. *See* Guideline G at ¶ 23(b). Finally, the Psychologist opined that the Individual has demonstrated adequate evidence of rehabilitation and reformation from the Alcohol Use Disorder, Moderate, and concluded that the Individual has a "good" prognosis with a low risk of relapse. *Contra* Guideline G at ¶ 22(d).

For the foregoing reasons, I find that the Individual has mitigated the Guideline G and Guideline J security concerns. As such, I find that the DOE should restore access authorization to the Individual.

VI. Conclusion

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 have found that the Individual has brought forth sufficient evidence to resolve the security concerns associated with Guideline G and Guideline J. Accordingly, I have determined that the Individual's access authorization should be restored. The parties may seek review of this

Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals