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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)	
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Filing Date: March 3, 2020)	Case No.: PSH-20-0051
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Issued: January 13, 2021

Administrative Judge Decision

Janet R. H. Fishman, 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."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 security clearance should be restored.

I. BACKGROUND

A DOE contractor employs the Individual in a position that requires him to hold a security clearance. In May 2019, the Individual reported to the Local Security Office (LSO) that he was arrested for DWI on May 10, 2019. Ex. 7. The LSO subsequently issued the Individual a Letter of Interrogatory (LOI) concerning the circumstances of his arrest and additional previous alcohol related incidents. Ex. 8. The LSO requested that the Individual be evaluated by a DOE consulting psychologist (DOE Psychologist), who subsequently issued a report of her findings. Ex. 9. After receiving the DOE Psychologist's Report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual, informing him that his security clearance had been suspended and that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

¹ 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 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. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of six witnesses and testified on his own behalf. *See* Transcript of Hearing, Case No. PSH-20-0051 (hereinafter cited as "Tr."). The LSO presented the testimony of one witness. The Individual submitted nine exhibits, marked as Exhibits A through I, and the LSO submitted 12 exhibits, marked as Exhibits 1 through 12

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 suspending the Individual's security clearance. Ex. 1 at 1–2. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses and can raise questions about an individual's reliability and trustworthiness. Adjudicative Guidelines at ¶ 21. The LSO asserted that: the DOE Psychologist determined that the Individual met the diagnostic criteria for Alcohol Use Disorder (AUD), Severe, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*; the Individual was arrested and charged with DWI on May 10, 2019; the Individual was arrested for Public Intoxication in June 2009; the Individual was arrested and charged with DWI in July 2004; the Individual was cited for Consumption of Alcohol by a Minor in June 2004; and the Individual was cited for Consumption of Alcohol by a Minor in May 2003. Ex. 1 at 1–2. The LSO's allegations that the Individual engaged in alcohol-related incidents away from work and was diagnosed with AUD, Severe, by the DOE Psychologist justify the LSO's invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (d).

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the other basis for suspending the Individual's security clearance. Ex. 1 at 2. "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 LSO listed all the same relevant facts, except the DOE Psychologist's diagnosis, as support for the Guideline J as those listed for the Guideline G concern. However, the LSO also added a charge that the Individual was arrested on a warrant for Failure to Complete Community Service for the DWI he received in July 2004. Ex. 1 at 2. The Individual's criminal record justifies the LSO's invocation of security concerns under Guideline J. Adjudicative Guidelines at ¶ 31(a)–(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 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. 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.

IV. FINDINGS OF FACT

On May 10, 2019, the Individual was arrested and charged with a DWI. Ex. 6 at 1. He reported his arrest to the LSO, which asked him to complete a Letter of Interrogatory – Questionnaire (LOI). Ex. 8. In his response to the LOI, he admitted that he had consumed approximately six beers and two shots of whiskey prior to his arrest. Ex. 7 at 1–2. He also admitted to five other incidents of criminal conduct, four of which arose while he was consuming alcohol and one related failure to comply with a court order relating to another alcohol-related charge. Specifically, in June 2009, he was arrested for public intoxication. Ex. 8 at 5. In July 2004, he was arrested and charged with DWI. *Id.* In August 2005, he was arrested on a bench warrant for failure to complete court-ordered community service for his July 2004 DWI. *Id.* Finally, he admitted to charges of consumption of alcohol when he was a minor in June 2004 and May 2003. *Id.*

At the hearing, the Individual testified that he has not consumed alcohol since the date of his arrest for the 2019 DWI and has successfully completed probation for this offense. Tr. at 71–72. After reporting his 2019 DWI arrest to his employer, he was referred to the same Intensive Outpatient Program (IOP) which he had previously attended and completed pursuant to a prior arrest. *Id.* at 73. He admitted that the first time he attended the IOP, he did not exert his best efforts because he thought it was unfair that they were focusing on his past alcohol history. *Id.* However, he actively participated in the second IOP and developed supportive relationships with other participants. *Id.* He realized that he had previously been making excuses for his alcohol use which led to his most recent DWI incident, and that he needed to completely remove alcohol use from his life. *Id.* at 74–75. The Individual successfully completed the second IOP and submitted a certificate verifying his completion. Ex. C.

The Individual also testified that he participates in an aftercare program, which is led by a counselor (Counselor). *Id.* at 76. Following aftercare sessions, several fellow aftercare participants gather in the parking lot to discuss the lessons they have learned from the session, and share what they are all experiencing. *Id.* at 76–77. The Individual explained that the parking lot group members have continued to attend in-person group meetings by themselves during the COVID-19 quarantine because they had become accountability partners to each other which was important to him in his sobriety journey. *Id.* at 78. He testified that he has also attended individual counseling since February 2020, where he has worked on addressing his insecurities without the use of

alcohol, and on finding an Alcoholics Anonymous (AA) sponsor that was a good fit for his needs. *Id.* at 79–81, 83.

The Individual testified that he has been attending AA meetings, and submitted a list of the meetings he has attended with signatures and dates that confirm his attendance three times per week since late February 2020. Tr. at 82, Ex. G. He obtained an AA sponsor who provided a letter attesting to the Individual's work on AA's 12 steps. Tr. at 8, Ex. B. The Individual also testified that he took six random breath tests between January 2020 and November 2020, and each test result was negative. Ex. F; Ex. H. He stated that his nail Ethyl Glucuronide (EtG) test which he took in February 2020 was also negative. Tr. at 88–89; Ex. D. He also submitted a total of eight Phosphatidylethanol (PEth) tests from March 2020 through October 2020. Tr. at 88–89; Ex. E; Ex. I.

The Individual testified that he applied the lessons he learned from IOP, aftercare, the parking lot group, and AA to give a presentation at his workplace to share his experience with problematic alcohol use and to assist and educate his colleagues. *Id.* at 94–95. He concluded that he will not consume alcohol in the future. *Id.* at 72, 97. He indicated that his Counselor, who provides him with one-on-one counseling, his wife, and his best friend are his main support. *Id.* at 97.

The Individual's wife testified that she has been in a relationship with the Individual for 14 years, they have a 13-year-old son, and they have been married for four years. Tr. at 9–10. She testified that after his 2019 DWI arrest, he was devastated and told her he blamed himself for his DWI and alcohol consumption. *Id.* at 13. The wife confirmed the Individual's testimony regarding his change of attitude and the difference in his participation in the second IOP as compared to the first time he completed the IOP. *Id.* at 14, 24–25. She testified that the Individual has told her about his participation in aftercare and the parking lot group, including the strong friendships he had developed. *Id.* at 15–16.

The Individual's wife also testified that she has observed numerous changes in the Individual's behavior since his most recent participation in the IOP and indicated that his attitude towards alcohol, and his interactions with friends and family, have all improved. Tr. at 18–19, 23–27. For example, he spends more time with their son alone; as a family, they do more outdoor recreational activities and attend their son's football games; and as a couple, they spend more time at home instead of going out with friends. *Id.* at 23, 25. If she and the Individual go to social outings with friends where alcohol is served, the Individual does not consume alcohol, and if his friends have consumed alcohol, he offers to give them a ride. *Id.* at 19. The wife indicated that the Individual asserted to her that he is "done" with alcohol. *Id.* at 19–20.

Two of the Individual's coworkers and his supervisor also testified in support of the Individual. The first coworker testified that he interacts with the Individual every day, including when the Individual assists him in transporting his deliveries. *Id.* at 40. The first coworker stated that the Individual told him he blames himself for his DWI and has discussed with him the actions he has taken to maintain abstinence, including his participation in various program meetings. *Id.* at 41–42. He further stated that the Individual told him "he's done" using alcohol, and the coworker asserted that the Individual is sincere in his commitment. *Id.* at 43, 45. The Individual's second coworker, who is also his wife's cousin, testified that he has known the Individual since he was a

teenager, and he socializes with the Individual twice a month outside of work, including at family events. *Id.* at 48. The second coworker stated that he last saw the Individual consume alcohol in 2018 at a football game that they both attended. *Id.* at 54. He testified that, since the Individual's DWI, he observed that the Individual's behavior changed in that he no longer consumed alcohol whenever they went out socially including at family events where alcohol is served. *Id.* at 49–50. The second coworker further stated that the Individual has discussed with him his future intent to remain abstinent, and he believes the Individual can succeed in maintaining his sobriety. *Id.* at 54–55. He also has no concerns about the Individual's reliability, trustworthiness, or honesty. *Id.* at 53.

The Individual's supervisor testified that the Individual is a very dedicated employee who does whatever task his employer requests of him, and that he considers the Individual to be one of the leaders of their department. *Id.* at 31–32. He confirmed the Individual's testimony regarding the presentation he and his colleague gave to their coworkers to raise awareness about driving after consuming alcohol. *Id.* at 33–34. He testified that he finds the Individual to be trustworthy, honorable, and reliable, and concluded by stating, "In the past five years that I've known the man, he has . . . not once lied to me. He's been committed to anything that he states that he's going to do. When he sets his mind to it, he does it." *Id.* at 35.

The Individual's best friend and accountability partner testified that he has been through a similar sobriety journey along with the Individual including IOP, aftercare, and the parking lot group. *Id.* at 58–59. He testified that the Individual is one of the "founders" of the parking lot group and provided examples of the Individual's active participation, including his initiating some of the group discussion topics and providing guidance to other group members. *Id.* at 59, 61, 64–65. He also confirmed the Individual's explanation of the purpose of the parking lot group, including its importance to the participants in providing a support network and accountability to each other which is integral to maintaining their sobriety. *Id.* at 59–60. Lastly, he testified that he finds the Individual to be "100 percent" trustworthy, honest, and reliable, *Id.* at 63.

The Individual's Counselor testified that he was involved in the Individual's first and second IOPs, currently leads the Individual's aftercare program, and provides the Individual with one-on-one counseling. *Tr.* at 102-03, 104. He observed two main changes in the Individual's behavior and actions that occurred during his most recent IOP. First, the Individual approached the IOP with complete humbleness due to the DWI. *Id.* at 103. Therefore, he was able to recognize and admit that he was using alcohol to manage his shyness, mistrust, and social anxiety. *Id.* at 103–104. The second change the Counselor noticed involved the Individual's level of anxiety, which the Counselor initially assessed at the moderate to severe level. *Id.* at 104. However, the Counselor indicated that, through the Individual's participation in individual therapy, aftercare, and the parking lot group, he has learned to express his emotions without suspicion and develop trust in sharing his experiences with others, all without the use of alcohol. *Id.* The Counselor concluded that the Individual "built a program of recovery that was assisting him in a way to abstain and grow, and . . . that should remain. . . . As for the probability of relapse, . . . It really hinged on his commitment to [the] program that he's built." *Id.* at 125.

In her November 2019 report, the DOE Psychologist diagnosed the Individual with AUD, Severe. Ex. 9 at 2, 9. This diagnosis was based on the DOE Psychologist's review of the Individual's

Personnel Security File and the forensic interview, along with the results of three tests administered after the interview: a urine drug screen 5-panel test including Alcohol, an EtG test, and a PEth test. *Id.* at 7–8. According to a medical doctor who reviewed the results of the tests, the negative results from the EtG and Peth tests were strong evidence that the Individual had not consumed alcohol for at least three days prior to the tests; had not consumed alcohol on a regular, heavy basis within a few weeks prior to the tests; and had not had binge drinking episodes or moderate drinking within one week prior to the tests. *Id.* In addition, the urine drug screen 5-panel including Alcohol was negative. *Id.*²

Also in her report, the DOE Psychologist opined that the Individual should abstain from alcohol for a period of not less than one year, attend Alcoholics Anonymous (AA) three times per week for a minimum of one year, find a sponsor or participate in another evidenced-based treatment, and undergo random alcohol testing not less than six times throughout the 12 months of his treatment. *Id.* at 8–9. She further recommended he take four random PEth tests. *Id.* at 9.

At the hearing, the DOE Psychologist testified that, based on the exhibits and hearing testimony, she has seen evidence that the Individual has been participating in the treatment she recommended in her report. Tr. at 119-20. As such, the DOE Psychologist concluded that, in her opinion, the Individual has demonstrated adequate evidence of reformation. *Id.* at 120. She further opined that the Individual’s prognosis is “quite good” as long as he continues to participate in AA, the support groups he has (whether that be aftercare or the parking lot group), and individual counseling. *Id.* at 124. She concluded that the Individual’s risk of relapse would be much greater if he should stop his involvement with these types of support. *Id.*

V. ANALYSIS

A. Guideline G

The Individual’s arrests for DWI, diagnosis of AUD, Severe, by the DOE Psychologist, and other alcohol-related arrests all raise security concerns under Guideline G. Adjudicative Guidelines at ¶ 22(a), (d). The Adjudicative Guidelines provide, in relevant part, that an individual may mitigate security concerns under Guideline G if “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.” Guideline G at ¶ 23(b).

The Individual has made laudable efforts to mitigate the security concerns related to his alcohol consumption. The Individual has acknowledged his pattern of maladaptive alcohol consumption and has taken action to overcome the problem by promptly engaging in a second IOP after his May 2019 DWI arrest. In addition to completing the second IOP, he has followed the treatment recommendations of the DOE Psychologist. He has participated in AA meetings three times per week, has obtained an AA sponsor, and continues to participate in aftercare and the parking lot group where he has developed a strong support system with accountability partners. Notably, although the DOE Psychologist recommended that he undergo at least four PEth tests, the

² This test also provided evidence that the Individual had not consumed alcohol in the 12 hours prior to the tests. Ex. 9 at 12.

Individual took it upon himself to take eight PEth tests, all of which were negative, demonstrating his commitment to abstinence. He also submitted six random breath tests from January 2020 through November 2020, and each test result was negative.

I find the Individual to be credible in his testimony. He has supported his assertions of his abstinence from alcohol use with objective evidence, and has provided consistent testimony from his supervisor, coworkers, best friend, wife, and Counselor regarding his reliability and trustworthiness. Moreover, he has gone beyond his own recovery to serve and assist others in their own sobriety journeys through his role as a founding member of the parking lot group, and the presentation he gave to his coworkers regarding the problems associated with alcohol consumption.

In light of the Individual's compliance with treatment recommendations, demonstrated abstinence from alcohol, development of a network to support his continued abstinence, and the positive testimony of two experts as to his prognosis, I am convinced that the Individual has resolved the security concerns asserted by the LSO under Guideline G.

B. Guideline J

The Individual's arrests for DWI and other alcohol-related arrests raise security concerns under Guideline J. Adjudicative Guidelines at ¶ 31(a)–(b). An individual may mitigate security concerns under Guideline J, in relevant part, if 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. Adjudicative Guidelines at ¶ 32(a).

In cases in which OHA Administrative Judges have determined that individuals' criminal conduct is the product of their abuse of alcohol, Administrative Judges have consistently determined that where the individual's criminal conduct is a direct product of his problematic alcohol consumption, the criminal conduct is mitigated by the individual's rehabilitation or reformation from an Alcohol Use Disorder. *See, e.g., Personnel Security Hearing*, OHA Case No. PSH-20-0018 at 15 (2020) (finding that "once the Individual resolves the security concerns raised by his use of alcohol, the associated [Guideline J] concerns pertaining to his alcohol-related arrests will also be mitigated.")³ In this case, I find that the Individual's criminal offenses are the direct product of his previous, escalating problematic consumption of alcohol. As described above, I also find that the Individual has resolved the security concerns related to his alcohol consumption through treatment and one and a half years of abstinence from alcohol. Thus, I conclude that adequate time has passed since the Individual's criminal activities, and those activities happened under such circumstances that they are unlikely to recur.

For the foregoing reasons, I find that the Individual has resolved the security concerns asserted by the LSO under Guideline J of the Adjudicative Guidelines.

³ Decisions issued by OHA are available on the OHA website located at <http://www.energy.gov/OHA>.

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 Guideline G and Guideline J 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's access authorization should be restored. Either party may seek review of this Decision by an Appeal Panel pursuant to 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals