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

In the Matter of: Personnel Security Hearing	)	
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Filing Date: September 30, 2021	)	Case No.: PSH-21-0121
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Issued: February 2, 2022

**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.”<sup>1</sup> As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should not be restored.

**I. Background**

The Individual is employed by a DOE contractor in a position that requires her to hold a security clearance. In September 2020, the Individual was arrested and charged with Simple Assault. The Individual admitted to consuming alcohol prior to this incident. As a result of this incident, the Individual was evaluated by a DOE consultant psychologist (Psychologist) in March 2021. Ex. 11. The Psychologist diagnosed her with Alcohol Use Disorder, Moderate, and determined that the Individual had not demonstrated adequate evidence of rehabilitation or reformation. Ex. 11 at 8.

Due to unresolved security concerns related to the Individual’s alcohol use, the Local Security Office (LSO) informed the Individual, in a March 2021 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) of the Adjudicative Guidelines. Ex. 1.

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<sup>1</sup> 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 seven lettered exhibits (Exhibits A-G) 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).

An individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). An individual is afforded a full opportunity to present evidence supporting her eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 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 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. In citing Guideline G, the LSO relied upon the Psychologist’s determination that the Individual met the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), criteria for Alcohol Use Disorder, Moderate, without adequate evidence of rehabilitation or reformation. Ex. 1. In addition, the LSO cited the Individual’s September 2020 arrest and charge of Simple Assault which occurred after she had consumed alcohol. *Id.*

## **IV. Findings of Fact**

As stated above, due to unresolved security concerns, the Individual underwent a psychological evaluation with the Psychologist in March 2021. Ex. 11. The Psychologist's April 2021 report (Report) noted that, prior to the September 2020 arrest, the Individual and her then girlfriend (Girlfriend) had been experiencing tension in their relationship. *Id.* at 3. On the day of the arrest, the Individual began consuming beer around 2:00 p.m. *Id.* She decided she "needed some time by herself" and went to a friend's house, where she consumed approximately nine beers from 5:00 p.m. to 9:00 p.m. *Id.* The Individual then returned home and fell asleep. *Id.* She awoke around 1:00 a.m. to find the Girlfriend intoxicated, and the couple began arguing. *Id.* The argument escalated to a physical conflict, which resulted in the Girlfriend calling law enforcement. *Id.* The Individual was arrested and charged with Simple Assault.<sup>2</sup> *Id.*; Ex. 8.

Following the incident, the Individual completed a Letter of Interrogatory (LOI), on which she stated that, prior to the incident, she had consumed 12 beers but was not intoxicated.<sup>3</sup> Ex. 10; *see* Ex. 9. The Individual also denied that her alcohol consumption contributed to her behavior during the incident. Ex. 10. The Individual's employer subsequently required her to meet with a staff psychologist (Staff Psychologist). Ex. 11 at 3. The Staff Psychologist reported to the Psychologist that the Individual initially stated that she consumed a "couple of beers" prior to the incident. *Id.* at 4. When the Staff Psychologist asked for clarification, the Individual then stated that she had consumed "six or seven" beers prior to the incident. *Id.* The Staff Psychologist referred the Individual to a substance abuse professional (SAP).<sup>4</sup> *Id.* at 3. The SAP opined that the Individual did not meet the criteria for a substance use disorder and did not recommend any treatment related to substance abuse; however, the Psychologist noted that the SAP's evaluation made no mention of the Individual's alcohol consumption prior to the incident. *Id.* at 3-4; Ex. 13. Although the Individual reported to the SAP that her typical alcohol consumption was one 12-pack of beer over the course of a week, she denied consuming alcohol with any regularity during her evaluation with the Psychologist. *Id.* at 3; Ex. 13 at 2.

During the Psychologist's clinical evaluation, the Individual denied daily, regular, or frequent alcohol consumption. Ex. 11 at 5. She additionally denied consuming more than three alcoholic beverages in one sitting and stated that she last consumed alcohol on January 2, 2021. *Id.* at 4-5. The Report notes that the Individual indicated that, "out of concern for the drinking problem she perceives her girlfriend to have, [the Individual] has reduced her alcohol consumption." *Id.* at 4. The Individual also expressed concern about the impact alcohol could have on her girlfriend's children as well as her own increased anxiety symptoms with the consumption of alcohol. *Id.* at 6. The Report additionally stated that the Individual and her girlfriend "have had to stop spending time with many of their friends in order to help curb their own drinking." *Id.* at 4.

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<sup>2</sup> The physical altercation and arrest will hereinafter be referred to as "the incident."

<sup>3</sup> The Report notes that, given the Individual's stature, after consuming 12 beers over the course of seven hours, the Individual's blood alcohol content (BAC) would have been "well above" the legal limit when she drove home from her friend's house. Ex. 11 at 4. The Psychologist noted that, at the time of the incident, using a "conservative rate of metabolism of alcohol," the Individual's BAC would be "considered very high."

<sup>4</sup> In a phone call with the Psychologist, the Staff Psychologist indicated that, although he believed alcohol to be a contributing factor in the physical altercation, he did not suspect a substance use disorder. Ex. 11 at 5.

The Psychologist noted that, at the end of the evaluation the Individual was informed she would be undergoing laboratory testing to evaluate her recent alcohol consumption. *Id.* at 8. At that time, the Individual revealed that she had been dishonest about her alcohol consumption as she was “nervous” and was advised by her coworkers to deny recent alcohol use. *Id.* The Individual then stated that she had consumed one beer the night before the evaluation. *Id.* The Individual underwent a Phosphatidylethanol (PEth) test, which was positive at a level of 140 ng/mL. *Id.* A consulting medical doctor explained that this level was “congruent with significant alcohol consumption.” *Id.* at 13. The Psychologist noted that the PEth results were inconsistent with the Individual’s reported alcohol consumption and “strongly suggests that the [Individual] is minimizing her alcohol use,” *Id.* at 5. The Psychologist opined that the laboratory testing revealed that the Individual had been “consuming alcohol regularly (likely daily) and [was] consum[ing] more than three drinks per sitting.” *Id.*

Ultimately, the Psychologist diagnosed the Individual with Alcohol Use Disorder, Moderate. *Id.* at 8. The Psychologist explained that the Individual’s minimization of her alcohol consumption, her choice to continue to consume alcohol despite being under investigation by the DOE, and her expressed concern about the impact alcohol could have on her girlfriend’s children suggested that alcohol is a problem for the Individual. *Id.* at 6. Additionally, the Psychologist noted that the Individual’s denial that she felt intoxicated and her decision to drive after consuming 12 beers suggested that the Individual had developed a tolerance to alcohol. *Id.* The Psychologist noted that the Individual had not demonstrated adequate evidence of rehabilitation or reformation, and to do so, she recommended that the Individual abstain from alcohol for a period of at least 12 months. *Id.* at 8. She also suggested that any random breathalyzers through the Individual’s employer be supported by random Ethyl Glucuronide (EtG) tests and at least two PEth tests over a 12-month period. *Id.* Finally, the Psychologist added that the Individual should participate in at least one Alcoholics Anonymous (AA) session per week. *Id.* She noted that proof of attendance should be provided. *Id.*

At the hearing, five witnesses testified on the Individual’s behalf: the Individual’s brother (Brother), the Individual’s wife (Wife), a coworker (Coworker), a work manager (Manger), and the Individual herself. The Manager and Coworker testified that they have known the Individual for approximately three years. Tr. at 52, 59. Both witnesses felt that the Individual was reliable, trustworthy, and honest. *Id.* at 55-56, 61-63. The Manager stated that she had never seen the Individual arrive to work intoxicated or with alcohol on her breath. *Id.* at 52-54. She further added that she has never received any reports concerning the Individual’s alcohol use. *Id.* at 54.

The Brother testified that he sees the Individual on a weekly basis and has never perceived her to have “a problem with [consuming] too much alcohol.” *Id.* at 15,17. He stated that he had not seen the Individual consume alcohol in over six months prior to the hearing, and the Individual had told him, approximately six weeks prior to the hearing, that she had “completely stopped” consuming alcohol. *Id.* at 18-19. The Brother had never noticed alcohol alter the Individual’s behavior, and he did not feel that alcohol had created any problems for her. *Id.* 20-21.

The Individual’s Wife testified that she was the Individual’s girlfriend at the time of the incident and the person listed as the victim of the incident resulting in the Individual’s arrest in September 2020. *Id.* at 30. The Wife stated that both she and the Individual consumed alcohol prior to the incident, and she believes it would not have occurred if not for the alcohol consumption. *Id.* at 31,

33. However, she later stated that she did not believe that alcohol had ever created a problem for the Individual. *Id.*

The Wife noted that, in the time prior to the incident, the Individual would not consume alcohol on a weekly basis, but she would consume two or three beers approximately once per month. *Id.* at 34. The Wife testified that she had never seen the Individual become intoxicated or consume too much alcohol, and she did not believe the Individual to be intoxicated the night of the incident. *Id.* at 29, 31. The Wife stated that shortly after the incident, she and the Individual stopped socializing with people whose “thing to do” was to consume alcohol. *Id.* at 42. She stated that the last time she saw the Individual consume alcohol was on New Year’s Eve of 2021, approximately two weeks prior to the hearing. *Id.* at 28. She recalled that the Individual consumed a mimosa and “a few beers.” *Id.*

The Individual testified on her own behalf. She acknowledged that she was intoxicated at the time of the incident and indicated that she believed alcohol played a part in the incident. *Id.* at 81-82. She stated that she last consumed alcohol on December 31, 2021, consuming one mimosa and six beers over the course of five hours. *Id.* at 66. She noted that after consuming two beers, she began to feel “a little weird in [her] head” and as though she was “getting a little bit of a buzz.” *Id.* at 67. She explained that she began feeling this way because she “ha[d]n’t been drinking” regularly. *Id.* As such, she “slow[ed] down” her consumption through the evening. *Id.* at 69. The Individual recalled that prior to New Year’s Eve, she consumed four beers on Christmas Eve of 2021 and prior to that, a glass of champagne at her wedding in September 2021. *Id.* at 70, 73. Before her consumption at the wedding, the Individual stated that she had been abstinent from alcohol for “almost two months,” which she felt was “pretty cool.” *Id.* at 74. The Individual added that since the night she was arrested, alcohol “does not stay in [her] house.” *Id.* at 71. She further noted that she is proud of herself for being in situations with people where alcohol consumption is the norm, and abstaining from alcohol. *Id.* at 77, 91.

The Individual stated that she received the Report from the Psychologist in May or June of 2021. *Id.* at 75. In addressing her PEth test results, the Individual acknowledged that, during the clinical evaluation, she made a “careless choice” to misrepresent her alcohol consumption based upon the advice of a colleague. *Id.* at 86. The Individual stated that she “falsely reported” the amount of alcohol she had consumed prior to the evaluation. *Id.* When asked to describe her consumption on the night prior, she stated that it was “a bit more” than she reported, but she could not recall the exact amount. *Id.* at 86. She elaborated, stating that, in addition to consuming alcohol the night before the evaluation, she consumed alcohol on the previous Friday and Saturday.<sup>5</sup> *Id.* at 87.

Turning to the Psychologist’s findings, the Individual stated that she “strongly disagree[d].” *Id.* at 75-76. She stated that she has not attended AA or participated in any alcohol therapy sessions.<sup>6</sup> *Id.* at 92. The Individual did, however, request that her employer set up regular breathalyzer tests, and

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<sup>5</sup> The record indicates that the Individual underwent the clinical evaluation on a Thursday. Ex. 11.

<sup>6</sup> In questioning the Psychologist later in the hearing, the Individual stated that she felt that she should not go to AA because stating that she has a problem with alcohol would be dishonest. *See* Tr. at 124-125. The Individual explained that the Staff Psychologist recommended therapy, and the Individual attended those sessions with “a high level of participation.” Tr. at 79; Ex. B. The Individual stated that the purpose of therapy was to address alcohol and anxiety; however, the SAP’s evaluation reports that the sessions were related to “Conflict Resolution, Problem Solving, Decision Making, and Values Clarification.” Ex. 13 at 2.

when she noticed that she was not being tested, she began reporting for the tests of her own accord. *Id.* at 77, 92.<sup>7</sup> *Id.* When asked about her future intentions regarding alcohol, she stated that she does not need alcohol, and she “will absolutely cut it way back.” *Id.* at 93, 97. She testified that she did not abstain from alcohol based on the Psychologist’s recommendation because she did not feel that the Psychologist knew her, and alcohol consumption “was just something [she] wanted to do.” *Id.* at 94. She felt that “in the presence of her own home if [she] every once in a while wanted to have a drink, [she did not] feel like [she] should be chastised for that or labeled as an alcoholic.” *Id.* at 92. The Individual added that the physical altercation was out of character for her, and prior to or since that incident, she has never had a comparable conflict with anyone. *Id.* at 97.

The Psychologist, after observing the hearing and listening to the testimony offered by the Individual and all other witnesses, testified that she diagnosed the Individual with Alcohol Use Disorder, Moderate, and did not find adequate evidence of rehabilitation or reformation. *Id.* at 104-105. The Psychologist explained that she based this diagnosis upon the Individual’s choice to continue to heavily consume alcohol despite: (1) being under the scrutiny of the DOE for her alcohol use, (2) being concerned about the impact that alcohol use had on her wife and her wife’s children (3) engaging in a physical altercation with her wife while under the influence of alcohol, and (4) feeling symptoms of anxiety with alcohol use. *Id.* at 104-106. The Psychologist also cited to the Individual’s development of a tolerance to alcohol. *Id.* at 106.

When asked whether her opinion regarding the Individual’s diagnosis changed when she heard the Individual admit to underreporting her alcohol usage, the Psychologist responded that her diagnosis did not change, but she was concerned to hear this admission as the Individual had already misrepresented her alcohol consumption twice before. *Id.* at 107-108. She felt that the Individual’s repeated misrepresentations reflected poorly on her trustworthiness. *Id.* at 108. The Psychologist additionally testified that she did not believe that the Individual had shown sufficient evidence of rehabilitation or reformation as, other than undergoing breathalyzer tests, the Individual had not followed her recommendations. *Id.* at 110.

The Psychologist commented on the Individual’s disagreement with her diagnosis and noted that even if the Individual’s disagrees, there is “still a lot of incentive to take [the] recommendations even if just to prove that [the diagnosis] is wrong.” *Id.* at 112. The Psychologist added that abiding by the recommendations shows that a person is taking the privilege of holding a security clearance seriously, is taking responsibility for holding a security clearance, and is motivated to maintain employment. *Id.* at 113.

## **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 not sufficiently mitigated the security concerns noted by the LSO regarding Guideline G. I cannot find that restoring the Individual’s DOE security clearance

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<sup>7</sup> The Individual submitted seven Alcohol Testing Forms into the record, all of which were negative for the presence of alcohol. Ex. G.

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 not be restored. The specific findings that I make in support of this Decision are discussed below.

Pursuant to Guideline G, diagnosis of alcohol use disorder by a duly qualified medical or mental health professional, including a clinical psychologist, is a condition that could raise a security concern and may disqualify an individual from holding a security clearance. Guideline G at ¶ 22(d). An Individual's failure to follow treatment advice once she is diagnosed, or the consumption of alcohol which is not in accordance with a treatment recommendation, after a diagnosis of alcohol use disorder, may disqualify an individual from holding a clearance. *Id.* at ¶ 22(e), (f). Additionally, alcohol-related incidents away from work could raise a disqualifying security concern. *Id.* at ¶ 22(a). 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).

In this case, the Psychologist diagnosed the Individual with Alcohol Use Disorder, Moderate. *See* Guideline G at ¶ 22(a). Additionally, the Individual acknowledges that her alcohol use was a factor in the physical altercation for which she was arrested. *Id.* at ¶ 22(d). The Individual denies that her alcohol use is problematic. *Contra* ¶ 23(b). However, according to her testimony, she has limited her alcohol consumption and abstained at times, eliminated certain people from her life due to their alcohol consumption, and removed alcohol from her home. The Individual's testimony that she does not find her alcohol use to be problematic seems inconsistent with her decision to modify her life where alcohol is concerned.

Although the Individual asserts that she has greatly minimized her alcohol consumption, aside from her testimony and that of her Wife's, I find that she has not demonstrated a clear and established pattern of modified consumption or abstinence in accordance with the treatment recommendations, and she has therefore failed to establish the mitigating factors of. *Contra id.* at ¶ 23(b). Regarding the Individual's reports of her current alcohol consumption, I do not find the Individual's reports to be credible. She misrepresented her alcohol consumption on the night of her arrest to the Staff Psychologist;<sup>8</sup> it is unclear whether she shared her alcohol consumption on the night of the arrest with the SAP;<sup>9</sup> and she twice misrepresented her consumption to the Psychologist. Without providing evidence that she followed the Psychologist's recommendations, her testimony that she has altered her alcohol consumption cannot be sufficiently corroborated *See id.* at ¶ 22(e), (f). As such, I cannot find that the Individual has mitigated the Guideline G security concerns.

## 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

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<sup>8</sup> The Individual initially reported to the Staff Psychologist that she had consumed a "couple of beers" prior to the arrest. Ex. 11 at 4. When he asked for clarification, she stated that she had consumed "six or seven" *Id.* She later reported that she had consumed 12 beers prior to the arrest. *Id.*

<sup>9</sup> The SAP's evaluation makes no mention of the Individual's alcohol consumption on the night of the arrest. Ex. 13.

the hearing, I have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline G. Accordingly, the Individual has not demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I have determined that the Individual's access authorization should not 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