

\*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

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

In the Matter of: Personnel Security Hearing )  
 )  
Filing Date: November 22, 2023 )  
 )  
\_\_\_\_\_ )

Case No.: PSH-24-0019

Issued: February 20, 2024

**Administrative Judge Decision**

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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's access authorization should be restored.

**I. BACKGROUND**

On November 2, 2020, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in connection with seeking access authorization. Exhibit (Ex.) 14 at 172.<sup>2</sup> The Individual disclosed on the QNSP that he was convicted of Felony Burglary in 2005, Driving While Intoxicated (DWI) in 2005, DWI in 2009, Disorderly Conduct for being drunk in public in 2011, and DWI in 2018. *Id.* at 159–63. He also disclosed that in 2019 he had resigned from a position after testing positive for alcohol in the workplace and subsequently received alcohol-related treatment through which he was diagnosed with alcohol use disorder (AUD). *Id.* at 138–39, 165. A background investigation of the Individual revealed additional criminal conduct, including several additional alcohol and drug-related offenses. *Infra* pp. 3–4. The Individual was subsequently granted access authorization.

---

<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.

<sup>2</sup> The exhibits submitted by DOE were Bates numbered in the upper right corner of each page. This Decision will refer to the Bates numbering when citing to exhibits submitted by DOE.

On April 27, 2023, the Individual submitted a personnel security information report to the local security office (LSO) disclosing that he had been arrested and charged with Aggravated DWI, Open Container, and Driving While Suspended/Revoked License. Ex. 8; *see also* Ex. 7 at 35 (reflecting documentation of the Individual's arrest and charges). The LSO issued the Individual a letter of interrogatory (LOI) concerning his alcohol consumption and history of criminal conduct. Ex. 9. The Individual's responses to the LOI did not resolve the LSO's security concerns. *See* Ex. 4 (summarizing the LSO's evaluation of the Individual's eligibility for access authorization).

On August 3, 2023, the Individual met with a DOE-contracted psychologist (DOE Psychologist) for a psychological evaluation. Ex. 10 at 83. The DOE Psychologist subsequently issued a report of the psychological evaluation (Report) in which she opined that the Individual binge consumed alcohol to the point of impaired judgment. *Id.* at 89.

The LSO subsequently issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1 at 9–11. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines G and J of the Adjudicative Guidelines. *Id.* at 5–8.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative hearing. The LSO submitted fifteen exhibits (Exs. 1–15). The Individual submitted eight exhibits (Exs. A–H). The Individual testified on his own behalf, and offered the testimony of his workplace employee assistance program counselor (EAP Counselor), his Alcoholics Anonymous (AA) sponsor, his workplace supervisor, and his girlfriend. Hearing Transcript, OHA Case No. PSH-24-0019 (Tr.) at 3, 9, 23–24, 38, 46–47, 54. The LSO offered the testimony of the DOE Psychologist. *Id.* at 3, 80.

## **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 its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 5–6. "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 SSC cited the DOE Psychologist's opinion that the Individual binge consumed alcohol to the point of impaired judgment, the Individual's termination from employment following a positive workplace alcohol test, the Individual's alcohol-related treatment and diagnosis with AUD, and six occasions on which the Individual was arrested or cited for alcohol-related offenses. Ex. 1 at 5–6. The LSO's allegations that the Individual engaged in alcohol-related incidents away from and at work, binge consumed alcohol to the point of impaired judgment, and was diagnosed with AUD by a duly qualified medical or mental health professional justify its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a)–(d).

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the second basis for its substantial doubt regarding the Individual's eligibility for access authorization. Ex. 1 at 6–8. “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 SSC listed 14 occasions on which the Individual was arrested or cited for unlawful conduct. Ex. 1 at 6–8. The LSO's allegations that the Individual engaged in numerous instances of unlawful conduct justify its invocation of 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 Dep't 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 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.* § 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

In November 2005, the Individual was arrested and charged with Felony Burglary. Ex. 13 at 120; Ex. 14 at 159. That same month, the Individual was also arrested and charged with DWI. Ex. 14 at 160; Ex. 15 at 185. The Individual was convicted of both offenses, and sentenced to 60 days in jail and a three-year term of probation for the Felony Burglary offense and a one-year term of probation for the DWI offense. Ex. 14 at 159–60.

In September 2006, the Individual was arrested and charged with violating the terms of his probation. Ex. 15 at 186, 298. The Individual violated the terms of his probation again in February 2007 and a warrant was issued for his arrest. *Id.* at 187, 298. When the Individual was arrested in connection with this violation of his probation, he provided false identification and was charged with providing False Identification to a Police Officer. *Id.* at 187. The Individual was arrested and charged with violating the terms of his probation again in April 2007. *Id.* at 188–89. The Individual served time in jail for each of the probation violations. *Id.* at 298.

In July 2007, the Individual was arrested and charged with Felony Robbery and Conspiracy to Commit a Crime. Ex. 15 at 189; *see also* Ex. 15 at 293 (reflecting the Individual's statement to the investigator that a group of individuals who were giving him a ride home committed the crime in his presence but that he did not take part in the robbery). The Individual pleaded guilty and was sentenced to serve two months in jail and a multi-year term of probation. *Id.* at 293.

The Individual was arrested and charged with DWI in October 2009. *Id.* at 196, 293. The Individual was sentenced to a six-month term of house arrest for this offense. Ex. 14 at 161; Ex. 15 at 294. The Individual was arrested and charged with violating the terms of his probation in June 2010 and served several days in jail. Ex. 15 at 189, 298.

In July 2011, the Individual was arrested and charged with Disorderly Conduct after becoming intoxicated with friends. *Id.* at 191, 294. The Individual was jailed in connection with this offense after failing to participate in court-ordered counseling. *Id.* at 294. In September 2011, the Individual was charged with several offenses after what he characterized in his response to the LOI as "freak[ing] out" in public while under the influence of methamphetamine. Ex. 9 at 70; Ex. 15 at 191. In December 2011, the Individual was arrested and charged with violating the terms of his probation. Ex. 15 at 191–92.

In February 2014, the Individual was arrested and charged with DWI. Ex. 15 at 196. The Individual was sentenced to a one-year term of probation pursuant to which he was required to attend alcohol education classes and receive alcohol-related counseling. Ex. 9 at 51; Ex. 15 at 294.

In March 2019, the Individual was arrested and charged with Aggravated DWI after refusing to undergo a Breathalyzer test. Ex. 15 at 196–97, 294. The Individual pleaded not guilty and the charges against the Individual were subsequently dismissed. *Id.* at 323.

In September 2019, the Individual tested positive on a random workplace alcohol screening. Ex. 9 at 60–61; Ex. 14 at 139. The Individual was terminated from his employment following the positive workplace alcohol test, but was offered the opportunity for rehire if he completed alcohol-related counseling. Ex. 10 at 87; Ex. 14 at 138. The Individual received counseling from a licensed professional clinical counselor who diagnosed him with AUD. Ex. 10 at 87. The Individual also attended AA meetings, but by his own admission "just went for the signature . . . [and] never participated . . . [or] worked the steps." *Id.*

The Individual signed and submitted the QNSP on November 2, 2020, in connection with his employment by a DOE contractor. Ex. 14 at 172. The Individual divulged a significant portion of his criminal history on the QNSP. *Id.* at 158–63. Following an investigation which further developed the Individual's history of criminal conduct, the Individual was granted access authorization. The Individual established a positive employment record with the DOE contractor, and is regarded as a reliable, trustworthy employee. *See* Tr. at 41 (reflecting the testimony of the Individual's supervisor at the hearing that the Individual is a trusted employee who is "great with the customers [] and knows his work real well"); *see also* Ex. A at 3–7 (reflecting letters of recommendation from coworkers of the Individual as to his trustworthiness and reliability).

On April 23, 2023, the Individual consumed a 12-pack of beer before driving to a friend's house. Ex. 9 at 41. He was stopped at a sobriety checkpoint set up by law enforcement. Ex. 7 at 35. A law enforcement officer observed an open beer in the center console of the Individual's vehicle. *Id.* The Individual failed a field sobriety test and refused to undergo a Breathalyzer test. *Id.* The Individual was subsequently arrested and charged with Aggravated DWI, Open Container, and Driving While License Suspended. *Id.* at 36; *see also* Ex. 9 at 43 (indicating in his response to the LOI that his driver's license was suspended for failing to pay a speeding ticket due to his making the payment to the wrong jurisdiction).

Upon returning to work following his arrest, the Individual was required to undergo weekly urinalysis screenings and daily Breathalyzer screenings. Tr. at 56–57. Each of these tests was negative for traces of alcohol consumption. *See id.* at 40 (reflecting the testimony of the Individual's supervisor at the hearing that he received the results of the testing, all of which were negative for traces of alcohol consumption); *see also* Ex. A at 1 (containing a letter from a representative of the Individual's employer indicating that the completed all required alcohol testing).

In May 2023, the Individual enrolled in a six-week alcohol awareness and education class through his employer's EAP. Tr. at 63. The Individual successfully completed the class in June 2023. Ex. B at 1. According to the EAP Counselor, the Individual was an attentive participant in the class, always completed assigned homework, and "became much more open and talkative" as the class progressed. Tr. at 11. The EAP Counselor attributed the Individual's increased openness to him overcoming "shame and embarrassment" related to his alcohol misuse. *Id.* at 12.

After completing the class, the Individual enrolled in a 12-week class through the EAP related to making changes in alcohol use. *Id.* at 58. The Individual also participated in four individualized counseling sessions with the EAP Counselor. *Id.* at 12. According to the EAP Counselor, the Individual told her in individualized counseling that his "pride had gotten in the way" of him seeking assistance prior to the 2023 DWI, but that he had come to understand that he was not in control of his alcohol consumption and needed treatment. *Id.* at 13.

In June 2023, the Individual began attending AA meetings twice weekly. Ex. C. Several weeks after beginning to attend AA meetings, the Individual approached the AA sponsor who agreed to sponsor the Individual. Tr. at 25 (reflecting the AA sponsor's account at the hearing of how he came to sponsor the Individual). The Individual attempted to enroll in an IOP for alcohol treatment, but his medical insurance company would not cover the costs of participation because the Individual was stable, and he could not afford to pay for the IOP out of pocket. *Id.* at 14–15, 74–75. In lieu of the IOP, the Individual enrolled in an online group counseling program. *Id.* at 68–69; *see also* Ex. D (containing attendance records showing that the Individual attended six online group counseling sessions from July to October 2023).

The Individual met with the DOE Psychologist for an evaluation on August 3, 2023. Ex. 10 at 83. The Individual told the DOE Psychologist that he rarely consumed alcohol prior to his 2023 DWI arrest, but that he would binge consume six to twelve beers per sitting when he did drink and that he was "not one of those [people] who can have one or two drinks." *Id.* at 86–87. At the request

of the DOE Psychologist, the Individual provided a sample for a Phosphatidylethanol (PEth) test.<sup>3</sup> The PEth test was negative for traces of alcohol consumption. *Id.* at 94–95.

The DOE Psychologist issued her Report on August 9, 2023. *Id.* at 89. In the Report, the DOE Psychologist opined that the Individual binge consumed alcohol to the point of impaired judgment.<sup>4</sup> *Id.* The DOE Psychologist recommended that the Individual demonstrate rehabilitation or reformation by continuing his current treatment regimen, including individualized counseling, attending AA meetings, attending group treatment, and undergoing PEth testing for a total of 12 months of treatment. *Id.*

In October 2023, the Individual completed the 12-week class through the EAP related to making changes in alcohol use. Ex. B at 2. The Individual subsequently enrolled in a court-ordered substance abuse treatment program through a community organization. Tr. at 61; Ex. F. In December 2023, the Individual completed one of the four segments of his court-ordered treatment program. Ex. B at 4.

The Individual's AA sponsor testified at the hearing that the Individual is working the 12 steps of the AA program with him and is currently on step nine. Tr. at 25–26, 34. The AA sponsor reported that he meets with the Individual approximately twice weekly before AA meetings. *Id.* at 26. The AA sponsor does not believe that the Individual has consumed any alcohol since entering AA and asserted that he would know from the Individual's behavior and body language if he had resumed drinking. *Id.* at 28–29, 31. The AA sponsor testified that the Individual told him that he intends to permanently abstain from alcohol. *Id.* at 32.

The Individual testified that he had not consumed alcohol since his arrest for DWI nine months prior to the hearing. *Id.* at 54; *see also id.* at 48, 50 (reflecting the testimony of the Individual's girlfriend that she had not observed the Individual consume alcohol since his 2023 arrest for DWI and that they no longer keep alcohol in their home). He provided the results of monthly PEth tests administered from June 2023 through January 2024, each of which was negative for traces of alcohol consumption. Ex. E; Ex. H. The Individual indicated that he decided to stop consuming alcohol while in a lockup after his 2023 arrest because he feared the consequences his alcohol consumption might have on his family. *Id.* at 54–55. He indicated that in the past he was the only person who suffered from his mistakes but that now his family depends on him to support them, and that he will not relapse as he did before because he has responsibility to provide for his family. *Id.* at 55.

The Individual has used fitness and practicing his religion as healthy ways to spend his time without drinking alcohol. *Id.* at 58–59, 75. The Individual indicated that his probation will end in October 2024. *Id.* at 61. His probation requires him to attend AA meetings twice weekly and to continue to attend the court-ordered treatment program. *Id.* at 61, 65.

---

<sup>3</sup> PEth, a compound produced in the presence of ethanol, is a biomarker for alcohol consumption that can be used to detect whether a subject consumed alcohol up to four weeks prior to sample collection. Ex. 10 at 94–95.

<sup>4</sup> The DOE Psychologist defined “binge drinking” as “consumption of alcohol to a level of intoxication that is markedly and episodically higher than what is typical for [the Individual]” and noted that “[t]he Substance Abuse and Mental Health Services Administration defines binge drinking as five or more alcoholic drinks for males . . . on the same occasion on at least one day in the past month.” Ex 10 at 91.

The Individual testified that he has no intention to resume using alcohol. *Id.* at 73. He has come to recognize that he “can’t even have one” because he cannot stop himself from binge drinking when he consumes alcohol and does not want to return to this pattern of problematic alcohol consumption. *Id.* at 73–74.

The DOE Psychologist testified that the Individual had demonstrated diligence in seeking out services to support his recovery and that his efforts satisfied her treatment recommendations. *Id.* at 81. The Individual’s treatment program is a “high quality” one in the opinion of the DOE Psychologist, and she believes that he gained the skills that he would have through an IOP through this treatment. *Id.* at 84–85. The DOE Psychologist opined that the Individual had demonstrated rehabilitation. *Id.* at 82.

## **V. ANALYSIS**

### **A. Guideline G**

Conditions that could mitigate security concerns under Guideline G include:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or judgment;
- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; or,
- (d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23.

By his own admission, the Individual has engaged in a pattern of binge drinking and alcohol-related criminal offenses throughout his adult life. This pattern persisted to as recently as April 2023 when he was arrested and charged with DWI after binge drinking. As the Individual engaged in frequent alcohol misuse and alcohol-related criminal offenses over several decades which persisted until as recently as nine months prior to the hearing, the first mitigating condition is inapplicable. *Id.* at ¶ 23(a).

The Individual has acknowledged his maladaptive alcohol use, and has proactively sought out treatment resources to support his abstinence from alcohol. Notably, the Individual began pursuing

treatment before being recommended to do so by the DOE Psychologist, and the DOE Psychologist characterized the Individual's efforts as diligent and fully compliant with her recommendations. Although the Individual's nine months of demonstrated abstinence from alcohol as of the date of the hearing fell short of the 12 months of abstinence recommended by the DOE Psychologist, the DOE Psychologist opined that the Individual had demonstrated rehabilitation based on his superlative efforts to support his abstinence through treatment. In consideration of these factors, I find that the Individual has established the applicability of the second mitigating condition. *Id.* at ¶ 23(b).

The third mitigating condition is inapplicable because the Individual relapsed following alcohol-related counseling in 2014 and 2019. *Id.* at ¶ 23(c). The fourth mitigating condition is inapplicable because the Individual's participation in court-ordered treatment is ongoing. *Id.* at ¶ 23(d).

Based on the Individual's alcohol testing supporting his nine months of abstinence from alcohol, the Individual's proactive approach to seeking resources to support his recovery, and the opinion of the DOE Psychologist that the Individual had demonstrated rehabilitation, I find that the Individual has resolved the security concerns asserted by the LSO under Guideline G.

## **B. Guideline J**

Conditions that could mitigate security concerns under Guideline J include:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

*Id.* at ¶ 32.

The Individual's history of criminal conduct appears to fall into two distinct phases. The first phase, from 2005 to 2011, includes a diverse array of offenses indicative of a lack of reliability, trustworthiness, and good judgment on the part of the Individual. The second phase, from 2011 to present, is exclusively comprised of alcohol-related offenses. I find that the passage of approximately 12 years from the last of the offenses in the first phase of the Individual's criminal history is sufficient to establish that he has changed since he committed the offenses and is unlikely to commit similar offenses in the future. With respect to the second phase of the Individual's criminal history, I am convinced that the Individual has resolved the binge drinking that led him



to commit the alcohol-related offenses and therefore that the alcohol-related offenses are unlikely to recur and do not currently cast doubt on the Individual's reliability, trustworthiness, and good judgment. Thus, I find that the Individual has established the applicability of the first mitigating condition to each of his criminal offenses. *Id.* at ¶ 32(a).

The second mitigating condition is inapplicable because there is no evidence that the Individual was pressured or coerced into committing any of the offenses asserted by the LSO. *Id.* at ¶ 32(b). The third mitigating condition is inapplicable because there is reliable evidence that the Individual committed the offenses. *Id.* at ¶ 32(c). The fourth mitigating condition is applicable to the first phase of the Individual's criminal history based on the passage of time since the Individual committed the offenses and his positive employment record with the DOE contractor, but not to the second phase of the Individual's criminal history in light of the recency of the Individual's alcohol-related offenses and the fact that he remains on probation from his 2023 DWI. *Id.* at ¶ 32(d).

For the reasons described above, I find that the Individual has resolved the security concerns asserted by the LSO under Guideline J.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines G and J of the Adjudicative Guidelines. After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all 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. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick  
Administrative Judge  
Office of Hearings and Appeals