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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: July 18, 2023	)	Case No.: PSH-23-0107
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Issued: March 13, 2024

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**Administrative Judge Decision**

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Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”<sup>1</sup> For the reasons set forth below, I conclude that the Individual’s security clearance should be restored.

**I. BACKGROUND**

The Individual is employed by a DOE Contractor in a position that requires a security clearance. Derogatory information regarding the Individual’s alcohol consumption was discovered. The Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding her eligibility to continue holding a security clearance. *See* 10 C.F.R. § 710.21.

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 in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of three witnesses—her sister, a close friend, and a human resources employee from her facility—and testified on her own behalf. The LSO presented the testimony of the DOE psychologist who had evaluated the Individual. *See* Transcript of Hearing, Case No. PSH-23-0107 (hereinafter cited as “Tr.”). The LSO submitted eight exhibits, marked as Exhibits 1 through 8 (hereinafter cited as “Ex.”). The Individual submitted five exhibits, marked as Exhibits A through D and Exhibit A Supplement.

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<sup>1</sup> Under the regulations, “[a]ccess authorization’ means 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 also be referred to in this Decision as a security clearance.

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

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for a security clearance. That information pertains to Guideline G of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. 10 C.F.R. § 710.7.

Guideline G states that 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. Conditions that could raise a security concern include:

- (a) Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;
- (b) Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder;
- (c) Habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;
- (d) 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;
- (e) The failure to follow treatment advice once diagnosed;
- (f) Alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder; and
- (g) Failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

*Id.* at ¶ 22.

The LSO alleges that the Individual admitted to drinking alcohol to intoxication two or three times per month for most of her adult life. The LSO further alleges that a DOE Consultant Psychologist (the Psychologist) diagnosed the Individual with Alcohol Use Disorder, moderate severity, in early remission but without adequate evidence of rehabilitation or reformation. Accordingly, the LSO's security concerns under Guideline G are justified.

### 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 entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. 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 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.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

### IV. FINDINGS OF FACT

The Individual began working at the DOE facility late in 2018. Tr. at 10. She testified that she experienced threats and hostility from some employees at the facility, which caused her some stress. *Id.* at 13. She had difficulty with failing to maintain boundaries to prevent being overcommitted. *Id.* at 39. Typically, she would drink one or two domestic beers with friends on her days off and one or two domestic beers during an occasional happy hour with colleagues. *Id.* at 16–17. She began drinking one to two vodka drinks instead of domestic beers in 2019 because she felt she became more relaxed from vodka. *Id.* at 19. She also began drinking one to two drinks on some weeknights. *Id.* at 20. She testified that she drank, in part, to deal with workplace stress. *Id.* Her drinking increased progressively during the COVID-19 pandemic. *Id.* at 21. In 2022, the Individual lost a tooth and developed a gum infection. *Id.* at 23–25. She began drinking every evening to deal with the pain in addition to her work stress. *Id.* at 29–30.

In early September 2022, the Individual's supervisor noticed her slurring her speech and referred her to medical for an alcohol test, which she failed. Tr. at 33. The Individual had consumed several drinks the night before and had intended to use a sick day but woke up feeling "fine" and decided to report to work as usual. *Id.* at 32. At work, her Blood Alcohol Concentration was around 0.24%. *Id.* at 33. The following day, the Individual met with her doctor to discuss options for alcohol

treatment. *Id.* at 34–35. She agreed to go to a detox facility and her sister took her there the following day. *Id.* 35–36.

The Individual began participating in the detox facility’s recovery program on her first day. Tr. at 36. The program involved several hours of classes each day. *Id.* The Individual requested to stay at the inpatient treatment center for a full 30-day program after completing her seven-day detox because she wanted to “really get everything [she] could out of what the program had to offer.” *Id.* at 44. She began sleeping and eating better, began feeling physically and mentally stronger, and gained clarity. *Id.* at 46. She attended recovery classes eight hours per day, seven days per week, covering issues such as trauma, behaviors, and coping skills. *Id.* at 46, 48. Activities outside the daily classes also tended to be recovery oriented, such as meditation and group activities. *Id.* at 46–47. She also completed homework assignments outside of classes that allowed her to focus on herself and her personal recovery needs. *Id.* at 47.

The Individual entered an Intensive Outpatient Treatment Program (IOP) as soon as she left the inpatient treatment facility. *Id.* at 55. The program began with three weeks of half-day classes before a second phase consisting of several weeks of daily group and individual therapy and all-day classes. *Id.* at 57–58. When the program ended in December 2022, the Individual returned to work. *Id.* at 63. She was somewhat apprehensive about returning to work, not because she worried that she would drink, but because she worried that she would fall back into her old patterns of people pleasing and not holding her boundaries. *Id.* at 60–61. When she did return, she found herself stronger than before and with more clarity. *Id.* at 63. She felt ready for her transition back to work. *Id.* She incorporated into her life the lessons and skills she learned in her treatment programs. *Id.* at 64–66. She also participated in an early recovery aftercare program that met twice per week after work for about four months. *Id.* at 66–67; Ex. D at 3. She continued participating in a long-term recovery program once per week after she finished the early recovery program. Tr. at 68; Ex. D at 3. She also attended individual therapy through work. Tr. at 69. The Individual was tested randomly at work for drugs and alcohol twice monthly and, starting in late September 2023, had completed four monthly PEth tests. *Id.* at 70–72. About two weeks before she started doing the PEth tests, she also did a hair follicle test to show that she had not consumed alcohol for the three months prior to the first PEth test. *Id.* at 72–73. All the tests returned a negative result. *Id.* at 71–73; Ex. A at 3–18; Ex. A Supplement; Ex. B; Ex. C.

In March 2023, the Individual underwent an evaluation by the Psychologist and was diagnosed with Alcohol Use Disorder, moderate severity, in early remission. Ex. 6 at 7. The Psychologist, in her report of the evaluation, recommended that, for the Individual to show rehabilitation or reformation, she should abstain from alcohol for a year, complete her early recovery program, and attend weekly meetings through Alcoholics Anonymous (AA), Life Ring, or her recovery program’s drop-in recovery meetings. *Id.*

At the hearing, the Individual testified that she had been abstinent from alcohol for 528 days, since September 2022, and that she intended to remain abstinent permanently. Tr. at 69–70. She testified that alcohol was harmful to her health and wellbeing and that she did not want it to control her life. *Id.* at 70. The Individual testified that she should have asked for help before letting her alcohol problem progress as far as it did and that her tendency to be a “people pleaser” had led her to neglect her own care. *Id.* at 38–39. She testified that she was continuing to set boundaries at work

and in her personal life and had learned several coping mechanisms. *Id.* at 40, 48. She had a list of people she could call at any time if she needed help or support. *Id.* at 48–49. She had learned methods like tapping on her legs or touching her fingertips together that helped her get through triggers. *Id.* at 49. She was also addressing past trauma and dealing with emotions she had suppressed. *Id.* at 49–50, 54.

The Individual’s sister testified that she saw the Individual several times per week and spoke to her almost daily. Tr. at 82–83. The sister testified that since returning home from the inpatient treatment program, the Individual was “doing fantastic.” *Id.* at 77. She testified that the Individual had regained weight, was looking healthier, and was proud of her sobriety. *Id.* She testified that the Individual was attending group therapy support meetings and was pursuing drawing, which the Individual found relaxing. *Id.* She testified that the Individual spent her social time with friends who also did not consume alcohol, some of whom started abstaining with the Individual. *Id.* at 77, 84. The sister testified that the Individual was maintaining a rich social life without alcohol. *Id.* at 84. She further testified that the Individual was successfully managing her work stress and was a better version of herself than she was two years ago. *Id.* at 79. She believed that the Individual was dedicated to remaining abstinent from alcohol. *Id.* at 80.

The Individual’s friend had known her for about 20 years. Tr. at 93–94. They saw each other a few times per month and spoke on the phone together about two times per week. *Id.* at 94. She testified that the Individual was doing well in her recovery and was thriving. *Id.* at 94–95. She further testified that the Individual was “extremely dedicated” to abstaining from alcohol and had been sober for about 18 months. *Id.* at 95.

The Human Resources employee worked with the Individual’s supervisor and had attended work-related social functions with the Individual. Tr. at 99. She saw the Individual almost every day at work. *Id.* at 101. She confirmed that none the Individual’s random drug and alcohol screenings had returned a positive result.<sup>2</sup> *Id.* at 105. She testified that based on her experience with her, the Individual had taken accountability for her actions, was performing at a very high level at work, and had grown in her sobriety. *Id.* at 103–05.

The Psychologist testified that, based on the evidence and testimony presented at the hearing, the Individual was rehabilitated and that she had confidence in the Individual’s ability to maintain her abstinence. Tr. at 111. She testified that the Individual had demonstrated a clear and established pattern of abstinence and was making satisfactory progress with her treatment. *Id.* at 112. She further testified that the Individual had met the aftercare (post-treatment ongoing support) requirements for the treatment programs she has completed. *Id.* The Psychologist gave the Individual a good prognosis. *Id.*

## V. ANALYSIS

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<sup>2</sup> The Human Resources employee testified that she would have been notified if a screening returned a positive result. Tr. at 104–05. She testified that she had not been notified of a positive screening for the Individual. *Id.* at 105.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government places a high degree of trust and confidence in individuals to whom it grants access authorization. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The issue before me is whether the Individual, at the time of the hearing, presents an unacceptable risk to national security and the common defense. I must consider all the evidence, both favorable and unfavorable, in a commonsense manner. “Any doubt concerning personnel being considered for access for national security eligibility will be resolved in favor of the national security.” Adjudicative Guidelines ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Because of the strong presumption against granting or restoring security clearances, I must deny access authorization if I am not convinced that the LSO’s security concerns have been mitigated such that restoring the Individual’s clearance is not an unacceptable risk to national security.

Conditions that can mitigate Guideline G concerns 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. The Individual has established mitigation under conditions (b), (c), and (d).

Regarding conditions (b) and (d), the Individual has demonstrated a clear and established pattern of abstinence through evidence and testimony that demonstrates that she has abstained from alcohol for over eighteen months. Her testimony is supported by alcohol testing extending back to June 2023, three months before the date of her hair follicle test. Ex. D. The Psychologist also testified that she had demonstrated a clear and established pattern of abstinence. The Individual presented evidence that she had completed two treatment programs, an inpatient program and an IOP, and an early recovery aftercare program and that she was continuing to attend long-term

aftercare meetings as recommended by the Psychologist. Moreover, in regard to condition (b), the Individual acknowledged her pattern of maladaptive alcohol use by identifying ways that alcohol had hurt her, as well as past experiences that had contributed to her unhealthy alcohol use. Regarding condition (c), the Individual has no history of treatment and relapse and has made progress in her treatment sufficient for the Psychologist to opine that she is rehabilitated.

The Individual sought treatment immediately after testing positive for alcohol at work and has been proactive in her treatment since then. She is dedicated to maintaining her sobriety because she recognizes that her life is better without alcohol. She has also pursued treatment to discover and heal the underlying causes of her substance abuse and has incorporated what she has learned into her daily life. The Individual displayed trustworthiness, reliability, and good judgment by taking accountability for her actions, taking immediate steps to resolve the problem, and making lasting changes in her life to support long-term appropriate behavior.

For the foregoing reasons, I find that the Individual has mitigated the Guideline G concerns.

## **VI. CONCLUSION**

Upon consideration of the entire record in this case, I find that there was evidence that raised concerns regarding the Individual's eligibility for access authorization under Guideline G of the Adjudicative Guidelines. I further find that the Individual has succeeded in fully resolving those concerns. Therefore, I conclude that restoring DOE access authorization to the Individual "will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should restore access authorization to the Individual.

This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Kristin L. Martin

Administrative Judge

Office of Hearings and Appeals