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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: December 20, 2023)	Case No.: PSH-24-0034
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Issued: March 21, 2024

Administrative Judge Decision

Kristin L. Martin, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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.”¹ 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. The Local Security Office (LSO) began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his 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 four witnesses—his sponsor, his friend, his neighbor, and his colleague—and testified on his own behalf. The LSO presented the testimony of the DOE psychologist who had evaluated the Individual. *See* Transcript of Hearing, OHA Case No. PSH-24-0034 (hereinafter cited as “Tr.”). The LSO submitted twelve exhibits, marked as Exhibits 1 through 12 (hereinafter cited as “Ex.”). The Individual submitted six exhibits, marked as Exhibits A through F.

¹ 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 his eligibility for a security clearance. That information pertains to Guidelines G and J 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.

Guideline J states that criminal activity creates doubt about a person's judgment, reliability, and trustworthiness and that, 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. Conditions that could raise a security concern include:

- (a) A pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;
- (b) Evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted;
- (c) Individual is currently on parole or probation;
- (d) Violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program; and
- (e) Discharge or dismissal from the Armed Forces for reasons less than "Honorable."

Id. at ¶ 31.

The LSO alleges that in June 2023, the Individual was arrested and charged with Driving Under the Influence (DUI) and Reckless Endangerment and admitted to consuming three tall beers and two shots of vodka before his arrest. Ex. 1. The LSO further alleges that the Individual went on a three-day alcohol binge in May 2022 and a week-long binge in 2020, consuming a 750 ml bottle of vodka daily during each binge. *Id.* The LSO alleges that in October 2023, a DOE Consultant Psychologist (the Psychologist) diagnosed the Individual with Alcohol Use Disorder, moderate severity, without adequate evidence of rehabilitation or reformation. *Id.* Accordingly, the LSO's security concerns under G and J 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 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).

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted 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

On June 30, 2023, the Individual was driving with his children to visit his brother in another state. Ex. 6 at 2. When they stopped for lunch, the Individual consumed three tall beers and two shots of vodka with his meal. *Id.*; Ex. 8 at 1. He believed he was able to drive, but when pulled over, his Blood Alcohol Concentration (BAC) was 0.19. Ex. 6 at 2; Ex. 8 at 1. He was arrested and charged with DUI. Ex. 6 at 2. He was also charged with Reckless Endangerment because his children were in the vehicle at the time. *Id.* The Individual pleaded guilty and entered a pre-trial diversion program. Ex. 8 at 2.

The Individual attended Alcoholics Anonymous (AA) for the first time on July 5, 2023, and continued attending multiple times per week—typically Monday, Friday, and Saturday—through the hearing date. Tr. at 59–60, 75. He found a sponsor and began working the 12 Steps. *Id.* at 72, 76–77. The Individual entered an alcohol education and treatment program in August 2023, which consisted of two hours of treatment every Wednesday for thirty-eight weeks. *Id.* at 58–59; Ex. E. Also in August 2023, the Individual entered an Intensive Outpatient Program (IOP), which he completed in November 2023. Ex. A. The IOP consisted of three-hour group sessions three days per week and a weekly one-hour individual therapy session. Tr. at 68. After completing the IOP, the Individual attended weekly aftercare (post-treatment group therapy sessions) on Tuesdays and individual therapy sessions every other Friday. *Id.* at 59. In November 2023, the Individual entered into a Recovery/Abstinence Agreement with his DOE facility’s Employee Assistance Program (EAP), pursuant to which he underwent random drug and alcohol screenings, random monthly blood tests—known as Phosphatidylethanol (PEth) tests—to screen for alcohol use in the preceding four weeks, and an initial evaluation and monthly monitoring with an EAP psychologist. Ex. B. He took the first of what will be twenty-four monthly PEth tests under the Abstinence Agreement on January 17, 2024. Tr. at 63; Ex. C. The test returned a negative result. Ex. B; Ex. C.

In late September 2023, the Individual underwent a psychological evaluation by the Psychologist. Ex. 9 at 1. The Psychologist diagnosed the Individual with Alcohol Use Disorder, moderate severity, in early remission. *Id.* at 7. He recommended that to show rehabilitation or reformation, the Individual should abstain from alcohol for at least one year; complete the IOP and attend aftercare (post-treatment group therapy sessions) and AA for a total treatment time of at least one year; and undergo PEth testing every four to six weeks for one year. *Id.*

At the hearing, the Individual testified that he last consumed alcohol on the day of his DUI in late June 2023. Tr. at 57. Since then, he did his best to avoid places that served alcohol, such as bars, but some family restaurants he went to served alcohol. *Id.* at 57–58. He testified that he had some alcohol cravings when he first began abstaining from alcohol but now did not experience alcohol cravings. *Id.* at 58. He testified that his sobriety and the work he’d done in his recovery programs

had changed his life for the better. *Id.* The Individual testified that he was an alcoholic and intended to abstain from alcohol permanently. *Id.* at 69, 80–81. He described his sobriety as a total life program. *Id.* at 81. He testified that his DUI had been a wakeup call and that he finally understood what alcohol could have cost him. *Id.* at 85.

When the Individual initially enrolled at the IOP facility on August 3, 2023, he was not placed in an IOP, but rather in a lower intensity program. Ex. A (Letter from IOP Counselor). He requested to be moved to the IOP, which his counselor there noted was the first time one of his clients had willingly moved from a lower to higher level of care and attributed the move to the Individual's "overwhelming amount of motivation." *Id.* In addition to treatment, the IOP required the Individual to submit to urine tests to screen for alcohol, all of which returned a negative result according to the Individual's IOP counselor. *Id.* He completed the IOP on November 30, 2023. *Id.* The IOP aftercare program the Individual attended was led by the counselor and was mainly focused on triggers members experienced over the previous week and coping mechanisms they used to manage the triggers. Tr. at 70. The Individual testified that triggers can cause a variety of feelings, but he had identified specific triggers that could make him want to drink alcohol. *Id.* at 70–71. In particular, he identified going to visit his family as a trigger because he was going through a divorce. *Id.* at 71. It was not his family that triggered him, but the circumstances, memories, and atmosphere surrounding the visits. *Id.*

The Individual has a relapse prevention plan. *Id.* He testified that relapse begins before you drink so identifying thoughts and emotions that lead to relapse is important. *Id.* at 71–71. His plan begins with calling his sponsor. *Id.* If his sponsor is not available, he has a list of people he can call. He has successfully used the plan twice, calling his sponsor in both instances, though one of the times he was not craving alcohol but experiencing strong sadness. *Id.* at 72–73. The Individual has also started exercising and has become involved in his church. *Id.* at 73. He has started spending his time with sober, positive people. *Id.* He no longer spends time with friends who consumed alcohol around him. *Id.* at 74.

The Individual began attending AA in the first week of July 2023, a few days after his DUI. Tr. at 75–76. The Individual testified that he was working the 12 Steps and was currently working on Step 8, which entailed forgiveness and making amends for wrongs he committed. *Id.* at 76. He worked on the Steps, AA literature readings, and daily reflections with his sponsor every week. *Id.* at 77. The Individual testified candidly about working through his feelings from being assaulted as a child, which stemmed in part from an adult's alcohol use at that time. *Id.* He testified that he was currently working on forgiving the adult who had harmed him. *Id.* The Individual testified that he had formed strong relationships in AA, particularly with his sponsor, and that these relationships were helpful for his sobriety. *Id.* at 80.

The Individual received his sentence from his DUI conviction close to the hearing date. Tr. at 102. As of the hearing, he had completed sixteen of his forty-eight hours of required community service by volunteering with Habitat for Humanity. *Id.* at 102–03. Upon completion of that and the full thirty-eight-week alcohol education course, he will have met all the requirements for his plea agreement. *Id.* at 102. He estimated that he had ten alcohol education classes remaining. *Id.* at 103.

The Individual's sponsor had known the Individual for about seven months and had been in recovery for about 11 years. Tr. at 11. They talked every day and met often outside of AA meetings. *Id.* at 12–13, 27. The sponsor testified that the 12 Steps were intended to be repeated throughout life, rather than just worked through once. *Id.* at 14. He and the Individual had worked through all 12 Steps together and the Individual was now joining his sponsor on Step 8 as the sponsor worked through the Steps again. *Id.* The sponsor believed that the Individual had made a lifestyle change to remain abstinent indefinitely and testified that he would be surprised if the Individual consumed alcohol in the future. *Id.* at 15, 19–20. He believed that the Individual was very honest because the Individual had shared his fears, weaknesses, and struggles with the sponsor candidly. *Id.* at 25. He believed the Individual was reliable and testified that because he is busy with family and work, he only sponsors people who are willing to show up and do the work. *Id.* at 26–27. He added that the Individual appeared to be abstaining because he did not want alcohol, rather than because he couldn't have alcohol. *Id.* at 19. He testified that recovery had not come easily for the Individual because he had faced the pain that led him to maladaptive alcohol use. *Id.* at 31. However, he further testified that abstinence was not a struggle for the Individual because he had addressed and continued to address the issues that made him want to drink. *Id.* at 31–32.

The friend also worked at the DOE facility and met the Individual through work in the summer of 2022. Tr. at 33–34. From September 2022 through April 2023, the Individual was trained in the department she managed, but she was not his direct supervisor. *Id.* at 34. They also went to the same church and sometimes went to lunch after church as well. *Id.* They communicated by phone or text message daily. *Id.* at 34. She had not seen the Individual consume alcohol since July 2023.² *Id.* at 36. She testified that the Individual described his DUI as “the best worst thing that ever happened to him” because it led to his sobriety. *Id.* at 37. She believed that the Individual would never drink again. *Id.* She described him as honest, citing his openness and candor during his interview process, positive attitude, willingness to help others, and sincerity. *Id.* at 37–38. She believed he was reliable because he was always on time, demonstrated positive leadership with new hires, and required little supervision to achieve good results at work. *Id.* at 38.

The Individual's neighbor saw him daily and also worked at the DOE facility. Tr. at 42. The Individual had spent time with the neighbor socially and the neighbor had been to the Individual's apartment. *Id.* at 43–44. The neighbor testified that he had not seen the Individual consume alcohol and that he had not seen any alcohol in the Individual's apartment. *Id.* He was aware that the Individual was attending recovery meetings and had talked with the Individual about his progress. *Id.* at 45.

The Individual's colleague saw him daily at work. Tr. at 50. He had invited the Individual to his church, which the Individual began attending regularly. *Id.* The Individual and his family spent time socially with the colleague's family and the colleague had not seen the Individual consume alcohol. *Id.* at 50–51. He was supportive of the Individual's sobriety and often gave the Individual rides to AA meetings. *Id.* at 51–52. He testified that the Individual had discussed his recovery efforts with him and how his life had changed for the better since he began abstaining from alcohol. *Id.* at 52. He testified that the Individual said his abstinence allows him to better serve his family and community. *Id.* at 52–53.

² The Individual's last drink occurred on the last day of June, making July 1, 2023, his first day of sobriety. See Tr. at 57.

The Psychologist testified that the Individual had exhibited adequate evidence of reformation because he had substantially followed his recommendations. *Id.* at 94–95. He also testified that the Individual had demonstrated adequate evidence of rehabilitation because the Individual had been deeply engaged in treatment and there was no indication that the Individual might return to alcohol. *Id.* at 95–96. Though he originally recommended 12 months of sobriety, and the Individual had only achieved seven and a half months as of the hearing date, he did not believe the remaining time was necessary to strengthen his updated opinion, particularly given the level of engagement the Individual had with substance abuse treatments. *Id.* at 97. He testified that the Individual had demonstrated insight into his alcohol recovery that will be helpful in the future. *Id.* at 98. The Psychologist gave the Individual a good prognosis, testifying that the Individual’s risk of relapse was low. *Id.* at 98–99. He cited as support for his prognosis the Individual’s work in his treatment programs, treatment attendance, his lifestyle changes to support his sobriety, his relapse prevention plan, and his large support system. *Id.* at 99–100.

V. ANALYSIS

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.

A. Guideline G

Conditions that can mitigate a Guideline G security concern 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. Conditions (b) and (d) apply in this case.

Regarding condition (b), the Individual demonstrated that he acknowledges his pattern of maladaptive alcohol use. He referred to himself as an alcoholic and testified that he had realized the serious cost of his alcohol use after his DUI. He also saw parallels between the way alcohol contributed to the abuse against him when he was a child and the way he had endangered his own children through his alcohol use.

Regarding conditions (b) and (d), the Individual demonstrated that he took actions to overcome his alcohol issues by undertaking several alcohol recovery activities, including completing his IOP and attending aftercare. The Individual began attending AA less than a week after his DUI and had deeply engaged with the program by getting a sponsor and working through the 12 Steps. He continued attending AA throughout the course of his other treatment activities and after their completion. The Individual pursued multiple treatment programs, enrolling in an alcohol education program as well as an IOP. He is nearing completion of the nearly nine-month-long education program. He completed the IOP and attended the program's aftercare meetings, in which he continued to work on identifying and coping with triggers that could make him want to drink.

Regarding conditions (b) and (d), the Individual demonstrated a clear pattern of abstinence that was in accordance with the Psychologist's updated treatment recommendation. The Individual began abstaining from alcohol immediately after his DUI. He was undergoing consistent urine screenings during his IOP and, when added to the four weeks preceding his negative PEth test, the Individual's evidence supports his claim of abstinence for almost all of the time from August 3, 2023, to January 17, 2024. The Psychologist testified that the Individual's length of sobriety and progress in treatment were sufficient for him to give the Individual a good prognosis and he opined that he believed the Individual's risk of relapse was low. He also opined that the Individual was rehabilitated and reformed. The Individual intends to abstain from alcohol indefinitely.

The Individual has taken his alcohol issues seriously and invested significant time and effort in his treatment activities. He has explored the underlying causes of his alcohol use, the triggers that put him at risk of relapse, the coping skills he needs to overcome those triggers, and the effects of alcohol on his life. He has integrated sobriety into his life and has a strong support system in his sponsor, family, friends, church, and treatment providers. He has a defined relapse prevention program and knows when to put it into action before a relapse occurs. The Individual also sees significant benefits in his life from abstinence and intends to continue his new lifestyle.

For the foregoing reasons, I find that the Individual is unlikely to binge drink or drive while under the influence of alcohol in the future. Accordingly, I find that the Individual has mitigated the concerns under Guideline G.

B. Guideline J

Conditions that could mitigate a Guideline J security concern 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.

Adjudicative Guidelines at ¶ 32. Condition (d) applies in this case.

Regarding condition (d), the Individual is complying with the terms of his sentence, is active in his church, and has not had other criminal charges since his DUI. Due to the nature of a DUI, the Individual's criminal activity is inextricably intertwined with his alcohol consumption. Alcohol inhibits good decision-making. The Individual is less likely to choose risky or illegal behavior if his judgment is not compromised. Moreover, the Individual cannot commit another DUI if he abstains from alcohol. Therefore, the Individual's mitigation of the Guideline G concerns is also evidence of successful rehabilitation from his criminal activity. The Individual's DUI is the only incident that gave rise to the Guideline J concern, and, based on his compliance with the terms of his sentence and his Guideline G mitigation, I find it unlikely that he will commit that crime or engage in any other alcohol-related crime in the future. There is no evidence that the Individual has any history of committing crimes unrelated to alcohol consumption. For the foregoing reasons, I find that the Individual has mitigated the concerns under Guideline J.

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 Guidelines G and J 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