

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

In the Matter of: Personnel Security Hearing	)	
	)	
Filing Date: January 18, 2024	)	Case No.: PSH-24-0045
	)	
_____	)	

Issued: May 1, 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.”<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 was discovered regarding the Individual’s alcohol use and criminal conduct. 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 therapist, his treatment program counselor, his friend, and his wife—and testified on his own behalf. The LSO presented the testimony of the DOE psychologist who had evaluated the Individual. *See* Transcript of Hearing, Case No. PSH-24-0045 (hereinafter cited as “Tr.”). The LSO submitted eleven exhibits, marked as Exhibits 1 through 11 (hereinafter cited as “Ex.”). The Individual submitted ten exhibits, marked as Exhibits A through J.

---

<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 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. *Id.* 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 of Liquor (Impairment) (DUI) and Reckless Driving and that he admitted to consuming two sixteen-ounce mixed liquor drinks and two Benadryl pills prior to driving. The LSO also alleges that in August 2023, a DOE-Contractor Psychologist (the Psychologist) diagnosed the Individual with Unspecified Alcohol Related Disorder without evidence of rehabilitation or reformation. Accordingly, the LSO's security concerns under Guidelines 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 Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting his 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 1, 2023, the Individual was arrested and charged with DUI and Reckless Driving, both misdemeanors. Ex. 6 at 1; Ex. 4 at 3. The Individual suffered from insomnia and had been awake for three days working on personal project while on vacation. Ex. 6 at 1. He did not eat breakfast before beginning to drink two Gatorades and two sixteen-ounce vodka mixed drinks at 9:00 a.m. while doing yard work. *Id.* He also took two Benadryl pills for his allergies at that time. *Id.* He began driving to his family's lake property with a trailer in tow around 11:20 a.m. *Id.* at 1–2; Ex. 9 at 3. He contacted his wife while on the road and she expressed concern about his driving with so little sleep. Ex. 6 at 2. Around 1:00 p.m., the Individual stopped for gas and walked around to wake himself up. *Id.*

About forty minutes later, the Individual fell asleep at the wheel while driving on the highway. Ex. 4 at 2–3. He hit a guard rail and rolled his vehicle. *Id.* at 2. The Individual was disoriented after the accident and refused to submit to a breathalyzer test. *Id.* at 3. He was arrested and released the following day. Ex. 7 at 2.

The LSO referred the Individual to the Psychologist for a substance abuse evaluation, which occurred on August 4, 2023. Ex. 9. The Individual told the Psychologist he had not consumed alcohol since his DUI, which was supported by the negative result of a Phosphatidylethanol (PEth) blood test administered on the day of his evaluation.<sup>2</sup> *Id.* at 4, 6. The Individual reported that before 2019, he had consumed alcohol frequently and in large amounts, but had abstained or consumed alcohol socially since 2019. *Id.* at 5. He reported having consumed alcohol five times in the year prior to his DUI, all at social events. *Id.* He told the Psychologist he intended to abstain from alcohol permanently. *Id.* The Psychologist diagnosed the Individual with Unspecified Alcohol-Related Disorder due to his past heavy alcohol use, his recent DUI, and his combining alcohol with Benadryl—which has a warning against taking it if consuming alcohol. *Id.* She described these factors as “a constellation of symptoms, risky behavior, . . . and alcohol-related poor judgment . . .” *Id.* She recommended that for the Individual to demonstrate rehabilitation, he should enter an alcohol awareness and education program, participate in at least twelve weeks of therapy with a substance abuse therapist, and undergo monthly PEth tests. *Id.* at 6. Alternatively, she recommended that for the Individual to show reformation, he should abstain from alcohol for at least six months and undergo monthly PEth tests. *Id.*

The Individual enrolled in an Intensive Outpatient Program (IOP) for substance abuse in December 2023, from which he graduated in February 2024. Ex. B at 4; Ex. I. At the hearing, his IOP counselor testified that she believed the Individual had no intention of returning to alcohol. Tr. at 63. She testified that the Individual submitted to a urine test to screen for alcohol every week that he attended the IOP and that all of the tests returned a negative result. *Id.* at 66–67.

---

<sup>2</sup> PEth tests can indicate whether the subject has consumed alcohol in the prior three to four weeks. Ex. 9 at 6.

The Individual began going to therapy in August 2023. Tr. at 14. The Individual's therapist initially worked with the Individual on substance abuse issues. *Id.* at 14–15. He diagnosed the Individual with alcohol dependence. *Id.* at 23. When the Individual enrolled in the IOP, they pivoted to working on other issues. *Id.* at 15. At the hearing, the therapist testified that the Individual was very open and willing to engage in difficult conversations. *Id.* at 16. The therapist's methodology for substance abuse counseling involves completing assignments and doing tasks, which helps ensure that his clients are engaged in a process of real change. *Id.* at 17–18. The therapist testified that Individual completed his assignments and engaged with the program appropriately. *Id.* at 18. Even after the pivot to broader issues, the therapist and the Individual worked on identifying triggers that could make the Individual want to drink alcohol. *Id.* at 19–20, 30–31. The therapist believed the Individual intended to continue with therapy in the future. *Id.* at 19, 32. He believed that the Individual had accepted responsibility for his alcohol abuse and the actions that had led him to treatment. *Id.* at 22. He believed that the Individual had not consumed alcohol since his DUI. *Id.* at 30. The Individual had told him that he did not intend to consume alcohol in the future. *Id.* at 32.

Regarding his diagnosis of the Individual, the therapist testified that he now believes the Individual's alcohol dependence is in remission. *Id.* at 35. He gave the Individual a good prognosis for maintaining abstinence from alcohol. *Id.* at 36. He testified that the Individual was rehabilitated and reformed. *Id.* at 39.

The Individual's friend also worked at the DOE facility. Tr. at 41. He met the Individual about 12 years ago through their wives. *Id.* at 42. He had been a source of support for the Individual after his DUI and had seen the Individual change for the better in the time since he started abstaining from alcohol. *Id.* at 45, 47, 52. He had last seen the Individual consume alcohol before the Individual received his DUI. *Id.* at 49. He testified that the Individual did not appear to struggle to abstain from alcohol. *Id.* at 51. The friend testified that he and his wife would continue to support the Individual in his sobriety and "keep him on track." *Id.*

The Individual's wife testified that she does not drink alcohol. Tr. at 89. She testified that she had not seen the Individual drink alcohol in several years because he did not drink around her. *Id.* at 91–92. She believed that the Individual's therapy had been a positive experience for the Individual. *Id.* at 94. She had witnessed positive changes in the Individual's communication and behavior since he began treatment. *Id.* at 95. The Individual had told her that he intended to abstain from alcohol indefinitely and that he intended to continue attending therapy. *Id.* at 95–96. She testified that their friends and family members were supportive of the Individual's sobriety and that he would be able to reach someone for help at any time of the day or night if he felt like he was about to relapse. *Id.* at 97–99, 103.

The Individual admitted that he had an alcohol problem and stated that he was responsible for his recovery. Tr. at 108. He testified that he had learned that addiction and substance abuse can take many forms beyond drinking. *Id.* at 114. He also testified that he had learned skills to deal with triggers in a variety of settings, including when with spending time with friends or at the lake. *Id.* He stated that the IOP provided the foundation for his new choices and responses to triggers. *Id.* He had started journaling every day, which he found helpful, and was working on avoiding

complacency in his recovery. *Id.* at 115–16. He was also focused on recognizing the root causes of his alcohol abuse. *Id.* at 116. The Individual testified that he had a close group of friends and that there were at least four or five people on his speed dial that would drop everything to help him if he needed them. *Id.* at 117–18.

The Individual committed to remaining abstinent indefinitely. Tr. at 119. He submitted into evidence the result of a urine drug screening taken shortly before the hearing, which was negative for alcohol use. Ex. C. Supplement. He testified that he was sleeping well since abstaining. Tr. at 142. He further testified that he had lost weight and his sleep apnea had resolved itself. *Id.*

The Individual testified that he had no prior arrests and had only received a speeding ticket once when he was about eighteen years old. Tr. at 106. He testified that he was, under the legal definition, impaired during the incident leading to his DUI. *Id.* at 123. His case was still pending, and he had entered a not guilty plea on the advice of counsel because he did not believe the state had met its burden of proof. *Id.* at 123–24, 149, 166. The case had gone to trial which resulted in a hung jury, and the case was being retried. *Id.* at 145. The Individual testified that he did not remember if he drove recklessly on the day of his DUI because he lost his memory after the airbags deployed during the crash. *Id.* at 146–47. He testified that when he entered his not guilty plea, he did not remember having fallen asleep at the wheel but did remember consuming alcohol before driving. *Id.* at 152. The Individual admitted that driving after having not slept for three days was a “terrible lack of judgment.” *Id.* at 147.

The Psychologist opined that the Individual was rehabilitated and reformed because he had gone above and beyond her recommendations. Tr. at 158–59. She was particularly impressed that he had entered an IOP even though it wasn’t a part of her recommendations and that he was able to articulate what he had learned there. *Id.* She gave him a good prognosis. *Id.* at 160. The Psychologist testified that though she did not diagnose any memory problems for the Individual, when she performed the evaluation, he had not been able to describe his driving during the incident. *Id.* at 162–63.

## 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 at ¶ 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 could 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), (c), and (d) apply in this case.

Regarding condition (b), the Individual acknowledges that he has an alcohol problem and should remain abstinent indefinitely. He also submitted evidence of actions he took to overcome this problem—including the IOP, and therapy—and is still undergoing long-term treatment for substance abuse and general life stress. He has not consumed alcohol since his DUI, as demonstrated by the PEth test ordered by the Psychologist, the urine screenings he underwent for the IOP and at his own request, and the testimony provided by himself and his witnesses. This demonstrates a pattern of abstinence that goes beyond the Psychologist's treatment recommendations.

The Individual's demonstrated pattern of abstinence is also a requirement of condition (d). Moreover, he submitted testimonial and documentary evidence that he substantially completed an IOP and continues to pursue counseling. This evidence shows that he has completed a treatment program and is attending aftercare.

Regarding condition (c), the Individual has not previously participated in alcohol or substance abuse counseling and has not relapsed since abstaining from alcohol. His therapist and IOP counselor both testified that he was making satisfactory progress in his treatment.

The Psychologist and the Individual's therapist testified that the Individual was rehabilitated and reformed. Both gave him a good prognosis. The Individual has learned to identify and cope with

triggers that could cause him to crave alcohol. He also has a strong support system, including his spouse who abstains from alcohol. The Individual has also committed to lifelong abstinence and demonstrated his ability to abstain for a significant amount of time.

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

## **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.

The DUI incident is the Individual's only criminal charge. Because that charge is inextricably linked to alcohol consumption, the Guideline J concerns can be mitigated if the Guideline G concerns have been mitigated. In this case, the Guideline G concerns have been mitigated. The Guideline G nexus with Guideline J even extends to the factors that exacerbated his dangerous driving, namely his sleep deprivation and his use of Benadryl with alcohol. The Individual's commitment to abstinence and demonstrated pattern of abstinence make it unlikely that he will combine alcohol and drugs with drowsiness side effects in the future. Moreover, the Individual's sleep difficulties have resolved since abstaining from alcohol, making it unlikely that he will drive after being awake for multiple days in the future.

The Individual's successful Guideline G mitigation is evidence of successful Guideline J mitigation in this case. He has no history of criminal behavior that was not caused by alcohol or cannot be resolved through abstinence. Accordingly, I find that the Individual has mitigated the Guideline J 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 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