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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: April 16, 2024)	Case No.: PSH-24-0102
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_____)	

Issued: August 14, 2024

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

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

I. Background

The Individual is employed with a DOE contractor in a position that requires him to hold an access authorization. In October 2023, the Individual properly reported to DOE an arrest and the resulting criminal charges of Driving While Intoxicated (DWI), Failure to Stop for Emergency Vehicle, and Reckless Driving. Exhibit (Ex.) 6 at 23–24. Accordingly, the Local Security Office (LSO) asked the Individual to complete a Letter of Interrogatory (LOI), which the Individual signed and submitted in November 2023. Ex. 7. As questions remained, the LSO asked the Individual to undergo a psychological evaluation with a DOE-consultant psychologist (DOE Psychologist) in late December 2023. Ex. 9. The DOE Psychologist issued a report (the Report) of his findings in early January 2024, and in the Report, he concluded that the Individual "drinks habitually and . . . binge consumes alcohol on a regular basis." Ex. 10 at 45. The Individual submitted to a Phosphatidylethanol (PEth) test in connection with the psychological evaluation, which rendered results of 104 ng/mL.² *Id.* at 44. An interpretation of the PEth test results, provided by a consulting

¹ 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.

² The PEth test measures the PEth metabolite, which "accumulates when ethanol binds to red blood cell membrane." Ex. 9 at 49. The test result "reflects the average amount of alcohol consumed over the previous [twenty-eight to thirty] days[.]" *Id.*

medical doctor, indicated that the Individual “regularly consumes alcohol.” *Id.* The DOE Psychologist did not find any evidence of rehabilitation or reformation. *Id.* at 45.

The LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created a substantial doubt regarding his continued eligibility for access authorization. In a Summary of Security Concerns (SSC) attached to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guidelines G (Alcohol Consumption) and J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold 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 Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf. *See* Transcript of Hearing, OHA Case No. PSH-24-0102 (hereinafter cited as “Tr.”). The Individual also submitted eleven exhibits, marked Exhibits A through K. The DOE Counsel submitted fourteen exhibits marked as Exhibits 1 through 14 and presented the testimony of the DOE Psychologist.

II. Notification Letter

A. Guideline G

Under Guideline G, “[e]xcessive 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. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are “[a]lcohol-related incidents away from work, such as driving while under the influence . . . regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder[.]” and “[h]abitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder[.]” *Id.* at ¶ 22(a) and (c). Under Guideline G, the LSO alleged that the DOE Psychologist indicated in the Report that the Individual “drinks habitually and he binge consumes alcohol on a regular basis to the point of impaired judgment.” Ex. 1 at 5. The LSO also cited the DOE Psychologist’s conclusion that the Individual’s PEth test results indicate that “he is underreporting his alcohol use and there is not adequate evidence of rehabilitation or reformation.” *Id.* Lastly, the LSO alleged that the Individual was arrested and charged with DWI in October 2023 after he consumed “six beers and three mixed drinks[.]” *Id.* The LSO’s invocation of Guideline G is justified.

B. Guideline J

Guideline J states that “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness” and that, “[b]y 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 under Guideline J include “[e]vidence . . . of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted[.]” *Id.* at ¶ 31(b). Under Guideline J, the LSO alleged that the Individual was “arrested and initially charged with . . . DWI, Failure to Stop for Emergency Vehicle[,], and Reckless Driving” in October 2023. Ex. 1 at 5. The LSO’s invocation of Guideline J is 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 the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

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.

IV. Findings of Fact and Hearing Testimony

The Individual indicated in his LOI response that on the night of his DWI arrest, he was on his way home following a celebration and became “lost and distracted[.]”³ Ex. 7 at 26. As he came to a gravel road, his car “fishtailed . . . and accelerated quickly.” *Id.*; Tr. at 30. A law enforcement officer took notice and stopped the Individual, resulting in the above criminal charges. Ex. 7 at 26; Tr. at 30. When he was stopped, he was asked to submit to a Breathalyzer test, and the Individual “was under the impression” that he did not “really have to” submit to one “on the side of the road.” Tr. at 30. The Individual indicated that prior to his arrest, he consumed “approximately [six] beers and [three] mixed drinks” over the span of approximately nine hours. Ex. 7 at 26. At the hearing, the Individual stated that he “misjudged how much [he] had” consumed prior to driving home. Tr. at 30–31. The criminal charges were resolved in January 2024 when the Individual entered a plea of guilty to the DWI and Faulty Equipment, and the remainder of the original criminal charges were reduced, requiring the Individual to pay a fine, complete a substance abuse program, attend a victim impact panel, and complete two years of unsupervised probation. Ex. 8 at 35; Ex. C; Ex.

³ At the hearing, the Individual testified that he did not intend to drink alcohol while attending the celebration, as he was responsible for an older relative who was also in attendance. Tr. at 29. When the older relative’s caretaker arrived, the Individual began consuming alcohol. *Id.* at 29–30.

D; Ex. E; Ex. F; Ex. G; Ex. H; Tr. at 16–18. The Individual attended the victim impact panel in February 2024 and completed the substance abuse program in April 2024. Ex. I; Ex. J. The substance abuse program consisted of thirty hours of classes, and the victim impact panel was one afternoon. Tr. at 18, 36–37.

In the November 2023 LOI response, the Individual described his current pattern of consumption as six to eight beers while attending “an extended event, with [the] occasional mixed drink.” Ex. 7 at 28. He stated that he consumed this amount of alcohol “once or twice a month[,]” and that this pattern of alcohol consumption began in 2017. *Id.* Generally, he indicated that he must consume eight beers within the span of five hours to become intoxicated, and he estimated, based on his personal definition of intoxication, that he becomes intoxicated “once or twice” a year. *Id.* at 29. He also stated that he last consumed alcohol earlier the same month, consuming six beers over the span of seven hours. *Id.* at 28.

The DOE Psychologist noted in the Report that the Individual provided inconsistent accounts of the amount of alcohol he consumed at the October celebration, first stating that he consumed “six beers and two glasses of ‘punch’ estimated at eight ounces each with unknown alcohol content over seven hours,” and later stating that he consumed “six beers and three mixed drinks” over the span of nine hours.⁴ Ex. 9 at 42. The DOE Psychologist also noted that the Individual “reported drinking five to six beers monthly with an occasional mixed drink” and if there was a “particularly good golf day” then a “round for the house” might be bought. *Id.* The Individual indicated that he becomes intoxicated after “drinking eight beers in five hours” and that he becomes intoxicated “twice a year[.]” *Id.* at 42–43. The Report indicates that the Individual’s “current plan is to drink once every one to three months specific to events and to have a plan in place from which he would not vary.” *Id.* at 43.

The DOE Psychologist concluded that the Individual “drinks habitually and he binge consumes alcohol on a regular basis.”⁵ *Id.* at 45. He further concluded that the Individual “is [underreporting] his alcohol use.”⁶ *Id.* As the Individual did not show adequate evidence of rehabilitation or reformation, the DOE Psychologist recommended that the Individual “not consume alcohol again” and “participate in a substance abuse treatment program from a licensed provider knowledgeable in this area of practice.” *Id.* The Individual should attend the aforementioned treatment sessions on a weekly basis “for a period of twelve weeks” and “attend maintenance/relapse prevention group therapy sessions at least twice a month for three months and then monthly for the remainder of one year.” *Id.* Finally, the Individual should attend Alcoholics Anonymous (AA), or a similar type of group, and work through the steps of the program with a sponsor. *Id.*

⁴ At the hearing, the Individual testified that he does not know exactly how much he consumed the night of the celebration and stated that he may have consumed more glasses of the punch drink than he initially reported to the DOE Psychologist. Tr. at 33.

⁵ The DOE Psychologist indicated that five alcoholic drinks in one sitting is considered an episode of binge drinking for a male. Tr. at 60.

⁶ As noted in the Report, the PEth test value indicates that the Individual “regularly consumes alcohol[,]” and that although a value of 104 ng/mL “would not discern regular consumption from binge drinking, [the Individual] indicated he drinks with a binge pattern.” Ex. 9 at 44. It was also noted in the Report that a PEth value “greater than 20 ng/mL indicates medium level of drinking,” which is consistent with “[two to four] drinks/day for several days/weeks.” *Id.*

At the hearing, when asked whether he believes he has “a problem with alcohol[.]” the Individual indicated that he does not believe so. Tr. at 25. He testified that he does not have “a set drinking habit” and consumes alcohol “maybe once or twice a month.” *Id.* How much alcohol he consumes every time he consumes alcohol “varies greatly.” *Id.* at 26. Regarding his alcohol consumption while on the golf course, the Individual stated that he does not consume alcohol when he plays competitively. *Id.* at 38–39. However, if he is playing a round of golf for charity, he drinks in a manner consistent with what he outlined in his LOI response for his last instance of consumption in November 2023; specifically, that he consumes approximately six beers over the course of seven hours. *Id.* at 38–39. He could not remember whether he consumed alcohol in the period between his October 2023 arrest and the reported consumption in November 2023. *Id.* at 39. The Individual testified that he was surprised by the DOE Psychologist’s Report and the recommendations contained therein, as he had never been told that his consumption was problematic. *Id.* at 40–41, 49. He acknowledged that he had not taken any steps to implement the DOE Psychologist’s recommendations, but he has “tak[en] a really hard look at [his] habits[.]” *Id.* at 41. He is now more “aware of alcohol[.]” and admitted that he may have underreported his consumption to the DOE Psychologist. *Id.* at 41–42, 44. The Individual also understands that his consumption “has affected [his] life in a big way.” *Id.* at 43. The Individual went on to testify that he consumed about a “six-pack” of beer two weeks prior to the hearing, and that he drank the same amount “if not a little less” about twenty-five days prior to the hearing *Id.* at 45–46. The Individual intends to remain vigilant about the alcohol around him, and he believes that his vigilance and changing life circumstances, like becoming “more family focused,” will ultimately result in reduced consumption. *Id.* at 50–53.

The DOE Psychologist testified that the Individual did not receive a diagnosis related to his alcohol consumption per the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition, Text Revision* (DSM-V-TR), because “he did not meet the criteria.” *Id.* at 61. However, because the Individual admitted that he was binge consuming alcohol on a monthly basis and the PEth test results indicated that he was “regularly consum[ing] alcohol[.]” the DOE Psychologist gave the Individual “a habitual binge consumption of alcohol diagnosis[.]” *Id.*; Ex. 9 at 44. The DOE Psychologist stated that he made specific recommendations in the Report because the Individual “did not really recognize the level of consumption of alcohol in which he was engaging.” Tr. at 61. The DOE Psychologist further stated that the Individual’s presentation at the hearing remained consistent with the aforementioned assessment. *Id.* He also testified that the substance abuse program and victim impact panel that the Individual attended in connection with his guilty plea are not tantamount to treatment, as they are educational in nature. *Id.* at 63. The DOE Psychologist testified that the Individual failed to show adequate evidence of rehabilitation or reformation at the hearing. *Id.* at 65. Although the Individual did not receive “an official prognosis” because he did not receive a diagnosis pursuant to the DSM-V-TR, the DOE Psychologist indicated that any prognosis he could provide in this case would be “guarded.” *Id.*

The Individual’s former supervisor submitted a letter describing the Individual as “an extremely valuable member of [the] overall team[.]” “highly professional[.]” and “self-motivated[.]” Ex. K at 1. He indicated that the Individual is a diligent worker who appropriately raises concerns and possesses strong technical skills. *Id.* The former supervisor also indicated that the Individual is respectful, willing to help, and gracious, and possesses valuable leadership skills. *Id.*

V. Analysis

A. Guideline G

The Adjudicative Guidelines provide that 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; and
- (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.

While it would have been prudent for the Individual to discontinue his use of alcohol following his arrest and the alcohol-related criminal charges in October 2023, the Individual continued consuming alcohol and has not acknowledged that his pattern of alcohol consumption is problematic. Although he testified that he is more aware of alcohol, the record does not indicate that the Individual has made any effort to reduce his consumption. The Individual testified that he last consumed alcohol approximately two weeks prior to the hearing in a manner consistent with what he previously reported, six beers on one occasion. The Individual has not implemented any of the DOE Psychologist's recommendations, and importantly, the DOE Psychologist testified that the Individual has not shown adequate evidence of rehabilitation or reformation.

As the Individual continues to consume a significant volume of alcohol against treatment recommendations, I cannot conclude that the behavior happened so long ago, was so infrequent, or took place under such unique circumstances that it is unlikely to recur or does not cast doubt on the Individual's current reliability, trustworthiness, or judgment. He has failed to mitigate the stated concerns under mitigating factor (a).

Because the Individual has not recognized that his pattern of consumption is maladaptive and he continues to consume alcohol, despite treatment recommendations otherwise, the Individual failed to mitigate the stated concerns pursuant to mitigating factor (b).

As indicated in the DOE Psychologist's testimony, the substance abuse program and victim impact panel do not constitute treatment, as they were solely educational in nature. There is no evidence before me that the Individual has participated in any treatment, and therefore mitigating factors (c) and (d) are not applicable.

B. Guideline J

The Adjudicative Guidelines provide that conditions that can 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.

Adjudicative Guidelines at ¶ 32.

The Individual's alcohol consumption resulted in and underpinned the criminal conduct that supported the stated Guideline J concerns. As the Individual continues to consume alcohol against treatment recommendations, I cannot conclude that the Individual has mitigated the stated Guideline J concerns. As the criminal behavior took place less than one year prior to the hearing and because the Individual continues to consume alcohol, I cannot conclude that so much time has elapsed or that it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on his reliability, trustworthiness, or good judgment. The Individual failed to mitigate the concerns pursuant to mitigating factor (a).

The Individual did not assert that he was pressured or coerced into committing the offense. He also did not argue that there was no reliable evidence to support that he committed the offense. Mitigating factors (b) and (c) are not applicable.

While the Individual entered a plea in the underlying criminal matter, paid the applicable fines, completed the substance abuse program, attended the victim impact panel, I cannot conclude that he has mitigated the stated concerns pursuant to mitigating factor (d). The Individual continues to engage in the underlying behavior that gave rise to the stated concerns. Therefore, I cannot conclude that the Individual is successfully rehabilitated.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and J of the Adjudicative Guidelines. After considering all the evidence, both 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 not brought forth sufficient evidence to resolve the Guideline G and Guideline J concerns set forth in the SSC. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals