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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: August 16, 2024)	Case No.: PSH-24-0180
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_____)	

Issued: January 6, 2025

Administrative Judge Decision

Phillip Harmonick, 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 be restored.

I. BACKGROUND

The Individual is employed by a DOE contractor in a position which requires that he possess access authorization. On November 18, 2023, the Individual was arrested and charged with Driving While Intoxicated (DWI). Exhibit (Ex.) 8 (arrest report and certification prepared by the arresting officer).² The local security office (LSO) issued the Individual a letter of interrogatory (LOI) concerning the circumstances of his arrest and his alcohol consumption practices. Ex. 7. The Individual's response to the LOI did not resolve the security concerns. *See* Ex. 5 at 15 (Case Evaluation Sheet summarizing information related to the adjudication of the Individual's eligibility for access authorization and recommending that he undergo a psychological evaluation).

On February 14, 2024, the Individual met with a DOE-contracted psychologist (DOE Psychologist) for a psychological evaluation. Ex. 10 at 49. The DOE Psychologist's report of the evaluation (Report) indicated that the Individual reported having consumed alcohol on four

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

occasions in the thirty days prior to the evaluation. *Id.* at 51. At the request of the DOE Psychologist, the Individual provided a sample for Phosphatidylethanol (PEth)³ testing, the results of which were positive at 95 ng/mL. *Id.* at 58. The DOE Psychologist subsequently issued the Report in which he opined that the Individual habitually and binge consumed alcohol to the point of impaired judgment. *Id.* at 52–53.

The LSO issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1 at 6–8. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guidelines G and J of the Adjudicative Guidelines. *Id.* at 5.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I conducted an administrative hearing. The LSO submitted twelve exhibits (Ex. 1–12). The Individual submitted seven exhibits (Ex. A–G). The Individual testified on his own behalf. Hearing Transcript, OHA Case No. PSH-24-0180 (Tr.) at 3, 10. The LSO offered the testimony of the DOE Psychologist. *Id.* at 3, 30–31.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline G (Alcohol Consumption) of the Adjudicative Guidelines as the first basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1 at 5. “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines at ¶ 21. The SSC alleged that the Individual habitually and binge consumed alcohol to the point of impaired judgment and cited the Individual’s DWI charge. Ex. 1 at 5. The LSO’s allegations that the Individual engaged in alcohol-related incidents away from work and habitually or binge consumed alcohol to the point of impaired judgment justify its invocation of Guideline G. Adjudicative Guidelines at ¶ 22(a), (c).

The LSO cited Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the other basis for its substantial doubt regarding the Individual’s eligibility for access authorization. Ex. 1 at 5. “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. The SSC cited the Individual’s DWI charge. Ex. 1 at 5. The LSO’s citation to the Individual having been arrested and charged with criminal conduct justifies its invocation of Guideline J. Adjudicative Guidelines at ¶ 31(b).

III. REGULATORY STANDARDS

³ PEth, a compound produced in the presence of ethanol, is a biomarker for alcohol consumption that can be used to detect whether a subject consumed alcohol within several weeks of sample collection. Ex. 10 at 56.

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

An individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). An individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. FINDINGS OF FACT

The Individual was granted access authorization by DOE in 2016 and has held it continuously since that time. Ex. 12 at 127; Tr. at 26. Prior to 2023, the Individual had never been arrested or cited for any alcohol-related offense and his only criminal history was a possession of marijuana offense for which he was cited when he was nineteen years of age. Tr. at 20–21, 26; Ex. 12 at 144 (reflecting the results of a 2021 routine reinvestigation of the Individual's eligibility for access authorization which found no criminal records related to the Individual); *id.* at 124 (2021 QNSP in which the Individual disclosed that he was cited for marijuana possession over thirty years ago).

On the evening of November 17, 2023, after the Individual received an unfavorable medical diagnosis, the Individual and his wife went out for drinks at a lounge to "unwind." Ex. 7 at 24; Ex. 8 at 49. In response to the LOI, the Individual reported that he consumed mixed drinks at the lounge containing what he estimated was six ounces of liquor in total. *Id.* at 27. While attempting to drive home from the lounge, the Individual rear ended another driver. Ex. 9 at 41. The Individual was arrested in the early morning hours of November 18, 2023, and was charged with DWI. Ex. 8.

A court ordered the Individual to undergo a substance-abuse evaluation. Tr. at 26. Based on the results of the substance-abuse evaluation, the Individual was recommended to participate in a substance abuse education program. *See* Ex. 10 at 50 (reflecting the Individual's account of the process to the DOE Psychologist). The Individual completed the substance abuse education program on February 3, 2024. Ex. C.

The Individual met with the DOE Psychologist for a psychological assessment on February 14, 2024. Ex. 10 at 49. During the clinical interview with the DOE Psychologist, the Individual reported having consumed alcohol on four occasions over the thirty days prior to the clinical interview: approximately six ounces of liquor on one occasion; approximately six ounces of liquor and two twelve-ounce beers on two occasions; and “two drinks” on the night prior to the clinical interview. *Id.*

At the request of the DOE Psychologist, the Individual provided a sample for a PEth test the results of which were positive at 95 ng/mL. *Id.* at 58. A medical doctor (MD) who reviewed the results of the PEth test, a journal article concerning interpretation of PEth tests, and information provided by the DOE Psychologist prepared an opinion (MD Opinion) concerning the inferences that might be drawn from the results of the Individual’s PEth test. *Id.* at 56–57; *see also* William Ulwelling & Kim Smith, *The PEth Blood Test in the Security Environment: What it is; Why it is Important; and Interpretative Guidelines*, J. OF FORENSIC SCI., July 2018 (PEth Article). Based on the information provided by the DOE Psychologist, and applying a definition of one standard drink as being equal to a 1.5-ounce serving of liquor or twelve-ounce beer, the MD assumed that the Individual had reported consuming “approximately 13-17 standard drinks” over the prior thirty days.⁴ Ex. 10 at 57. Excerpting references to studies cited in the PEth Article, the MD stated that “a PEth of 95 ng/mL lies numerically between up to 4 drinks/day (73 ng/mL; an average) and 4 or more drinks/day (141 ng/mL . . .).” *Id.* at 56; *see also* PEth Article at 4 (listing average PEth levels of subjects in various studies compared to average self-reported drinks by those subjects). The MD claimed that “13-17 standard drinks in 30 days would result in a PEth of less than or equal to 20 ng/mL” and that “it is medically likely [the Individual] is consuming around 4 drinks per day on average.” Ex. 10 at 57; *but see* PEth Article at 4 (indicating that a study found that a PEth level of 24 corresponded to an average of 4.1 self-reported standard drinks per week among participants). However, the MD noted that “PEth at 95 ng/mL would not discern regular consumption from binge drinking.” Ex. 10 at 57.

Based on the MD Opinion, the DOE Psychologist concluded that the Individual was underreporting his alcohol consumption and that he habitually and binge consumed alcohol to the point of impaired judgment.⁵ Ex. 10 at 52–53. The DOE Psychologist did not diagnose the Individual with an alcohol use disorder. *Id.* The DOE Psychologist recommended that the Individual participate in weekly substance abuse treatment with a licensed provider for twelve weeks followed by group therapy for a total of one year of treatment. *Id.* at 53. He also recommended that the Individual permanently abstain from alcohol and participate in a support

⁴ The MD’s calculation of the Individual’s self-reported standard drinks was inaccurate. The Individual reported having consumed approximately eighteen ounces of liquor (equivalent to twelve standard drinks) and four twelve-ounce beers (equivalent to four standard drinks) – *i.e.*, sixteen standard drinks – over the first three occasions in which he drank alcohol in the thirty days prior to the clinical interview. Therefore, whether the two alcoholic drinks the Individual consumed on the night prior to the clinical interview were twelve-ounce beers or an unknown amount of liquor, the Individual must have self-reported consuming at least eighteen drinks in the thirty days prior to the clinical interview.

⁵ The DOE Psychologist defined habitual consumption of alcohol to the point of impaired judgment as intoxication occurring more frequently than once per month based on OHA precedent. Ex. 10 at 49. The DOE Psychologist cited a definition of binge drinking from the National Institute of Alcoholism and Alcohol Abuse which defines it as “five or more drinks over two hours” resulting in “episodic intoxication with periods of high consumption followed by periods in which intake is low.” *Id.* at 49, 57.

group, such as Alcoholics Anonymous (AA). *Id.* However, he did not recommend that the Individual arrange for alcohol testing to corroborate his abstinence from alcohol. *Id.*; *see also* Tr. at 34 (testifying at the hearing that he did not feel such a recommendation was necessary because the Individual demonstrated during the clinical interview that he “understood the seriousness of the consequences of drinking related to his job” and such testing might have been redundant with testing as part of the Individual’s treatment).

In late February of 2024, the Individual entered into a plea agreement to resolve the DWI charge. Ex. F. The Individual was sentenced to a two-year term of probation pursuant to which he was ordered to perform community service, pay fines and fees, refrain from driving within twenty-four hours of consuming alcohol, and avoid committing alcohol-related criminal offenses. *Id.* The Individual testified at the hearing that he paid the fines and fees and completed the required community service. Tr. at 26–27; *see also* Ex. B (documenting the Individual’s completion of community service).

Beginning in June 2024, the Individual met with a Licensed Clinical Addiction Counselor (Individual’s Counselor) on a weekly basis for twelve weeks.⁶ Ex. A (letter from the Individual’s Counselor summarizing the Individual’s treatment and listing the topics covered in her twelve-week counseling program); Ex. D (reflecting the Individual’s Counselor’s professional training and experience). According to the Individual’s Counselor, she provided the Individual with treatment for “Alcohol Use Disorder.” Ex. A at 1; *but see* Tr. at 33 (testimony from the DOE Psychologist, who did not diagnose the Individual with an alcohol use disorder, speculating that the diagnosis was required for insurance to cover the Individual’s treatment and that the diagnosis had no impact on his opinion of the Individual’s rehabilitation).

In a letter dated November 4, 2024, the Individual’s Counselor stated that the Individual’s treatment focused on attaining and maintaining abstinence from alcohol and that the Individual had “learned how to recognize triggers and develop contingency plans for handling stressful situations.” Ex. A at 1. The Individual testified at the hearing that he had learned that he used alcohol to cope with fear and anxiety in his life, such as consuming alcohol after learning of his medical diagnosis, and that recognizing this trigger would help him to abstain from consuming alcohol in the future. Tr. at 16. The Individual’s Counselor characterized the Individual’s participation in treatment as “open” and “engaged.” Ex. A at 1. She opined that the Individual’s prognosis was “good.” *Id.*

Following completion of the twelve-week counseling program, the Individual’s Counselor indicated that the Individual did not require further treatment but recommended that he attend AA meetings to help him maintain his abstinence from alcohol. Tr. at 13. The Individual testified at the hearing that he had attended five AA meetings since completing counseling and that he intended to continue attending AA meetings and obtain an AA sponsor. *Id.* at 13, 19. He also indicated that, through counseling and attending AA meetings, he had come to understand that he

⁶ The Individual’s twelve weeks of counseling were not consecutive due to a period of approximately seven weeks during which the Individual did not attend counseling. Ex. A at 1. According to the Individual, his counseling was interrupted due to a medical procedure he underwent which significantly limited his mobility. Tr. at 14; *see also* Ex. E (documenting that the Individual underwent the procedure and was advised by a medical professional not to return to work for approximately eight weeks).

had a problem with alcohol and that he intended to permanently abstain from consuming alcohol. *Id.* at 15, 22. He indicated that he last consumed alcohol approximately five months prior to the hearing when he accidentally consumed alcoholic beer that he mistook for non-alcoholic beer, and that he had not consumed any other alcohol since receiving the Notification Letter in May 2024. *Id.* at 17.

The DOE Psychologist testified that the Individual had complied with his recommendations and made significant progress. *Id.* at 32. He opined that the Individual had demonstrated rehabilitation and had a good prognosis for avoiding problematic alcohol consumption in the future. *Id.* at 32, 34. The DOE Psychologist cited the Individual's compliance with treatment and "change of thinking" related to alcohol as particularly positive factors in the Individual's recovery. *Id.* at 34.

V. ANALYSIS

A. Guideline G

Conditions that could mitigate security concerns under Guideline G include:

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

Adjudicative Guidelines at ¶ 23.

The Individual has acknowledged using alcohol in a maladaptive manner, completed alcohol-related counseling, and testified to having participated in AA. Moreover, the Individual testified that he has not consumed alcohol for five months and claimed that his last consumption of alcohol was unintentional. While an individual's testimony in and of itself is not particularly weighty evidence of a clear and established pattern of modified consumption or abstinence, I have considered the facts that the DOE Psychologist did not recommend that the Individual undergo alcohol testing or diagnose the Individual with an alcohol use disorder. Moreover, the results of the PEth testing performed at the request of the DOE Psychologist were not particularly elevated, and the MD noted that the test results could not distinguish regular drinking from binge drinking.

In light of the isolated nature of the Individual's alcohol-related arrest in his otherwise law-abiding adult life, the relatively moderate PEth level upon which the MD and DOE Psychologist relied to infer that the Individual was engaged in binge drinking, and the fact that the DOE Psychologist did not see fit to recommend that the Individual personally obtain alcohol testing, I find that the "nature, extent, and seriousness" of the conduct giving rise to the security concerns is sufficiently minor that the Individual's testimony alone is satisfactory to establish a clear and established pattern of modified consumption or abstinence. *See* 10 C.F.R. § 710.7(c) (listing factors to be considered in applying the Adjudicative Guidelines). Accordingly, I find that the Individual has established the applicability of the second mitigating condition. Adjudicative Guidelines at ¶ 23(b).

Additionally, the Individual has completed alcohol-related counseling as recommended by the DOE Psychologist, the DOE Psychologist testified that the Individual's efforts fully satisfied his recommendations, and the DOE Psychologist and the Individual's Counselor both opined that the Individual has a good prognosis for avoiding problematic alcohol consumption in the future. Considering this evidence of successful completion of a treatment program, and in light of my aforementioned conclusion concerning the adequacy of the Individual's testimony to demonstrate a clear and established pattern of modified consumption or abstinence, I find the fourth mitigating condition applicable. *Id.* at ¶ 23(d).

Having found two mitigating conditions applicable, and in light of the Individual's favorable prognosis from both the Individual's Counselor and the DOE Psychologist, I find that the Individual has resolved the security concerns asserted by the LSO under Guideline G.

B. Guideline J

Conditions that could mitigate security concerns under Guideline J include:

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

Id. at ¶ 32.

The Individual's DWI was the only occasion in which he was arrested or charged with criminal conduct in over thirty years, and he has received alcohol-related treatment and abstained from alcohol use such that he is unlikely to misuse alcohol in the future. As the Individual's DWI

was an isolated event, and the Individual no longer consumes alcohol, I find it highly unlikely that he will engage in alcohol-related criminal conduct in the future. Accordingly, I find the first mitigating condition applicable. *Id.* at ¶ 32(a).

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

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guidelines G and J of the Adjudicative Guidelines. After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns asserted by the LSO. Accordingly, I have determined that the Individual's access authorization should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals