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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: September 3, 2024 )  
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Case No.: PSH-24-0186

Issued: February 25, 2025

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**Administrative Judge Decision**

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Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an 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 or Eligibility to Hold a Sensitive Position.”<sup>1</sup> 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 should be granted an access authorization.

**I. Background**

On January 26, 2023, the Individual submitted a Questionnaire for National Security Positions (QNSP). Exhibit (Ex.) 12 at 41. In this QNSP, the Individual disclosed that he had used marijuana “recreationally, a number of times as a teen” from June 2014 through December 2021. Ex. 12 at 41. The Individual explained his marijuana use resulted because he “was young and dumb.” Ex. 12 at 42. The Individual further stated that “I straightened up my life after finding out that I was having children.” Ex. 12 at 41.

On March 13, 2023, an Office of Personnel Management Investigator conducted an Enhanced Subject Interview (ESI) of the Individual. Ex. 12 at 53. During this ESI, the Individual reported that he had smoked marijuana and had used edibles three times a week from June 2014 until December 2021. Ex. 12 at 54. The Individual reported that he stopped using marijuana because he found out he was having twin baby girls and needed to be able to care for them. Ex. 12 at 54. The Individual admitted he knew his conduct was illegal. Ex. 12 at 55. The Individual stated he had no intention to use marijuana or any other illegal drug in the future. Ex. 12 at 55.

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<sup>1</sup> Under the regulations, “[a]ccess authorization means an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will also be referred to in this Decision as a security clearance.

On August 14, 2023, the Individual submitted an incident report (IR) to a Local Security Office (LSO) reporting that he had been arrested and charged with Driving Under the Influence (DUI) on August 12, 2023.<sup>2</sup> Ex. 10 at 1–2.

At the LSO's request, a DOE contracted psychologist (Psychologist) conducted an evaluation of the Individual, which included a clinical interview (CI) of the Individual on August 21, 2023. Ex. 11 at 2. In addition to conducting the CI, the Psychologist also reviewed the Individual's personnel security file and had him undergo several psychological screening tests.<sup>3</sup> Ex. 11 at 2.

On August 31, 2023, the Psychologist issued a report (the Report), in which she found that the Individual met sufficient *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition* (DSM-5) criteria for a diagnosis of Alcohol Use Disorder (AUD), Mild.<sup>4</sup> Ex. 11 at 8. The Psychologist also evaluated the Individual's cannabis use history and concluded he did not meet the criteria for a cannabis use disorder. Ex. 11 at 7–8. Noting that the Individual has never received alcohol or drug treatment and had consumed alcohol eight days before the CI, the Psychologist concluded that the Individual had not been reformed or rehabilitated from his AUD. Ex. 11 at 9. The Psychologist further opined:

[The Individual] could benefit from alcohol education and treatment. A reputable alcohol education class in person or online would be quite beneficial. Treatment could include attendance at [Alcoholics Anonymous (AA)], 30 meetings in 30 days and continued participation for at least six months. An individual therapist who has specific understanding of alcohol abuse would be an appropriate treatment option as well, until that therapist reported that he was free from alcohol misuse and unlikely to use excessively again. He is not in need of an intense program or inpatient treatment at this time. A 12-month period of no alcohol use would be an appropriate amount of time for him to gain a better understanding of his risk and learn better coping skills to reduce his use of alcohol for coping. One year of no alcohol use would put his alcohol use disorder in full remission.

Ex. 11 at 9–10.

### **Present Administrative Review Proceeding**

The LSO issued a Notification Letter to the Individual informing him that it received derogatory information creating substantial doubt regarding his eligibility to hold a security clearance. The Notification Letter further informed the Individual that he was entitled to a hearing before an

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<sup>2</sup> He was also charged with Careless Driving, Failure to Notify Address Change, and Operating Under A Suspended License. Ex. 10 at 5.

<sup>3</sup> These tests included: the Minnesota Multiphasic Personality Inventory-2 (MMPI-2); the Substance Abuse Subtle Screening Inventory-4 (SASSI-4); the Alcohol Use Disorder Identification Test (AUDIT); the Michigan Alcohol Screening Test (MAST); the Beck Depression Inventory (BDI); the Beck Anxiety Inventory (BAI); and a Patient Health Questionnaire (PHQ-9). Ex. 11 at 2.

<sup>4</sup> The Psychologist found that the Individual had a history of unsuccessful attempts to stop drinking alcohol and stay sober, and that he has used alcohol in situations where it was physically hazardous. Ex. 11 at 8.

Administrative Judge to resolve the security concerns. *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), I took testimony from the Individual, his spouse, his former supervisor, his present supervisor, and the Psychologist. The DOE Counsel submitted twelve exhibits, marked as Exhibits 1 through 12. The Individual submitted two exhibits, marked as Exhibits A and B.

Exhibit A is a laboratory report, dated September 21, 2022, indicating the Individual's urine tested negative for fourteen types of drugs.

Exhibit B is a discharge statement dated June 5, 2024, indicating that the Individual had successfully completed eight weeks of court-mandated education classes (CME) for problematic alcohol use. Ex. B at 1.

## **II. The Summary of Security Concerns (SSC)**

The SSC attached to the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance under Guidelines G (Alcohol Consumption) and J (Criminal Conduct) of the Adjudicative Guidelines.

### **A. Guideline G**

Under Guideline G, the LSO cited the Psychologist's opinion that the Individual met sufficient DSM-5 criteria for a diagnosis of AUD, Mild, as well as the Individual's DUI arrest. This information adequately justifies the LSO's invocation of 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 "alcohol-related incidents away from work . . ." and "diagnosis by a duly qualified medical or mental health professional (e.g. . . . Psychologist . . .) of alcohol use disorder." Adjudicative Guidelines at ¶ 22(a), (d).

### **B. Guideline J**

Under Guideline J, the LSO cited the Individual's DUI arrest and history of marijuana use. This information adequately justifies the LSO's invocation of 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[.]" Adjudicative Guidelines at ¶ 31(b).

### **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 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 to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **IV. Hearing Testimony**

The Individual's spouse testified at the hearing that she has known him for almost nine years. Tr. at 16. She last observed him using alcohol on October 17, 2024, her birthday, when he had a couple of drinks. Tr. at 16–17, 20. The Individual has been a devoted husband and father for their two children who have faced severe health challenges. Tr. at 18–19. After his DUI, the Individual stopped using alcohol except for the drinks he had on her birthday, as well as when he went to a "game" with his coworker. Tr. at 19, 22. The Individual has told her he intends to abstain from using alcohol. Tr. at 19–20. The Individual used marijuana in high school. Tr. at 21. The Individual stopped using marijuana before she became pregnant with their children in December 2021. Tr. at 22.

The Individual's friend and former supervisor testified on his behalf. He testified that he associates with the Individual, who he has known for two years, outside of work. Tr. at 28–29. He observed the Individual have one beer at a football game in September 2024. Tr. at 31–32.

The Individual's current supervisor testified on the Individual's behalf at the hearing. She testified that she has known the Individual for two and a half years. Tr. at 38. She testified that the Individual is reliable and exhibits a strong work ethic at his job. Tr. at 39. She has interacted with him outside of work and has never observed him using alcohol. Tr. at 41. The Individual has indicated to her that he intends to abstain from alcohol use. Tr. at 43.

The Individual testified that the DUI arrest occurred on the evening before his wedding. Tr. at 48. The Individual testified that he was sober for a year and a month after his wedding. Tr. at 57. The Individual consumed alcohol on the weekend of his wife's birthday in October 2024, when he had

two beers, and in September 2024 at a football game. Tr. at 51–52, 66. He testified that he had completed the CME as required. Tr. at 52. He described the CME as a “very productive class.” Tr. at 52. The CME was not an intensive outpatient program and met once a week for a couple of hours. Tr. at 56. After the CI, he wanted to prove to others that he didn’t need alcohol. Tr. at 57–58. When he read the Psychologist’s Report concluding that he had AUD, it left “a sour taste in his mouth” because he did not want the stigma of that diagnosis, so he stopped using alcohol to prove to himself and others that he did not have a problem with alcohol. Tr. at 59–60. The Individual admitted using marijuana until December 2021, when he was learned he was going to be a father. Tr. at 54–55. The Individual indicated that becoming a father changed him and gave him the “push” he “needed in life.” Tr. at 61. He has not consumed any illegal drugs since that time. Tr. at 55.

The Psychologist testified after observing the testimony of the other witnesses. The Psychologist began her testimony by essentially reiterating the findings she set forth in her Report. Tr. at 72–74. She clarified that she did not recommend that the Individual permanently abstain from alcohol use but rather recommended that he at least temporarily abstain from alcohol use for a year, although she would like to see him permanently abstain from alcohol use. Tr. at 74. The Psychologist testified that an individual is considered to be in remission from AUD after a year of abstaining from alcohol use. Tr. at 75. The diagnosis only becomes active again if two or more of the eleven diagnostic criteria become present again. Tr. at 75. The Psychologist initially testified that the Individual’s use of alcohol on a couple of occasions during the past year meant that his AUD was not presently in full remission. Tr. at 75–76. However, the DOE Counsel reminded the Psychologist that the Individual had testified that he abstained from alcohol for a period of thirteen months after his wedding, and asked hypothetically if that would mean that his AUD was now in remission, even though he had consumed alcohol in the fall of 2024. Tr. at 78–79. The Psychologist then opined that if the Individual had abstained from alcohol use for thirteen months his AUD would be in remission, even if he had consumed alcohol in moderate amounts after his thirteen months of sobriety. Tr. at 79, 86–87. The Psychologist, noting the Individual’s success in first discontinuing his alcohol use, and then in moderating it, opined that he has a good chance of avoiding future problematic alcohol use. Tr. at 87–88. The Psychologist further opined that the Individual is rehabilitated from his AUD. Tr. at 88.

## **V. Analysis**

### **A. Guideline G**

The Individual has been diagnosed with AUD, Mild, by the Psychologist. After hearing the Individual’s hearing testimony that he discontinued using alcohol for thirteen months after he met with the Psychologist and that he had attended the CME, the Psychologist and I both concluded that the Individual’s AUD was now in remission and that he has now been rehabilitated. I found the Individual’s hearing testimony to be credible, as he freely admitted his most recent alcohol consumption on two occasions in the fall of 2024 and his past marijuana use.

The Adjudicative Guidelines set forth four conditions that may mitigate security concerns under Guideline G. One of these four conditions is present in the instant case. Paragraph 23(b) provides that security concerns raised under Guideline G may be mitigated when an individual acknowledges their “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.” Adjudicative Guidelines at ¶ 23(b). In the present case, the Individual has taken the recommended steps of attending the CME and abstaining from alcohol use for over one year. These actions led the Psychologist to opine that the Individual’s AUD is now in full remission and that he is therefore rehabilitated. Accordingly, the second mitigating factor is sufficiently present in this case to resolve the security concerns raised under Guideline G.

## **B. Guideline J**

The Individual self-reported a history of regular marijuana use from 2014 to the end of 2021. Moreover, the Individual was arrested for DUI and several lesser offenses in August 2023.

The Adjudicative Guidelines set forth four conditions that can mitigate security concerns under Guideline J. At least two of these four conditions are present in the instant case.

Paragraph 32(a) provides that security concerns raised under Guideline J can be mitigated when the individual has shown that “[s]o 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.” Adjudicative Guidelines at ¶ 32(a). In the present case, the Individual’s marijuana use was discontinued over three years ago. Moreover, that marijuana use occurred when the Individual was a teenager and then a young adult. The Individual’s maturation since that time, which occurred as a result of the responsibilities he has assumed as a father and husband, lead me to conclude that the Individual is unlikely to return to marijuana use. Accordingly, I find that enough time has passed to resolve the security concerns arising from his marijuana use. Moreover, the Individual’s arrest for DUI was a symptom of his AUD, Mild, which the Psychologist has found the Individual to be rehabilitated from and from which he is now in remission. I therefore find that the Individual has shown his criminal behavior is unlikely to recur and that his behavior no longer casts doubt on his reliability, trustworthiness, honesty, and good judgment. Accordingly, I find that this mitigating factor is sufficiently present in the instant case to resolve the security concerns arising under Guideline J.

Paragraph 32(d) provides that that security concerns raised under Guideline J can be mitigated when the individual has shown that 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(d). In the present case, the Individual has achieved rehabilitation by successfully addressing his AUD which led to his criminal arrest. Moreover, the Individual has discontinued his marijuana use for an extended period of time. Accordingly, I find that the fourth mitigating factor is sufficiently present in the instant case to resolve the security concerns raised by his arrest and illegal drug use under Guideline J.

I therefore find that the Individual has sufficiently established the presence of two of the four mitigating conditions set forth at Guideline J. Accordingly, I find that he has resolved the security concerns raised under Guideline J by his arrest and past history of marijuana use.

## **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 commonsense manner, I find that the Individual has mitigated all of the security concerns raised under both Guidelines. Accordingly, the Individual has demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Administrative Judge  
Office of Hearings and Appeals