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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: October 31, 2024 )  
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Case No.: PSH-25-0013

Issued: March 19, 2025

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**Administrative Judge Decision**

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Erin C. Weinstock, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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."<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's access authorization should not be restored.

**I. BACKGROUND**

The Individual is employed by a DOE contractor in a position that requires him to hold an access authorization. Exhibit (Ex.) 1 at 5.<sup>2</sup> In February 2024, the Individual was arrested and charged with Driving Under the Influence (DUI). Ex. 8. As a result of this arrest and an August 2023 DUI arrest, the Local Security Office (LSO) issued the Individual a Letter of Interrogatory (LOI), which the Individual completed in June 2024.<sup>3</sup> Ex. 7; Ex. 9.

The LSO subsequently issued the Individual a Notification Letter advising him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization.

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<sup>1</sup> 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.

<sup>2</sup> References to the Local Security Office's (LSO) exhibits are to the exhibit number and the Bates number located in the top right corner of each exhibit page.

<sup>3</sup> At the request of the LSO, the Individual underwent a psychological evaluation in July of 2024. Ex. 11. The DOE-contract psychologist found that the Individual did not have an alcohol use disorder, nor did he find evidence that the Individual habitually or binge consumed alcohol to the point of impaired judgement. *Id.* at 64.

Ex. 1 at 5. In a Summary of Security Concerns (SSC) attached to the letter, the LSO asserted that this derogatory information raised security concerns under Guideline J (Criminal Conduct) of the Adjudicative Guidelines. *Id.*

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 thirteen exhibits (Ex. 1–13). The Individual submitted fourteen exhibits (Ex. A–N). The Individual presented one witness and testified on his own behalf. Hearing Transcript, OHA Case No. PSH-25-0013 (Tr.).

## **II. THE SECURITY CONCERNS**

Guideline J, under which the LSO raised the security concerns, provides: “Criminal activity creates doubt about a person’s judgement, 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. Conditions that could raise a security concern under Guideline J include: “evidence . . . of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.” *Id.* at ¶ 31(b). In citing Guideline J, the LSO relied upon the Individual’s two DUI arrests. Ex. 1 at 5. This derogatory information adequately justifies the LSO’s invocation of Guideline J.

## **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 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 their 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. *Id.* at § 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**

In August 2023, the Individual was arrested and charged with DUI. Ex. 7. In the incident report the Individual filed with the LSO, he indicated that he was arrested after being pulled over for weaving in traffic and having failed a field sobriety test. *Id.* at 29. During his hearing testimony, the Individual claimed that his first DUI arrest was “improper” and testified that “[he didn’t] believe [he] should have been pulled over for that.” Tr. at 34. At the hearing, the Individual also stated that these charges were not pursued before the statute of limitations on the charges expired. *Id.* at 29.

Approximately six months later, in February 2024, the Individual was again arrested and charged with DUI. Ex. 8. The Individual again failed field sobriety tests administered by the law enforcement officer who pulled over his vehicle. *Id.* at 33. The results of the blood alcohol test the Individual underwent after his arrest showed a blood alcohol content of 0.25. Ex. 9 at 38. During his hearing testimony, the Individual opined that the second DUI occurred because he had made a mistake by operating his motor vehicle rather than calling for a ride when he was not feeling well. Tr. at 34. The Individual has a criminal hearing in this matter scheduled for April 2025. Ex. D.

When, at the hearing, he was given an opportunity to explain why he had been arrested for two DUIs, the Individual could not provide any explanation, other than to contest the propriety of his first DUI arrest and opine that the second DUI arrest occurred because he had made a “bad judgment call” by failing to use “Uber” to get home and that he was “tired” and “not feeling well.” *Id.* at 35–36. The Individual testified that he now realizes that he cannot consume alcohol unless he can get home safely without driving. *Id.* at 39. He further testified that the stress of the court proceedings and the present proceeding provide him with ample motivation to avoid any further use of motor vehicles after consuming alcohol. *Id.* at 44–46.

At the hearing, the Individual testified that he had not consumed any alcohol since his February 2024 arrest. *Id.* at 39. He corroborated these claims with the submission of four Phosphatidylethanol (PEth) tests<sup>4</sup> from November 2024, December 2024, January 2025, and February 2025, each of which was negative for traces of alcohol consumption. Ex. E; Ex. F; Ex. G; Ex. H. The Individual also underwent a PEth test in July 2024 as a part of the psychological evaluation he underwent at the request of DOE. Ex. 11 at 66. The results of this test were also negative for alcohol use. *Id.* The Individual also testified that he has been attending weekly Alcoholics Anonymous (AA) meetings since his arrest in February 2024. Tr. at 32.

The Individual’s coworker testified that he has known the Individual for about twenty years and in the last five or six years they have had nearly daily contact at work. *Id.* at 13. The coworker stated that he cannot recall ever seeing the Individual consume alcohol. *Id.* at 14–15. He further testified that in the time he has known the Individual, the Individual has been critical in ensuring that everyone in their work environment follows relevant rules and procedures. *Id.* at 16.

The Individual submitted five reference letters that spoke to his character and his professional contributions, including his excellent performance at work, his regard for rules and procedures, and his commitment to his job. Ex. J; Ex. K; Ex. L; Ex. M; Ex. N. He also submitted a reference letter from a psychologist associated with his employer’s employee assistance program. Ex. I. The psychologist explained she had regular meetings with the Individual from December 7, 2024, to

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<sup>4</sup> “PEth levels in excess of 20 ng/mL are considered evidence of moderate to heavy ethanol consumption.” Ex. E.

the date of the letter, January 27, 2025. *Id.* She reported that in these meetings they discussed coping mechanisms to deal with stress arising from legal issues, and the Individual confirmed her written statement in his testimony. *Id.*; Tr. at 42.

## V. ANALYSIS

The security concerns here relate only to the Individual's criminal conduct, not his consumption of alcohol. The Individual has clearly demonstrated that he is no longer consuming alcohol and that he has taken steps to ensure he does not use alcohol in a dangerous manner in the future. These steps, while admirable, do not address the LSO's concerns about criminal conduct or explain why the Individual was arrested for DUI twice in a period of approximately six months. I am concerned about the Individual's lack of insight into why these incidents occurred as well as his reticence to take full responsibility for his actions.

An individual may be able to mitigate security concerns under Guideline J though the following conditions:

- (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 two incidences of criminal behavior both occurred within the last two years, and he did not testify to any unusual circumstances that led to the behavior, other than his contentions that he was tired and feeling ill at the time of the second DUI arrest. Therefore, I cannot say that "so much time has elapsed since the criminal behavior happened," nor can I say that it occurred under unusual circumstances. Accordingly, the mitigating condition set forth at ¶ 32(a) is not present.

The Individual did not allege that he was pressured or coerced into the behavior at issue here. Therefore, the mitigating condition set forth at ¶ 32(b) is not applicable.

On both occasions that he was arrested, the Individual admitted that he had consumed alcohol before operating his vehicle. Further, the police report for the second incident indicated that the Individual was driving erratically, that he failed field sobriety tests, and that his blood alcohol

content was well above the legal limit. Consequently, the mitigating condition set forth at ¶ 32(c) is not present.

The Individual's criminal activity was recent. While the charges related to his first arrest were not prosecuted, the charges related to the second offense are still pending. Accordingly, he does not have any terms of parole or probation that he could have complied with. He has shown that he has had a historically good employment record, but his employment record is not an indication of rehabilitation because it was already excellent prior to the two criminal incidents. The Individual's counseling sessions, while certainly beneficial to him, as described in the psychologist's letter and the Individual's testimony, addressed the Individual's stress arising from his legal issues rather than discussing whatever underlying issues caused the conduct. As such, I cannot find that those sessions rehabilitated him from the criminal behavior at issue here. The Individual's participation in AA presents a similar issue. I cannot say that his attendance at these meetings addresses whatever issues caused him to make the decision to operate his vehicle after consuming alcohol because his testimony about his AA attendance did not show any insight into what specifically caused his own criminal incidents. In his testimony, the Individual said that he believed his first arrest was improper and that his poor judgment in connection with the second arrest was contributed to by illness. The lack of insight into his own personal responsibility for these incidents concerns me. Further, the Individual does not have an alcohol problem and has not identified any other issues from which he has been rehabilitated since the time of the incidents. Therefore, I cannot say that the mitigating condition set forth at ¶ 32(d) is present.

Accordingly, I find that the Individual has not 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 Guideline 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 not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined 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.

Erin C. Weinstock  
Administrative Judge  
Office of Hearings and Appeals