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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: January 8, 2025 )  
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Case No.: PSH-25-0059

Issued: June 13, 2025

**Administrative Judge Decision**

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (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 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's access authorization should be restored.

**I. BACKGROUND**

The Individual is employed by a DOE contractor in a position that requires a security clearance. In April 2024, the DOE Local Security Office (LSO) learned that the Individual, through self-report, had been arrested and charged with driving while intoxicated (DWI). As a result, the LSO requested that the Individual be evaluated by a DOE-consultant Psychiatrist (DOE Psychiatrist). Based on the information gathered by the LSO, including the DOE Psychiatrist's report (Report), the LSO informed the Individual by letter (Notification Letter) that it possessed reliable information that created substantial doubt regarding his eligibility to possess a security clearance. In an attachment to the Notification Letter, entitled Summary of Security Concerns (SSC), the LSO explained that the derogatory information raised security concerns under Guidelines G and J of the Adjudicative Guidelines.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals (OHA) appointed me as the

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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.

Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. At the hearing, the Individual presented the testimony of three witnesses and testified on his own behalf. The LSO presented the testimony of the DOE Psychiatrist. The Individual submitted eight exhibits, marked Exhibits A through H.<sup>2</sup> The LSO submitted sixteen exhibits, marked Exhibits 1 through 16.<sup>3</sup>

## II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines as the bases for concern regarding the Individual's eligibility to possess a security clearance. Exhibit (Ex.) 1 at 6.

Guideline G provides that “[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. Conditions that could raise a security concern include “[a]lcohol-related incidents away from work, such as driving while under the influence . . .” and “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 . . .” *Id.* at ¶ 22(a), (d). The SSC cited that the DOE Psychiatrist concluded that the Individual meets sufficient *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision*, criteria for a diagnosis of Alcohol Use Disorder (AUD), moderate, in early remission, without evidence of rehabilitation or reformation, and the Individual was arrested and charged with DWI in April 2024, July 2002, and 1997. Ex. 1 at 6. The cited information justifies the LSO’s invocation of Guideline G.

Guideline J provides that “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Adjudicative Guidelines at ¶ 30. “By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” *Id.* Conditions that could raise a security concern include “[e]vidence (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 . . .” *Id.* at ¶ 31(b). The SSC cited the three DWIs cited above under Guideline G, which justify the LSO’s invocation of Guideline J. Ex. 1 at 6.

## 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

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<sup>2</sup> The Individual’s exhibits are as labeled as follows. Exhibit A is a letter from the Individual’s employer’s Fitness for Duty program. Exhibit B is a letter from the Individual’s treatment provider for counseling. Exhibit C is an attendance sheet for Alcoholics Anonymous meetings. Exhibit D is a letter from the Individual’s Alcoholics Anonymous sponsor. Exhibit E contains several clinical alcohol test results. Exhibit F is a single clinical alcohol test result. Exhibit G is an email from a federal prosecutor. Exhibit H is a receipt for payment related to the 2024 DWI.

<sup>3</sup> References to the LSO exhibits are to the exhibit number and the page number of the combined .pdf of the exhibit book.

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 or her 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.* § 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**

The Individual has been arrested and charged with DWI three times. In 1997, the Individual received his first DWI after he consumed several beers and drove home. Transcript of Hearing, OHA Case No. PSH 25-0059 (Tr.) at 70. That case was dismissed on procedural grounds. *Id.* at 71. He received a second DWI in 2002 under similar circumstances. *Id.* As a result, he received a deferred sentence that required him to participate in group counseling to address his alcohol use. *Id.* at 72; *see also* Ex. 12 at 64.

In 2023, the Individual's father passed away, and his wife observed that the Individual increased his alcohol consumption as a result. Tr. at 15 (the Individual's wife testifying that he took his father's death very hard and did not address his grief). In April 2024, the Individual received his third DWI. *Id.* at 73. The night of his arrest, he reported consuming four alcoholic beverages (including two mixed drinks that contained an unknown amount of alcohol) before being stopped by law enforcement while driving. *Id.* at 74–76. The Individual was under the influence of alcohol at the time of his arrest. *Id.* at 76 (stating he "wasn't sober"). He failed officer-administered standardized field sobriety tests and refused to submit to an alcohol breath test. Ex. 8 at 36–37. He was arrested and charged with DWI under both tribal code and federal statute. Ex. 10 at 51 (tribal); *id.* at 52 (federal).

After his most-recent arrest, the Individual immediately decided to abstain from alcohol. Tr. at 79. On the same night, the Individual's wife observed that he was remorseful and embarrassed, and he told her that he would never consume alcohol again. *Id.* at 19, 25–26. He also told his supervisor that he intended to remain sober. *Id.* at 44. He proactively contacted Alcoholics Anonymous (AA) days after his arrest, and he started to abstain from alcohol the day after his arrest. *Id.* at 20, 78,

81; Ex. 12 at 61, 63 (giving his AA start date as April 26, 2024). He reached out to AA because he realized his problem with alcohol jeopardized his job and ability to support his family. Tr. at 79–81, 85. He attended eight meetings during the first two weeks of participating in AA. *Id.* at 21; Ex. C at 1.

In May, the Individual was evaluated by his employer’s Fitness for Duty program (FFD).<sup>4</sup> Ex. A. The FFD recommended that the Individual participate in individual therapy, continue AA meetings, and undergo Phosphatidylethanol (PEth)<sup>5</sup> testing. *Id.* The Individual started undergoing PEth testing that same month. *Id.* The following month, he started attending weekly, individual counseling to address his grief and alcohol use. Tr. at 23, 97–98 (stating the counseling included discussions regarding alcohol use and maintaining sobriety); Ex. B.

In late August 2024, the DOE Psychiatrist evaluated the Individual. Ex. 13 at 69. The DOE Psychiatrist noted that the Individual provided inconsistent information regarding his pattern of alcohol consumption. *Id.* at 71 (for example, the Individual reported consuming three to four high-alcohol beers several nights a week but also denied ever regularly consuming alcohol during the week or regularly consuming more than two or three alcoholic beverages). However, the Individual acknowledged that he had a problem with alcohol. *Id.* at 72. In addition to reporting his history of alcohol use, the Individual reported that he had been attending counseling and AA and working the AA program with a sponsor. *Id.*

After the evaluation, the DOE Psychiatrist concluded that the Individual met several criteria for AUD for the following reasons. *Id.* at 74. First, the Individual’s history of DWIs demonstrated difficulty in fulfilling obligations because he reported that he lost his driver’s license and had to rely on family for transportation. *Id.* at 73–74. Second, his history of DWIs demonstrated that his behavior created hazardous situations. *Id.* Third, the Individual’s statements and behavior demonstrated that he minimized his alcohol use and consumed more than planned (*e.g.*, the DOE Psychiatrist opined that the Individual likely underreported his alcohol consumption because his level of impairment at the time of the 2024 DWI did not correlate with the Individual’s report of consuming four alcoholic beverages several hours before his arrest). *Id.* at 71, 73–74. Fourth, the Individual continued to use alcohol despite negative health effects (*e.g.*, the Individual reported that he had “very low iron” due to alcohol use that resulted in gastrointestinal issues, and the condition “largely reversed” after the Individual stopped consuming alcohol)<sup>6</sup>. *Id.* at 71–73. The DOE Psychiatrist therefore concluded that the Individual met sufficient criteria for a diagnosis of AUD, moderate, in early remission. *Id.* at 75 (explaining that the Individual demonstrated four symptoms of AUD and a three-month period of abstinence). In order to rehabilitate or reform from his AUD, the DOE Psychiatrist recommended that the Individual attend AA at a frequency of three

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<sup>4</sup> According to the letter, a “Fitness for Duty evaluation is required when an employee’s ability to work safely and reliably is called into question due to a medical or substance use concern, including arrests.” Ex. A.

<sup>5</sup> According to the DOE Psychiatrist, “PEth is a metabolite of ethyl alcohol, and can only be made when consumed ethyl alcohol reacts with a compound in the Red Blood Cell [] membrane . . . . PEth can still be detected in the blood for about 28 days after alcohol consumption has ceased.” Ex. 13 at 73.

<sup>6</sup> The Individual reported that he believed his iron-related health issue “is a direct result of alcohol use” because his physician said he “could be anemic from alcohol consumption. Ex. 12 at 65–66.

times a week, maintain his relationship with his AA sponsor, continue weekly counseling, and continue PEth testing he had started through his employer's FFD for nine months. *Id.* at 75–76.

Once the Individual received the Report in early December 2024, he increased his AA attendance to three times a week. Tr. at 86–87; *see* Ex. C (AA sign in sheets). AA made a significant impact on the Individual's recovery, and he realized that his alcohol use was to blame for his criminal record. Tr. at 82 (testifying, *e.g.*, that AA has “been an awakening . . . [and] a life-changing experience”). Hearing people speak in AA strengthened his resolve to remain sober. *Id.* at 84 (referring to AA as “man sharpening man, [] iron sharpening iron”). His wife has been very supportive of his recovery, and he acknowledged that any future alcohol use would jeopardize their relationship. *Id.* at 83, 91; *see also id.* at 30 (wife's testimony that she told the Individual that she would not tolerate any future alcohol use).

The Individual's AA sponsor provided substantial positive testimony regarding the Individual's progress in AA over the year they worked in the program together.<sup>7</sup> *Id.* at 51–52 (testifying that they established the sponsor relationship “almost from day one”). The Individual diligently participated in AA and worked with his sponsor daily, including phone check-ins<sup>8</sup> and individual meetings. *Id.* at 53 (explaining they studied together a “couple times a week” and that the Individual met at the sponsor's home at 4:00 a.m. because that was the only time the sponsor could meet to work the program and study), *id.* at 67 (stating that the Individual is “fully attentive, active, and he does talk” during meetings—sometimes becoming visibly emotional). The sponsor testified that the Individual demonstrated love for the AA program, which the sponsor believes is the best predictor for individual success. *Id.* at 60. The Individual's testimony concerning his work with the AA sponsor echoed the sponsor's description. *Id.* at 92–95.

Through individual counseling, the Individual learned coping mechanisms such as focusing on church, hobbies, and spending time with family. *Id.* at 90. He testified that he replaced his old friends with friends and people he met through AA, who have “been there for [him]” for the past thirteen months. *Id.* at 100–01. He intends to complete at least a year of counseling, and he intends to continue as long as recommended. *Id.* at 109–10. According to the Individual's therapist, the Individual attended weekly individual counseling from June 2024 to April 2025, and the Individual made “great progress []in reaching his treatment goals and objectives.” Ex. B.

A letter from the Individual's employer's FFD lead psychologist, dated May 19, 2025, states that the Individual “has done everything that has been asked . . . [and he] has been very proactive in his treatment.” Ex. A. The Individual also submitted the results of twelve PEth tests given at regular monthly intervals from May 2024 to April 2025. Ex. E; Ex. F. All test results were negative except for the initial test. Ex. E at 1 (the May 2024 test result was positive slightly over the detection threshold).

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<sup>7</sup> The AA sponsor had over a decade of sobriety when he met the Individual. Tr. at 50.

<sup>8</sup> The sponsor described the phone calls as discussing “daily living” and “dealing with issues, frustrations, bereavements . . . and how to deal with life on life's terms . . .” instead of using alcohol to address the same. Tr. at 62–63.

At the hearing, the DOE Psychiatrist opined that the Individual's AUD is currently in sustained remission and that the Individual's condition is reformed and rehabilitated. Tr. at 119–23. To support her opinion, the DOE Psychiatrist explained that the Individual had documented sobriety for twelve months, from May 2024 through April 2025. *Id.* at 122–23 (referencing the PETH test results and corroborating witness testimony). She also favorably considered the evidence that the Individual had been working with his sponsor for a significant period of time, including during early-hour meetings; the evidence of his counseling sessions and the therapist's opinion that the Individual had been making positive progress towards his goals; and the positive letter from the FFD psychologist. *Id.* at 119–21. The DOE Psychiatrist concluded that the Individual had therefore demonstrated abstinence in accordance with her treatment recommendations. *Id.* at 126–27. The Psychiatrist opined that the Individual had a good prognosis. *Id.* at 124.

The record demonstrates that the Individual resolved the federal charges from the 2024 DWI by paying the associated fines and fees. *Id.* at 77; *see* Ex. G and Ex. H (emailed receipt from federal district court resolving the federal citation). Neither the Individual nor his attorney have received any information or communication regarding the tribal charges from the local court system or law enforcement in over a year. Tr. at 78.

## V. ANALYSIS

### A. Guideline G Considerations

Conditions that can mitigate security concerns based on alcohol consumption include the following:

- (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.

I conclude that ¶ 23(b) applies to resolve the Guideline G concerns for the following reasons. First, there is ample evidence that the Individual acknowledged his pattern of maladaptive alcohol use.

He admitted his problem to his wife on the night of his 2024 DWI, to the DOE Psychiatrist during the evaluation, and at the hearing. He acknowledged that his conduct had put his job, health, and marriage in jeopardy. He also provided clear evidence of actions taken to overcome the problem. He began attending AA immediately after his arrest and identified and worked the program with an enthusiastic sponsor. The AA records document the Individual's regular, consistent attendance in AA for one year, and his AA sponsor provided persuasive testimony of the Individual's commitment to recovery, including daily phone calls and early-morning appointments that were in addition to regular AA meeting attendance. The Individual also attended counseling to address his alcohol use for approximately ten months. And he replaced his old friends with AA participants who, along with his wife, support his recovery. All of these actions were clearly in an effort to address his problem with alcohol. As a result, the DOE Psychiatrist concluded that the Individual's AUD was rehabilitated, reformed, and in remission, and that he had a good prognosis. Finally, the Individual demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations. He provided testimonial and clinical evidence that he has continued to remain abstinent since his April 2024 DWI, which demonstrates a year of abstinence. And he remained abstinent while participating in the AA and counseling that the FFD and DOE Psychiatrist recommended. In short, he followed all treatment recommendations. Accordingly, I conclude that the Individual has resolved the Guideline G concerns under ¶ 23(b).

#### **B. Guideline J Considerations**

Conditions that can mitigate security concerns based on criminal conduct include the following:

- (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.

I conclude that ¶ 32(d) applies to resolve the Guideline J concerns. The evidence demonstrates that the Individual's criminal conduct is inextricably linked to his history of problematic alcohol consumption because the three DWIs cited in the SSC resulted from his decision to operate a motor vehicle while under the influence of alcohol. According to my above findings under Guideline G in the preceding section, the Individual has rehabilitated and reformed his AUD. In addition to resolving the underlying cause of his criminal conduct, he has also refrained from engaging in criminal conduct for over one year since his 2024 DWI. The Individual is therefore unlikely to

engage in any future criminal conduct. He also established that he has made reasonable efforts to address his criminal charges, and he successfully resolved the federal charges by paying the fine and court costs. Based on the evidence of his efforts, and the lack of communication from the local jurisdiction, I conclude that his inability to resolve the presumed-outstanding tribal charge does not outweigh the significant evidence of his rehabilitation. Accordingly, I conclude that the Individual is successfully rehabilitated. The Individual has therefore resolved the Guideline J security concerns.

## **VI. CONCLUSION**

In the above analysis, I found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Guideline G and Guideline J of the Adjudicative Guidelines. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I conclude that the Individual brought forth sufficient evidence to resolve the Guideline G and J security concerns. 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.

James P. Thompson III  
Administrative Judge  
Office of Hearings and Appeals