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United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing
Filing Date: January 23, 2025

Case No.: PSH-25-0063

Issued: July 25, 2025

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (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."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 should be granted access authorization.

I. BACKGROUND

The Individual is an employee of a DOE contractor in a position that requires a security clearance. In August 2024, the DOE Local Security Office (LSO) learned that the Individual had been arrested and charged with Driving Under the Influence (DUI). The LSO also determined that he had failed to timely report his arrest within three working days. As a result of the alcohol-related arrest, 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 results of the DOE Psychiatrist's evaluation, 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 E, G, and J of the Adjudicative Guidelines.

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.

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 appointed me as the 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 twenty-three exhibits, marked Exhibits A through W.² The LSO submitted eleven exhibits, marked Exhibits 1 through 11.³

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

As indicated above, the LSO cited Guideline E (Personal Conduct), 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.

Guideline E provides that "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." Adjudicative Guidelines at ¶ 15. "Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes." *Id.* Conditions that could raise a security concern include:

. . .

- (b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to a[] . . . competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination . . .

. . . .

Id. at ¶ 16.

The SSC cites that the Individual failed to report his August 2, 2024, DUI arrest within three days, as required by DOE O 472.2A.⁴ Ex. 1 at 5. The SSC further states that the Individual failed to disclose the same arrest during his August 9, 2024, evaluation with the DOE Psychiatrist. *Id.* However, as discussed below in Section V, the record establishes that the Individual was arrested

² The Individual submitted Exhibit V separately from the combined .pdf exhibit book that contains the Individual's other exhibits. Except for Exhibit V, references to the Individual's exhibits are to the exhibit letter and the page number of the combined exhibit book.

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

⁴ Applicants for and covered individuals who hold a security clearance must report "[a]rrests, criminal charges (including charges that are dismissed), citations, tickets, . . . or detentions by Federal, state, or other law enforcement authorities for violations of law within . . . the U.S." DOE O 472.2A (2022), Attachment 5, at 5-1-5-4. The above information must be reported "within three (3) working days after the situation or incident." *Id.* at ¶ 4(w)(5).

on August 9, after the evaluation, and that he reported the arrest on August 11, just two days later. Therefore, the LSO has not alleged conduct that raises a security concern under Guideline E.

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 . . . or other incidents of concern . . .”; “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder . . .”; 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), (c)–(d). The SSC cites the DOE Psychiatrist’s opinion in an August 2024 report (Report) that the Individual met sufficient criteria in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision*, for a diagnosis of Alcohol Use Disorder (AUD), Mild, in Early Remission, and “habitually or binge consumes alcohol to the point of impaired judgment” without adequate evidence of rehabilitation or reformation. Ex. 1 at 5. The SSC also cites that the Individual has a history of three DUIs, which occurred in 2024, 2023, and 2021. Ex. 1 at 5–6. The cited information justifies the LSO’s invocation of Guideline G.

Under Guideline J, “[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 cites the three DUIs referenced above under Guideline G, which justifies 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 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

Prior to his August 2024 DUI, the Individual had been arrested and charged with DUI in 2021 and 2023. Ex. 2 at 13. Both times his blood alcohol concentration (BAC) was over the legal limit of .08. *Id.* He resolved his first DUI by pleading guilty to the lesser charge of Driving While Ability Impaired (DWAI). Ex. 8 at 44. He was not required to attend alcohol-related counseling or treatment. *Id.* However, he stopped consuming alcohol for a couple of months. *Id.* As for his second DUI, he again resolved his charges by pleading guilty to DWAI, and again he was not required to undergo any alcohol-related treatment. *Id.* at 47–48; Ex. 7.

The Individual met with the DOE Psychiatrist on August 9, 2024. Ex. 8 at 45. During the course of the evaluation, the Individual admitted that he had consumed approximately eight standard alcoholic beverages in the three hours before his first DUI and “five or six beers” within “a couple hours” prior to his second DUI. *Id.* at 45–47. He also reported becoming intoxicated “every couple months.” *Id.* at 48. As for his history of alcohol consumption, he reported that he would generally consume two alcoholic drinks a week, and he disclosed that he was last intoxicated a few months prior to the evaluation after consuming approximately six beers over approximately two hours. *Id.* at 48. The Individual told the DOE Psychologist that he intended to “drink only in moderation” and “[n]ot drink and drive.” *Id.*

As part of the evaluation, the Individual underwent a test for the presence of Phosphatidylethanol (PEth), which is only created “when consumed ethyl alcohol reacts with a compound in the red blood cell membrane.” *Id.* at 50. The PEth test was administered to evaluate the Individual’s recent alcohol consumption because PEth can be detected in the blood “for about twenty-eight days after alcohol consumption has ceased.” *Id.* After comparing the results of the Individual’s PEth test with the Individual’s reported consumption of alcohol over the past month, the DOE Psychiatrist concluded that it was “likely” that the Individual had under-reported his recent consumption. *Id.* (comparing the Individual’s positive test result barely over the detection threshold⁵ with the Individual’s report of consuming one beer five days before the exam and three beers three weeks before that—an amount which the DOE Psychiatrist concluded would “most likely result in a negative result”). The DOE Psychiatrist concluded that the Individual met sufficient criteria to diagnosis him with AUD, Mild, without adequate evidence of rehabilitation or reformation. *Id.* at

⁵ The detection threshold for a positive PEth test is 20 ng/mL. Ex. 8 at 50. The Individual’s result was 22 ng/mL. *Id.* According to the DOE Psychiatrist, the Individual’s test result “generally indicates light to moderate alcohol consumption over the past month.” *Id.* The interpretive guidance provided by the laboratory on the test result states that “PEth levels in excess of 20 ng/mL are considered evidence of moderate to heavy ethanol consumption.” *Id.* at 54.

51–53 (opining that the Individual met three of the eleven criteria for diagnosis of AUD). The DOE Psychiatrist also concluded that the Individual met the definition of a “binge consumer” of alcohol. *Id.* at 52–53 (relying upon the Individual’s admitted episodes of intoxication and, as recently as a few months before the evaluation, admitted consumption of six alcoholic beverages at a social event). *Id.* The DOE Psychiatrist recommended that, to demonstrate adequate evidence of rehabilitation or reformation, the Individual should maintain sobriety and enter into outpatient treatment of moderate intensity for at least six months, including weekly SMART⁶ group counseling or individual counseling with an AUD treatment professional. *Id.* at 53.

On the evening of August 9, 2024, the Individual received his third DUI. Ex. 6 at 29 (arrest report indicating the Individual had a BAC over the legal limit); Transcript of Hearing, OHA Case No. PSH-25-0063 (Tr.) at 63. He reported the arrest to the DOE on August 11, 2024. Ex. 6 at 26. Shortly after his arrest, the Individual met with a counselor from his employer’s Fitness For Duty program (FFD). Tr. at 73. That counselor encouraged the Individual to enroll in an Intensive Outpatient Treatment Program (IOP), and the Individual did enroll a few months later. *Id.* at 74 (the Individual testifying that he was hesitant at first but “ultimately accepted” the counselor’s advice). Prior to enrolling in the IOP, the Individual began attending SMART recovery group counseling in October 2024, and he stopped attending SMART once he began the IOP in December 2024. *Id.* at 16, 77–78, 80. The twelve-week IOP involved two group sessions and one individual counseling session each week. *Id.* at 17–18. The Individual successfully completed the IOP in April 2025. *Id.* at 19–20 (the IOP counselor testifying that the Individual demonstrated the ability to identify his triggers for alcohol use and implement acceptable coping mechanisms to address them, that he took responsibility for his behaviors, and that he was fully engaged throughout treatment); Ex. H (IOP certificate of completion). After the Individual completed the IOP, he enrolled in aftercare treatment with the same provider, which, by the July 2025 hearing date, he had been attending for approximately three months. Tr. at 21, 85 (testimony that he continues to participate in monthly aftercare sessions and weekly SMART meetings). He intends to continue his participation beyond the hearing date. *Id.*

The Individual has also maintained abstinence since the date of his August 2024 DUI. Tr. at 34, 36 (testimony of the Individual’s roommate that the Individual had not consumed alcohol for “nearly a year”)⁷; *id.* at 54–55 (work colleague testifying that, in the last twelve months, he had observed the Individual refrain from consuming alcohol when socializing at work-related conferences and receptions); *id.* at 67 (Individual’s testimony). PEth test results covering the same period corroborate the same. Ex. L–V (monthly negative PEth test results from late September 2024 through July 2025). The Individual stopped consuming alcohol after he “realiz[ed] that alcohol was having some really significant . . . , negative consequences in [his] life.” Tr. at 68.

⁶ “SMART stands for Self Management and Recovery,” which is a program “focused on empowering individuals to take ownership of their own recovery through the development of emotional intelligence and advanced coping skills.” Ex. I at 13.

⁷ The roommate testified that on one, single occasion in March 2025 he observed the Individual have “one sip as a taste” of an “expensive” wine that a mutual friend brought to their home and, despite the Individual’s emphatic refusal to accept a glass, the mutual friend succeeded in getting the Individual to take a taste. Tr. at 42. The Individual confirmed the same. *Id.* at 67. The DOE Psychiatrist testified that this instance is not very substantial nor a clinical relapse or warning sign. *Id.* Instead, the DOE Psychiatrist viewed it as the Individual essentially being “forced” to taste the wine given the pushy demands of the guest attempting to show off an expensive treat. *Id.* at 133.

During treatment, the Individual reported feeling healthier as a result of abstaining. *Id.* at 26. He decided that he will not use alcohol again in the future. *Id.* at 69; *see also id.* at 26–28 (the Individual’s counselor’s testimony that the Individual told her the same), 40 (testimony of the roommate that the Individual stated his intention to remain sober indefinitely).

The Individual agreed with the DOE Psychiatrist’s conclusion that he had an AUD. *Id.* at 71 (Individual acknowledging that “one of the defining characteristics of [AUD] is continuing to use alcohol in spite of the consequences that it’s having in your life”). He also confirmed that, prior to his recent DUI, he would occasionally engage in binge drinking on Fridays and Saturdays. *Id.* at 105. He testified that the IOP and aftercare treatment required a high level of introspection, which led him to realize how his relationship with alcohol had impacted his life. *Id.* at 84.

At the hearing, the DOE Psychiatrist opined that it is very common for individuals to underreport their alcohol consumption—especially during a clinical evaluation precipitated by employer or government concerns regarding alcohol use. *Id.* at 121–22. The DOE Psychiatrist also testified that his Report would have contained additional recommendations had he known about the DUI that happened subsequent to the evaluation. *Id.* at 130. Namely, the DOE Psychiatrist would have recommended a more intense treatment regimen and a longer period of sobriety. *Id.* However, the DOE Psychiatrist testified that he was impressed by the Individual’s eleven months of sobriety and the effort he had put into treatment from the evaluation to the hearing date. *Id.* at 134. The DOE Psychiatrist concluded that, based on the same, the Individual had provided adequate evidence of rehabilitation and reformation of the AUD, the Individual had a good prognosis, and the Individual no longer engaged in the binge consumption of alcohol. *Id.* at 135–36.

Lastly, the Individual established that the prosecutor’s office initially dismissed the 2024 DUI charges shortly after his arrest and then refiled the charges nine months later in May 2025. *Id.* at 99–100 (explaining that this is common in the jurisdiction given the large backlog of cases); *see* Ex. D at 5 (August 12, 2024, notice of dismissal of the charges), and Ex. F (May 20, 2025, notice of refiled charges). He expects to resolve the charges through a plea deal. Tr. at 101, 115.

V. ANALYSIS

A. Guideline E Considerations

The allegations cited in the SSC under Guideline E do not establish a security concern. The record is clear that the Individual did timely report his arrest within three days. The arrest report in the record provides the correct date of his arrest as August 9, and he reported the arrest on August 11. Furthermore, the Individual’s arrest occurred on the evening of August 9, after his evaluation, and therefore he could not have concealed the information during the evaluation because the incident had not yet occurred. Accordingly, I conclude that the Individual’s conduct does not raise a Guideline E concern.

B. 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) and ¶ 23(c) apply 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 acknowledged that he had an AUD, that he had engaged in binge drinking, and that his past alcohol use had negatively impacted his life. He also provided clear evidence of actions taken to overcome the problem, and there is no evidence in the record that the Individual has ever relapsed after engaging in alcohol treatment. He began attending SMART meetings in October 2024 after his arrest and enrolled in the IOP in December 2024 after accepting the recommendation of the FFD counselor. He completed the IOP and continued to participate in aftercare up to the hearing date, and he is committed to continuing to participate in SMART meetings and aftercare. Therefore, he has been engaged in treatment for approximately nine months, and his counselor established that he had made positive improvement in the program. After evaluating the record of the Individual's treatment and documented abstinence, the DOE Psychiatrist concluded that the Individual's AUD had been rehabilitated and reformed and that the Individual had a good prognosis. I therefore conclude that the Individual is making satisfactory progress in his treatment program. Lastly, 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 August 2024 DUI, which demonstrates just under a year of abstinence, and he remained abstinent throughout the treatment that had been recommended by the DOE Psychiatrist and FFD counselor. In short, he maintained abstinence while following all treatment recommendations. Accordingly, I conclude that the Individual has resolved the Guideline G concerns under ¶ 23(b) and ¶ 23(c).

C. 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 find that ¶ 32(d) applies to resolve the security concerns. The evidence demonstrates that the Individual's criminal conduct is inextricably linked to his history of problematic alcohol consumption because the three DUIs 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 and no longer binge consumes alcohol to the point of impaired judgment. In addition to resolving the underlying cause of his criminal conduct, he has also refrained from engaging in any criminal conduct for almost one year since his 2024 DWI. I conclude that the Individual is therefore unlikely to engage in any future criminal conduct. After considering the above evidence, 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, but not under Guideline E 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 find that the Individual brought forth sufficient evidence to resolve the Guideline G and Guideline J security concerns set forth in the SSC. Accordingly, I have determined that the Individual should be granted access authorization.

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