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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: May 1, 2025	)	Case No.:	PSH-25-0113
	)		
	)		

Issued: October 21, 2025

Administrative Judge Decision

James P. Thompson III, Administrative Judge:

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

I. BACKGROUND

The Individual is employed by a DOE contractor in a position that requires a security clearance. In September 2024, the DOE Local Security Office (LSO) learned that the Individual had been arrested and charged with Aggravated Driving While Under the Influence of Intoxicating Liquors or Drugs (DUI)[2]. As a result, the LSO requested that the Individual be evaluated by a DOE-consultant Psychologist (DOE Psychologist). Based on the information gathered by the LSO, including the DOE Psychologist'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.

[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] As described below, the Individual has a history of being charged with alcohol related criminal charges that have different titles but are all essentially driving or operating a motor vehicle while under the influence of alcohol. Therefore, this Decision will refer to these various charges as DUI.

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 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 Psychologist. The Individual submitted eleven exhibits, marked Exhibits A through K. The LSO submitted eighteen exhibits, marked Exhibits 1 through 18.[3]

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.

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 . . .", "habitual or binge consumption of alcohol to the point of impaired judgment . . .", 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 cited that the DOE Psychologist concluded that the Individual met 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; the Individual was arrested and charged with DUI in September 2024; the Individual admitted to becoming intoxicated two to three times a week for the five months leading up to his September 2024 DUI; he was also diagnosed in March 2023 as meeting the criteria of AUD, mild; he was arrested and charged with DUI in 2022; and he was arrested and charged with DUI in August 2012.[4] Ex. 1 at 6–7. 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 DUIs cited above under Guideline G. Ex. 1 at 7. The SSC also cited that the Individual was charged with Negligent Use of a Firearm after getting into an argument with people, retrieving his

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

[4] The SSC also alleged that the Individual participated in an administrative review hearing in 2023, during which he testified that he would retrain from alcohol consumption in the future, through which his security clearance was restored. Ex. 1 at 6. While these alleged facts are relevant to the application of the Adjudicative Guidelines in this proceeding, they do not present discrete security concerns under Guideline G.

pistol, and then arguing with a different group of people; the Individual was charged with Careless Driving in connection with his 2012 DUI; in 2011 the Individual was charged with Unlawful Use of a License and Careless Driving; in 2009, he was charged with Speeding and License Not in Possession; and in 2008 the Individual was arrested and charged with Larceny. *Id.* The cited information 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 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 admitted as true the allegations contained the SSC, outlined above. Ex. 2 at 13. This is the second administrative review hearing that the Individual has been subject to as a result of his concerning alcohol consumption; the Individual underwent his first administrative review hearing in 2023 as a result of being arrested and charged with DUI in October 2022. Ex. 10 (decision in OHA Case No. PSH-23-0099). At the time of his arrest, his blood alcohol content was over twice the legal limit. Ex. 7 at 29 (stating that his blood alcohol content was 0.19). He was subsequently evaluated by a DOE consultant psychologist who issued a report in March 2023 that concluded that the Individual met sufficient diagnostic criteria for a diagnosis of AUD, Mild, in early remission. Ex. 15 at 238. That psychologist's opinion noted that at the time of the evaluation the Individual had successfully abstained from alcohol for six months and had been receiving alcohol-related counseling. *Id.* at 236, 238. That psychologist also provided several recommendations to address the AUD, including continuing the alcohol-related counseling that the Individual had initiated prior to the evaluation and remaining abstinent for another six months as demonstrated by quarterly clinical testing for recent alcohol consumption in the form of a Phosphatidylethanol (PEth) test[5]. *Id.* at 238–39 (noting that he did not recommended an Intensive Outpatient Program). During the 2023 administrative review hearing, which only considered his alcohol use as a security concern and not his criminal conduct, the Individual testified that in counseling he learned that the underlying issue that led him to his improper alcohol use was his inability to effectively communicate with his partner. Ex. 11 at 123. He had used alcohol to numb his feelings and avoid his emotions, and therapy helped him realize that alcohol only made things worse. *Id.* at 123–24. He also provided evidence that persuaded the Administrative Judge and the original DOE psychologist that he had remained abstinent for one year by the hearing date. Ex. 10 at 65; Ex. 11 at 155. Accordingly, the original DOE psychologist opined during the hearing that the Individual had demonstrated rehabilitation or reformation from his AUD. Ex. 11 at 157. However, that psychologist also noted that while the Individual intended to remain abstinent into the future, he did not appear firm in his conviction, which the psychologist believed put him at risk to consume alcohol in the future. *Id.* at 162. He consequently concluded that the Individual had a "slightly above average" potential to sustain his sobriety. *Id.* at 165. The Administrative Judge in that case concluded that the Individual successfully mitigated the concerns derived from his concerning use of alcohol and that his security clearance should be restored. Ex. 10 at 66.

The precipitating event for the present administrative review hearing is the Individual's 2024 DUI. In September of that year, the Individual was arrested and charged after he consumed approximately thirteen alcoholic beverages. Ex. 13 at 208. He was also charged with Negligent Use of a Firearm because he was seen carrying a loaded weapon around other individuals, some with whom he had been arguing. *Id.* at 210. During the evaluation with the DOE Psychologist, the Individual described that in about May 2024, he began consuming beer again a few times a week and then in July 2024 he began consuming liquor two to three times a week, which often resulted in arguments with his current spouse. Ex. 13 at 207 (noting the Individual had abstained for approximately seven months after his previous hearing before beginning to consume alcohol again). The Individual underwent a PEth test during the evaluation, and the results were negative for recent alcohol use. *Id.* at 208. The DOE Psychologist diagnosed him with AUD, Moderate, in Early Remission. *Id.* at 210. The DOE Psychologist based her opinion on the Individual's history of DUIs, his failure to remain abstinent despite his stated intention to do so during his first administrative hearing, and that his alcohol use led to interpersonal troubles with his family. *Id.* The DOE Psychologist also opined that the Individual could demonstrate rehabilitation by attending an Intensive Outpatient Program (IOP), abstaining from alcohol, and completing monthly PEth testing for one year or reformation by completing PEth testing monthly for eighteen months and demonstrating lifestyle changes with effective coping mechanisms. *Id.* at 210–11.

At the hearing, the Individual testified that he last consumed alcohol on the date of his September 2024 DUI, which would represent approximately eighteen months of abstinence from alcohol. Transcript of Hearing, OHA Case No. PSH-25-0113 (Tr.) at 10. The Individual had also enrolled in and successfully completed the specific twelve-week IOP identified by the DOE Psychologist in the Report. *Id.* at 11–12 (testifying that the IOP consisted of three group and one individual

[5] "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 (RBC) membrane." Ex. 13 at 208. It "builds up in the RBC membrane PEth with repeated drinking episodes . . . . [and] can still be detected in blood for about 28 days after alcohol consumption has ceased." *Id.*

treatment sessions each week); *see also* Ex. D (IOP certificate of completion). After the IOP, the Individual enrolled in and has been attending aftercare treatment recommended by the IOP provider. Ex. A (August 2025 letter from IOP and aftercare provider). The Individual attends aftercare twice a month and has two months to go before completing the six-month program. Tr. at 16–17. He testified that during the individual and group aftercare meetings he focuses on triggers, his goals, and what he has been doing to keep himself healthy. *Id.* at 13–14, 16–17. He testified that his two main goals are improving communication and patience. *Id.* at 18. He believes that he has made huge improvements on his communication skills and facing his problems rather than using alcohol. *Id.* He specified that his communication has improved with everyone in his life, including his family, friends, wife, and mother. *Id.* at 51.

The Individual testified that he originally began consuming beer again prior to his recent DUI because he thought he could handle it and, at the time, he did not believe he was not in control; he has since learned that he cannot control his alcohol consumption. Tr. at 21–26, 29. He also testified that he had previously avoided telling his family members, including his current wife, that he had resumed alcohol consumption even though at the hearing during his first administrative review process, he identified some of them as people he could turn to in case of relapse. *Id.* at 26. He testified that he tried to hide his drinking from them and that his wife knew he was consuming alcohol but did not ask him about it. *Id.* at 26–27.

The Individual testified that, after his security clearance was restored in 2023, he stopped going to counseling. Tr. at 28. He testified that he remained abstinent for a total of about eighteen months before he began consuming alcohol again. *Id.* at 50. He testified that, by April 2024, he was drinking to intoxication two or three times per week and, at the time, believed he was controlling his drinking. *Id.* at 29. He testified that he now sees that he was not in control at all. *Id.* at 29–30. He believed that had he not been arrested for DUI in September 2024, he would have continued with that pattern of alcohol consumption indefinitely. *Id.* at 30. The Individual testified that he did not plan to continue treatment after he finished his six months of aftercare. *Id.* at 36.

The Individual testified that he "can use anything, probably, as a trigger sometimes," including "gloomy, rainy" weather, songs he used to hear at parties, social events, family members consuming alcohol, camping, stress, anxiety, and depression. Tr. at 31. He testified that his "biggest skill" for dealing with these triggers was "just loving [him]self and really loving who [he is] sober" because he cannot avoid all his triggers. *Id.* at 32. He testified that, for example, he did not want to have to miss birthday parties because alcohol would be served there. *Id.* He testified that he felt a sense of pride when turning down drinks offered to him at parties and concerts and that he loved the respect he was receiving from family and friends because of his choice not to drink. *Id.* at 33–36. He did not have a plan in the event that he someday began thinking that he could drink in moderation because returning to alcohol consumption was not an option for him. *Id.* at 35–35.

The charges against the Individual related to his 2024 DUI case were dismissed through his participation in a diversion program. Tr. at 44; Ex. B. He submitted evidence showing completion of the court-mandated treatment, victim impact panel, and community service from his 2024 DUI arrest. Ex. E; Ex. F; Ex. G; Tr. at 36–41. He still has to maintain an interlock device in his car until January 2026. Tr. at 45. The Individual also submitted the results of three PEth tests, administered in June, July, and August 2025, all of which returned negative results. Ex. J; Ex. K; Ex. M. He testified that, while he was in the IOP, he took several breathalyzer tests per week and, while in aftercare, he took a breathalyzer test twice per month. Tr. at 43. He testified that all of these tests returned a negative result. *Id.*

The Individual testified that he had his firearm with him on the night of his 2024 arrest because it had a flashlight on it and he was using it to find his way at a campsite. Tr. at 49–50. He stated that he made the wrong decision and that alcohol had contributed to it. *Id.* He acknowledged that the behavior was risky and could have resulted in harm to himself if police had felt threatened by the firearm and shot him. *Id.* at 50.

At the hearing, the DOE Psychologist testified that she had recommended, if the Individual attended an IOP, one year of sobriety documented by PEth tests because that is the length of time required, diagnostically speaking, to move into sustained remission from AUD. Tr. at 58. She testified that if the Individual had not attended an IOP, eighteen months of sobriety documented by PEth tests could be used, in conjunction with evidence of lifestyle changes and effective coping skills, to show reformation. *Id.* at 59. She clarified that breathalyzer tests covered a period of twelve to twenty-four hours and, therefore, were not a reliable method of ensuring continuous sobriety over a long period of time. *Id.* at 60. She testified that without the scientific evidence of abstinence that PEth tests provided, she was not sure of the Individual's continuous sobriety and, therefore, his rehabilitation or reformation. *Id.* at 61–63, 73. The DOE Psychologist also noted that, while she believes the Individual is on the right path, he appeared to be on the right path in his previous administrative review hearing. *Id.* at 63–64. She credited the Individual for his insight, but testified that it sounded very much like what she had read from the Individual's testimony in the 2023 hearing. *Id.* at 64. She expressed concern that once external accountability ended, the Individual may return to alcohol consumption again. *Id.* at 63–65, 67. She stated that the Individual would have a good prognosis if she could be certain of his continuous abstinence since September 2024. *Id.* at 73, 76.

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 none of the above mitigating factors apply to resolve the Guideline G concerns for the following reasons. I find that ¶ 23(a) does not apply because that mitigating condition is based on the passage of time, infrequency of the conduct, or unusual circumstances under which the conduct occurred such that the concerning conduct is unlikely to recur. Here, the Individual repeated the concerning conduct within two years of having his clearance restored, making the conduct not only recent, but also relatively frequent and, based on the Individual's recidivism, with the potential to recur. The strongest evidence of what the Individual will do after receiving a positive administrative decision is what he did in just such a scenario. The Individual has not provided evidence of rehabilitation sufficient to overcome the fact that he relapsed and engaged in further alcohol-related illegal conduct after attending treatment and going through administrative review.

Second, I find that ¶ 23(b) does not apply to resolve the security concerns. While he has shown evidence of steps taken to treat his AUD, he did not provide sufficient evidence of sobriety to demonstrate a pattern of abstinence. The minimal period of time measured by the breathalyzer tests the Individual claimed to have undergone makes them insufficient to corroborate the abstinence from alcohol that the Individual claimed to have established. As the Individual did not comply with the DOE Psychologist's recommendation for monthly PEth testing, and has not brought forth alternative evidence to substantiate his claimed abstinence from alcohol, I find that he has not demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations.

Lastly, I find that ¶ 23(c) and ¶ 23(d) do not apply for the following reasons. While the Individual is currently participating aftercare, which is a treatment program, he previously participated in alcohol-related counseling and, despite his stated intent to remain abstinent after a positive administrative decision, began consuming alcohol again shortly thereafter. This relapse precludes application of ¶ 23(c). The Individual also has not completed aftercare as contemplated by ¶ 23(d). Moreover, as stated previously, he has not provided sufficient evidence to demonstrate a pattern of abstinence.

For the foregoing reasons, I find that the Individual has not mitigated the Guideline G security concerns.

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. Mitigating conditions (b) and (c) are not relevant in this case because the Individual admits to his offenses and has not claimed that he was coerced.

I find that ¶ 32(a) does not apply for the same reason that ¶ 23(a) does not apply: That mitigating condition is based on the passage of time, infrequency of the conduct, or unusual circumstances under which the conduct occurred such that the concerning conduct is unlikely to recur and the Individual reoffended within just two years. The Individual's criminal conduct continues to cast doubt on his judgment, reliability, and trustworthiness because his decision-making while intoxicated has led to criminal conduct multiple times and he has not demonstrated that he can remain abstinent from alcohol long-term.

I find that ¶ 32(d) also does not apply because in this instance part of rehabilitation is rehabilitation from the alcohol use that led to the Individual's criminal conduct. Without evidence of continuous sobriety, the question of his alcohol consumption remains unresolved and I cannot find that he will not reoffend again if I cannot find that he is unlikely to be in the same position just a few years from now. Moreover, the Individual has not completed his court required period of required interlock use in his car, indicating that he has not completely resolved the legal requirements of his case. The Individual also brought forward no evidence of having paid restitution or of job training or higher education. While the Individual has demonstrated compliance with the diversion program, the positive evidence of rehabilitation from these actions is insufficient to demonstrate rehabilitation considering the relatively short period of time since the Individual's 2024 DUI, the Individual's history of alcohol-related offenses, and the doubt as to the Individual's resolution of his maladaptive alcohol use.

For the foregoing reasons, I find that the Individual has not mitigated 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 has not brought forth sufficient evidence to resolve the Guideline G and J 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.

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