

respectively). DOE Ex. 1. The Notification Letter also informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the security concerns. *Id.*

The Individual requested a hearing on this matter. DOE Ex. 2. The LSO forwarded his request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. At the hearing, the DOE Counsel introduced nine exhibits into the record (DOE Exs. 1-9) and presented the testimony of one witness, the DOE psychiatrist. The Individual, represented by Counsel, presented his own testimony, as well as the testimony of three witnesses: his wife, his Alcoholics Anonymous (AA) sponsor, and his supervisor. *See* Transcript of Hearing, Case No. PSH-11-0047 (hereinafter cited as “Tr.”).

II. REGULATORY STANDARD

The regulations governing the Individual’s eligibility for access authorization are set forth at 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” The regulations identify certain types of derogatory information that may raise a question concerning an individual’s access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Hearing Officer considers relevant factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors. *See* Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House) (Adjudicative Guidelines).

Ultimately, the decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that “the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id. See generally Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

III. FINDINGS OF FACT AND ANALYSIS

A. Whether the LSO Properly Invoked Criteria J and L

1. The Individual’s Alcohol Use

The Individual began drinking alcohol at age 17 or 18. DOE Ex. 6 at 5. During his early to mid-20s, the Individual drank several times per week, and he drank to intoxication one to two times per week. *Id.* at 4. In March 2005, the Individual was arrested for Driving Under the Influence of Alcohol (DUI), with a breath alcohol content at the time of his arrest of 0.106. *Id.*; *see also* DOE Ex. 9 at 78. As a result of his DUI arrest, the Individual was placed on probation for a period of two years. *Id.* Among the various terms of his probation was that the Individual not consume any alcohol, a condition with which the Individual did not comply. DOE Ex. 6 at 4. From his mid-20s to his early 30s, the Individual's alcohol consumption decreased slightly, both in frequency and volume. *Id.* at 5. As of early 2012, the Individual consumed alcohol one to two times per week, and drank to intoxication approximately twice per month. *Id.* at 5.

As noted above, the Individual was evaluated by the DOE psychiatrist. Following the evaluation, the DOE psychiatrist determined that the Individual was a user of alcohol habitually to excess, but did not currently qualify for a diagnosis of Alcohol Abuse because he had not had any "negative outcome from his drinking" since his 2005 DUI arrest. DOE Ex. 6 at 9. The DOE psychiatrist noted as a positive factor that the Individual had not increased his alcohol consumption to his "pre-DUI" levels, but he had also not recognized that he was at risk for alcoholism due to his family history and past excessive consumption. *Id.* The DOE psychiatrist determined that in order to demonstrate adequate evidence of rehabilitation and reformation, the Individual could either establish that he has reduced his alcohol intake to "minimal" for at least two years, defining "minimal" intake as no more than one drink per day, and no more than 12 drinks per month. Alternatively, the Individual could attend AA meetings for one year, or participate in an alcohol abuse treatment program for six months, and establish a minimum of two years of abstinence from alcohol. *Id.* at 10. Finally, the DOE psychiatrist opined that although the Individual did not yet demonstrate evidence of rehabilitation or reformation, several factors in his life supported his ability to do so, including his wife's support, his high regard for his job and unwillingness to jeopardize his position with the DOE contractor, and his high level of maturity and insight, particularly now that he was aware of his risk factors. *Id.*

2. The Individual's Non-Alcohol Related Arrest

The Individual began smoking marijuana at age 16, and used the substance frequently. DOE Ex. 6 at 3. In February 2001, the Individual was arrested for Possession of Marijuana and Possession of Paraphernalia, and was placed on probation for six months. *Id.* The Individual reduced his marijuana use in 2005 because he did not like how it made him feel, and he stopped using the substance altogether in March 2010. *Id.* at 4.

3. The Associated Security Concerns

Criterion J relates to conduct indicating that the Individual has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). It is well-established that excessive use of alcohol raises security concerns because "excessive 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, Guideline G, ¶ 21. *See also Personnel Security Hearing, Case No.*

TSO-0678 (2008).² In light of the DOE psychiatrist's determination that the Individual was a user of alcohol habitually to excess, the LSO properly invoked Criterion J.

Criterion L concerns circumstances tending to show that the Individual is "not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l). It is well-established that criminal conduct raises doubts as to an individual's honesty, reliability and trustworthiness, and raises security concerns under Criterion L. *See* Adjudicative Guidelines, Guideline J, ¶ 30 ("Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations."); *see also Personnel Security Hearing*, Case No. TSO-0507 (2007). Given the Individual's past arrests, the LSO had sufficient grounds to invoke Criterion L.

B. Whether the Individual Has Mitigated the Security Concerns

1. Criterion J – Alcohol Use

Among the factors that may serve to mitigate security concerns raised by an individual's alcohol use are that "the individual acknowledges his or her ... issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)," and that "the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program." Adjudicative Guidelines, Guideline G, ¶ 23.

At the hearing, the Individual testified candidly regarding his past alcohol consumption. He stated that he generally consumed alcohol on weekends, and that on those occasions he typically continued to drink until he felt "buzzed" or intoxicated. Tr. at 16. The Individual acknowledged that he continued to drink after his 2005 DUI, stating that he was immature about drinking and that alcohol was part of his lifestyle at the time. Tr. at 17-18. However, the Individual's evaluation with the DOE psychiatrist made him think about the role alcohol played in his life, particularly given his positive family history for alcohol problems. Tr. at 12-13.

The Individual has been abstinent from alcohol since January 2012, six months as of the hearing. He consumed his last drink three days before meeting with the DOE psychiatrist. Tr. at 28. He does not have any alcohol in his home, and alcohol is no longer part of his social life. Tr. at 40, 45-46. The Individual stated that he has a group of close friends who are all aware that he does not drink. Tr. at 46. He stated that his abstinence from alcohol has been a "very positive thing" and that since he stopped drinking his already-stable relationship with his wife has strengthened,

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

he is more spiritual than in the past, and his physical health has improved. Tr. at 40-41, 47, 53-54. In short, he is “happier now.” Tr. at 55.

In addition to becoming abstinent from alcohol, the Individual decided to begin attending AA meetings shortly after his evaluation with the DOE psychiatrist. He went to his first meeting in early February 2012, three days after the evaluation. Tr. at 13. The Individual stated that, initially, he was not very engaged in the program. During that time he was angry and still did not believe that he had a problem with alcohol. Tr. at 20. After speaking with a friend who had gone through a similar experience, the Individual came to realize that his anger stemmed from “being scared.” *Id.* Participating in AA helped the Individual learn that he did have a problem with alcohol because, on the occasions he did drink, he could not control how much alcohol he consumed. Tr. at 19. The Individual now actively works with an AA sponsor and is working the AA program’s 12 steps. Tr. at 35-36. He also enjoys hearing from the other members of his AA group, as many of them have achieved long periods of abstinence. Tr. at 31. He attends AA meetings two to three times per week, and is an active participant. Tr. at 56

Through his participation in AA, the Individual has learned that he cannot drink alcohol in moderation and, therefore, he intends to remain abstinent from alcohol in the future. Tr. at 41, 53. He has a strong support system to help him maintain that goal. Tr. at 48. For example, the Individual’s family and friends are aware of his participation in AA and are supportive of his efforts. Tr. at 50. His wife has attended an open AA meeting with him and has met his AA sponsor. Tr. at 30. The Individual is also comfortable relying on his sponsor and other AA members is he is under stress or is otherwise faced with situations that might have led him to drink in the past. Tr. at 50. The Individual enjoys AA and plans to continue his participation in the program indefinitely. Tr. at 51.

The Individual’s testimony regarding his abstinence and his participation in AA was corroborated by the testimony of his AA sponsor and his wife. Tr. at 69-70, 91, 94-96. The Individual’s sponsor, who has been in AA for many years, testified that the Individual is open and honest when he participates in their AA meetings. Tr. at 61. The Individual’s sponsor is helping the Individual work through the program’s 12 steps, and he speaks with the Individual several times per week. Tr. at 63. The Individual’s sponsor noted that the Individual is proud of his abstinence and he believes that the Individual intends to remain abstinent and continue in AA in the future. Tr. at 68, 75. The Individual’s wife echoed the sentiments of the Individual’s sponsor. She stated that participating in AA has been “very uplifting” for the Individual. Tr. at 96. The Individual’s wife stated that AA is “a part of [the Individual’s] journey,” and he intends to continue participating in the program. Tr. at 106-07. She also stated that the Individual does not have difficulty in remaining abstinent and their social activities no longer include alcohol. Tr. at 100-02, 109. The Individual’s wife is confident that the Individual will maintain his abstinence in the future. Tr. at 114. She reiterated that the Individual has a strong support system made up of family and friends to help him maintain his abstinence. Tr. at 112-13.

After listening to the hearing testimony, the DOE psychiatrist did not change his initial opinion that the Individual had been a user of alcohol habitually to excess. Tr. at 116. As to the Individual’s prognosis, the DOE psychiatrist cited several positive factors including the Individual’s six months of abstinence, his participation in AA and work with his AA sponsor,

and his strong support system. Tr. at 117. The DOE psychiatrist was particularly impressed with the Individual's insight into his problem with alcohol and his ownership of responsibility for his past behavior. Tr. at 117-18. He further noted that the Individual could have chosen to attempt to reduce his alcohol intake and drink in moderation – one of the possible methods of establishing rehabilitation and reformation that the DOE-psychiatrist suggested in his evaluation report – but the Individual did not do so. Tr. at 118. He found that the Individual's choice to pursue abstinence was “striking,” and he noted that the Individual appeared to have an “internal motivation” to remain abstinent that went beyond his concerns regarding the effect his alcohol consumption could have on his employment. *Id.* Given these facts, the DOE psychiatrist opined that the Individual was likely to continue to remain abstinent from alcohol. Tr. at 122. Therefore, he determined that the Individual's risk of relapse was “low.” Tr. at 119.

After considering the hearing testimony and evaluating the record as a whole, I find that the Individual has mitigated the security concerns raised by his consumption of alcohol. The Individual has developed significant insight into the problems caused by his past use of alcohol. He has been abstinent from alcohol for six months as of the date of the hearing and intends to remain abstinent indefinitely. He no longer engages in social activities involving alcohol, and his family and friends are aware and supportive of his sobriety. In addition, the Individual has fully engaged in the AA program and has made considerable progress since he began attending meetings in February 2012. He routinely attends meetings, regularly speaks with his sponsor, and is actively working the program's 12 steps. Both the Individual's AA sponsor, who has many years of experience in the AA program, and the DOE psychiatrist believe that a relapse is unlikely. Given these factors, I find that the Individual no longer consumes alcohol, and has demonstrated adequate evidence of rehabilitation and reformation. Accordingly, I conclude, consistent with OHA precedent in alcohol abuse matters, that the Individual has mitigated the Criterion J concerns cited in the Notification Letter. *See, e.g., Personnel Security Hearing, Case No., TSO-0853 (2010) (individual who engaged in treatment and five and one-half months of abstinence demonstrated low risk of relapse); Personnel Security Hearing, Case No. TSO-0559 (2007) (concerns raised by alcohol use mitigated by individual's seven months of abstinence, commitment to abstinence, participation in AA, and strong support system); Personnel Security Hearing, Case No. TSO-0064 (2003) (individual who established five months of abstinence, developed exceptional insight into alcohol problem, and actively participated in AA demonstrated adequate evidence of rehabilitation and reformation); Personnel Security Hearing, Case No. TSO-0768 (2009) (concerns raised by individual's alcohol use mitigated where psychiatrists agreed that risk of relapse was low).*

2. Criterion L – Past Arrests

As noted above, it well-settled that criminal conduct, by its very nature, raises security concerns. *See* 10 C.F.R. § 710.8(1); Adjudicative Guidelines, Guideline J, ¶ 30. There are a number of factors which may serve to mitigate such concerns. Among those factors are that “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” and that “there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity” Adjudicative Guidelines, Guideline J, ¶¶ 32(a), 32(d); *see also* 10 C.F.R. § 710.7(c).

In this case, I find that the Individual has mitigated the security concerns raised by his 2001 arrest for Possession of Marijuana and Possession of Paraphernalia, and his 2005 DUI arrest. A substantial period of time has elapsed since the Individual's arrests, 11 years since the marijuana-related arrest and seven years since the DUI arrest. Moreover, the two arrests resulted from behaviors that the Individual has since discontinued. Specifically, the Individual stopped smoking marijuana in 2010 and, as established above, has been abstinent from alcohol since January 2012. In addition, the Individual attributed the behavior to his immaturity, and his wife stated that he has learned from his mistakes. Tr. at 17-18, 112. Based on my own observations at the hearing, it is clear that the Individual has matured greatly in recent years and developed insight into his past behavior. All of these factors lead me to conclude that the Individual's past criminal behavior is unlikely to recur in the future, and does not cast doubt on his reliability, trustworthiness, or good judgment. *See Personnel Security Hearing*, OHA Case No. TSO-1053 (2011) (security concerns raised by individual's past arrests mitigated by passage of time since criminal conduct, as well as individual's increased maturity and pattern of responsible behavior).

IV. CONCLUSION

Upon considering the entire record in this case, I find that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns regarding the Individual's eligibility for a security clearance under Criteria J and L of the Part 710 regulations. After considering all the relevant information, favorable and unfavorable, in a comprehensive and common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has presented sufficient information to fully resolve the Criteria J and L concerns. Therefore, I conclude that granting the Individual access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should grant the Individual access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Diane DeMoura
Hearing Officer
Office of Hearings and Appeals

Date: August 24, 2012