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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 31, 2012)
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) Case No.: PSH-12-0068
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Issued: September 24, 2012

Hearing Officer Decision

Steven L. Fine, Hearing Officer:

This Decision concerns the eligibility of XXXXX (hereinafter referred to as “the Individual”) to hold a security clearance under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me in light of the relevant regulations, I conclude that the Individual’s security clearance should not be restored.

I. BACKGROUND

The administrative review proceeding began with the issuance of a Notification Letter to the Individual. *See* 10 C.F.R. § 710.21. The letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. Specifically, the Local Security Office (LSO) stated that the Individual had been diagnosed by a psychologist with Alcohol-Related Disorder, Not Otherwise Specified (NOS) and that the Individual had engaged in certain behavior which brought into question his honesty, reliability, and trustworthiness.¹

The Notification Letter informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for a security clearance. The Individual requested a hearing, and the LSO forwarded the Individual’s request to the Office

¹ *See* 10 C.F.R. § 710.8(h), (j), and (l) (Criterion H, J, and L, respectively).

of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on May 31, 2012.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, three friends/coworkers, three supervisors, his treating counselor (the Counselor), a DOE consultant Psychiatrist, and a DOE consultant psychologist (the DOE Psychologist). *See* Transcript of Hearing, Case No. PSH-12-0068 (hereinafter cited as “Tr.”). The LSO submitted 12 exhibits, marked as Exhibits 1 through 12, while the Individual submitted four exhibits, marked as Exhibits A through D.

II. FINDINGS OF FACT

The Individual has a history of criminal conduct. On March 8, 2001, a local court issued a Misdemeanor Warrant to the Individual for his failure to appear in court for a speeding ticket. In a separate incident, the Individual was charged with Speeding and Not Having a Valid Driver’s License on May 16, 2002. On November 23, 2002, he was arrested on a bench warrant for failing to appear in court to answer the charges arising from the May 16, 2002, incident. On October 30, 2011, the Individual was arrested and charged with aggravated DWI and Careless Driving. A Breathalyzer test administered to the Individual as result of this arrest indicated that his blood alcohol level was .22 percent.

On November 17, 2011, the LSO conducted a Personnel Security Interview (PSI) of the Individual.² During this interview, the Individual was asked about the circumstances resulting in his October 30, 2011, DWI arrest.

At the request of the LSO, the DOE Psychologist evaluated the Individual on December 22, 2011. The DOE Psychologist reviewed selected portions of the Individual’s personnel security file, and interviewed the Individual. After completing his evaluation of the Individual, the DOE Psychologist issued a report on December 31, 2011, in which he found that the Individual met the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revised (DSM-IV-TR) for “Alcohol-Related Disorder NOS.”³ Exhibit 4 at 6. The DOE Psychologist further found the Individual’s Alcohol-Related Disorder NOS to be an illness or condition that causes, or may cause, a significant defect in the Individual’s judgment and reliability. *Id.* at 7. The DOE Psychologist opined that the Individual was neither reformed nor rehabilitated from his Alcohol-Related Disorder NOS, stating in pertinent part:

[The Individual] should remain abstinent for a minimum of one year. He should participate in an intensive outpatient substance abuse program of at least six weeks duration. I also recommend that he actively participate in [Alcoholics Anonymous (AA)] for a minimum period of six-months. By active participation, I intend that he attend at least four meetings a week, obtain and use a sponsor and begin diligent study of the 12-steps. To not do these things will indicate that he is not taking his problem with alcohol seriously.

² A copy of the transcript of the November 17, 2011, PSI appears in the record as Exhibit 11.

³ A copy of this Report appears in the record as Exhibit 4.

Id. at 6.

On March 27, 2012, the LSO conducted a second PSI of the Individual.⁴ During this March 27, 2012, PSI, the Individual reported that a Human Reliability Program (HRP) Psychologist had placed him in a mandatory Employee Assistance Program (EAP) counseling program after his DWI. Exhibit 10 at 50.⁵

On February 5, 2012, the Individual was involved in a domestic disturbance. He was arrested and charged with Aggravated Battery, Battery (Household Member), Abuse of a Child-Intentional (No Death or Great Bodily Harm), Interference with Communications, Negligent Use of a Deadly Weapon (Unsafe Handling), and Tampering with Evidence (Highest Crime a Third Fourth or Indeterminate Degree Felony).

A police report dated February 7, 2012, states that the Individual had engaged in a physical fight with his spouse,⁶ destroyed property, and pointed a rifle at his spouse. Exhibit 9 at 5. The Individual's spouse stated that the Individual, in the presence of their two minor children, then aimed the rifle at his own chin and fired it. *Id.* According to his spouse, the bullet grazed his face. *Id.* The police report indicates that the arresting officer observed that the Individual "had black and blue marks to his left cheek." *Id.* The Individual told the officer that he had fallen down. *Id.* Both of the Individual's in-laws, and both of the Individual's daughters reported observing the Individual with a rifle during the domestic disturbance incident. The Individual's in-laws reported that the Individual had hit them when they tried to intercede. *Id.* Other than the five witnesses who stated that they had observed the Individual with a rifle, the police were unable to locate any evidence indicating that the Individual had discharged a rifle during the domestic disturbance incident. *Id.* Several days after the Incident, police were called back to the Individual's home by his spouse, who showed the officers several spent casings and a recently patched bullet hole. *Id.* at 7.

During the Individual's March 27, 2012, PSI, the Individual admitted that he had hit his spouse, cut her lip, and broke her cell phone. Exhibit 10 at 21-22. However, the Individual repeatedly denied that he had pointed a rifle at his spouse or at himself during the domestic disturbance. *Id.* at 22, 28-29, 33, 57. The Individual stated that he had sold all of his rifles before the domestic disturbance. *Id.* at 22-23, 29. The Individual also admitted striking his in-laws. *Id.* at 27. When the Individual was asked why his daughters would report to the police that they had observed a rifle, the Individual stated that the police had questioned his daughters on four occasions and that his daughters had reported observing a rifle during the last two occasions in which they were

⁴ A transcript of the March 27, 2012, PSI appears in the record as Exhibit 10.

⁵ At the second PSI, the Individual related that he had attended two Alcoholics Anonymous (AA) meetings a week since approximately early March 2012, and had been seeing an EAP Counselor once a week since February 24, 2012. Exhibit 10 at 40, 43-44. The Individual reported that he did not yet have a sponsor. *Id.* at 48. The Individual stated that a video that his EAP Counselor showed him convinced him that he has a problem with alcohol. *Id.* at 52. He stated his last use of alcohol occurred in December 2011. *Id.* at 71.

⁶ The Individual and his spouse have subsequently separated.

questioned by police. *Id.* at 29. All charges against him resulting from the domestic disturbance were dismissed. *Id.* at 36-37. The Individual denied that he had been using alcohol before or during the domestic disturbance. *Id.* at 39.

III. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of 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). In rendering this opinion, I have considered the following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. ANALYSIS

A. Criteria H and J

On October 30, 2011, the Individual was arrested for aggravated DWI after a breathalyzer test indicated that his BAC was .22. Subsequently, a DOE Psychologist diagnosed the Individual with Alcohol-Related Disorder NOS. This information indicating that the Individual's use of alcohol might be problematic raises security concerns about the Individual under Criterion J. In addition, the Alcohol-Related Disorder NOS diagnosis raises security concerns under Criterion H. 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. *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) at ¶ 21. In the present case, an association exists between the Individual's consumption of alcohol and his subsequent failure to exercise good judgment and to control his impulses, as evidenced by operation of a motor vehicle on public roads while in a state of extreme intoxication.

I find that the Individual has not mitigated the security concerns raised by his Alcohol-Related Disorder NOS. Although neither the HRP Psychologist⁷ nor the EAP Counselor diagnosed the

⁷ The HRP Psychologist did not testify at the hearing. However, the Individual submitted a Psychological Evaluation Report authored by the HRP Psychologist, which appears in the Record as Exhibit B, and a letter authored by the HRP Psychologist, which appears in the Record as Exhibit D. While the HRP Psychologist did not diagnose the Individual with a mental disease or disorder, she did require him to complete an alcohol awareness

Individual with an alcohol disorder, the Individual himself acknowledges that he has an alcohol problem and candidly admits that he needs treatment. Tr. at 117-119. Accordingly, the issue before me is whether the Individual's self-acknowledged alcohol problem, which has been characterized by the DOE Psychologist as an Alcohol-Related Disorder NOS, has been sufficiently mitigated by rehabilitation or reformation.

The Individual is taking action to address his alcohol disorder. He convincingly testified that he has abstained from consuming alcohol since December 17, 2011. Tr. at 118. The Individual has obtained counseling, and has begun attending AA.⁸ The Individual has also obtained an AA sponsor and is working the AA Twelve-Step Program. *Id.* at 119. While these are important and necessary steps for the Individual, I was convinced by the DOE Psychologist's testimony, as outlined below, that the Individual needs to both abstain from alcohol use for a longer period of time, continue his participation in AA and successfully complete alcohol treatment in order to resolve the doubts raised by his Alcohol-Related Disorder NOS.

The EAP Counselor testified on the Individual's behalf at the hearing. The EAP Counselor began seeing the Individual as a result of a Fitness-for-Duty evaluation which, in turn, resulted from the Individual's October 30, 2011, DWI. Tr. at 16-17. The EAP Counselor provided the Individual with Alcohol Awareness training from January 30, 2012, to July 2, 2012. *Id.* at 17. He still sees the Individual on a periodic basis, primarily to counsel the Individual about issues concerning his estranged wife. *Id.* He noted that he never had any reason to doubt the accuracy of the information provided to him by the Individual. *Id.* at 20. The Individual is extremely cooperative and engaged in his counseling. *Id.* at 23. When asked about the Domestic Disturbance, the EAP Counselor opined that, with the Individual, "there is more of a problem-solving, communication issue rather than overall anger management problem." *Id.* at 24. The Individual has expressed remorse for the Domestic Disturbance. *Id.* The Individual recognizes the problems alcohol has caused for him. *Id.* at 26. The EAP Counselor testified that the Individual "has made significant progress" and classified his prognosis as "good." *Id.* at 24, 33. The EAP Counselor testified that, although he recommends that the Individual permanently abstain from using alcohol, he had not diagnosed the Individual with any mental or emotional diseases or disorders. *Id.* at 50-51, 53.

At the hearing, the DOE Psychologist observed the testimony of each of the other witnesses before he testified. The DOE Psychologist testified that he was concerned that the Individual's alcohol consumption was more extensive than he admitted. Tr. at 147-150. The DOE Psychologist noted that the Individual's blood alcohol level at the time of his arrest was .22, and that he had an elevated Gamma GT liver function level, which most often results from heavy alcohol consumption over time. *Id.* Noting that he had originally recommended that the Individual abstain from alcohol use for a year, the DOE Psychologist opined that the Individual needed to abstain from alcohol use for an additional six to eight month period, along with attending AA and receiving alcohol treatment, in order to establish reformation or rehabilitation.

program (conducted by the EAP Counselor). Exhibit D at 2. In addition, the HRP Psychologist required the Individual to participate in counseling for his "alcohol use and anger management." Exhibit B at 6.

⁸ During his March 27, 2012, PSI, the Individual stated that he had begun attending AA meetings in approximately early March 2012. Exhibit 10 at 43-44.

Id. at 153. Accordingly, the DOE Psychologist testified that the Individual is neither reformed nor rehabilitated from his Alcohol-Related Disorder NOS. *Id.* at 154.

Based upon the Psychologist's compelling testimony, I find that the Individual has not sufficiently mitigated the security concerns raised under either Criteria H and J.

C. Criterion L

The Individual's four arrests constitute criminal conduct which raises security concerns under Criterion L. "Conduct 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 information." Adjudicative Guidelines at ¶ 15. "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." *Id.* at ¶ 30.

In the present case, the criminal conduct and behavior evidencing poor judgment, unreliability and dishonesty cited in the Notification Letter occurred as recently as February 5, 2012. Not enough time has passed since his last criminal activity to consider these security concerns resolved by the passage of time. Nor has the Individual met any of the mitigation criteria set forth in the Adjudicative Guidelines at ¶ 32. Accordingly, I find that the security concerns raised under Criterion L by the Individual's four arrests remain unresolved.

V. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H, J, and L. I find that unmitigated security concerns remain under each of these criteria. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: September 24, 2012