

this report and the rest of the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. Exhibit 3. The LSO informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. Exhibit 1. The Notification Letter also informed the individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning her eligibility for an access authorization.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and I was appointed the Hearing Officer. The DOE introduced 15 exhibits into the record of this proceeding. The individual introduced seven exhibits, and presented the testimony of three witnesses, in addition to her own testimony.

II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

The Notification Letter cited derogatory information within the purview of three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (j), and (l) (hereinafter referred to as Criteria H, J, and L, respectively). Exhibit 1.³ Under Criterion H, the LSO cited the report of the DOE Psychologist, in which he diagnosed the individual as suffering from Personality Disorder Not Otherwise Specified (NOS), and Alcohol Dependence, and opined that both disorders are mental conditions that cause, or may cause, a defect in judgment or reliability. *Id.* at 1.⁴

Under Criterion J, the LSO cited the diagnosis of Alcohol Dependence by the DOE Psychologist, as well as (1) arrests of the individual for driving while intoxicated (DWI) in 2009, 1997, and 1994; (2) a 2001 automobile accident, after which police allegedly found alcohol in her car; (3) the individual's continued use of alcohol after previously being advised to abstain and stating in a 2002 PSI that she did not intend to consume alcohol in the future; (4) the individual's admission that she was terminated from a job in 1997 due to coming into work smelling of alcohol; and (5) admissions of the individual regarding her history of alcohol use, including driving while intoxicated, and her sister's expression of concern about her use of alcohol. *Id.* at 1-3.

³ Criterion H defines as derogatory information indicating that the individual has an "illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Under Criterion J, information is derogatory if it indicates that the individual has "[b]een, 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). Criterion L defines as derogatory information indicating that the individual has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend 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).

⁴ In his report, the DOE Psychologist stated, without specific reference to either of the two diagnoses he rendered, that the individual "has an 'illness or mental condition of a nature which causes or may cause a significant defect in judgment or reliability.'" Exhibit 4 at 12. He then stated that both the individual's "Alcohol Dependence . . . and her impulsive and action-oriented personality tendencies captured in the Personality Disorder NOS . . . diagnosis, are mental conditions that have caused and are likely to continue to cause defects in her judgment and reliability." *Id.* In his hearing testimony, the DOE Psychologist clarified that the latter sentence should refer not simply to "defects" but "significant defects" in the individual's judgment and reliability. Tr. at 91.

Finally, under Criterion L, the LSO cited (1) the individual's three arrests for DWI and the 2001 automobile accident referenced above; (2) an admission by the individual that she was charged with assault at the age of 13 or 14; (3) delinquent debts totaling \$2,999, and statements by the individual regarding her inability to pay her debts and inaction in taking steps to resolve her debts; (4) the individual's failure to provide proof of payment or a payment plan for approximately \$5,087 in delinquent debt despite her assurance in a 2002 PSI that she would do so; and (5) the individual's inconsistent statements regarding the basis for her termination from a job in 1997.

The Part 710 regulations require that I "make specific findings based upon the record as to the validity of each of the allegations" in the Notification Letter. 10 C.F.R. § 710.27(c). In the present case, I find that, with certain exceptions,⁵ each of these allegations is valid and well supported by the record in this case.⁶ I further find that the valid allegations in the Notification Letter adequately justify the DOE's invocation of Criteria H, J, and L, and raise significant security concerns.

⁵ First, the Notification Letter alleges that the individual "currently consumes one to six beers, every one to three months," and that "she intends to consume alcohol in the future." Exhibit 1 at 2. Though there is support for these allegations in the transcript of the January 12, 2012, PSI, the validity of this allegation as to her current consumption and expressed intent as of the date of June 4, 2012, Notification Letter, is not supported by statements of the individual during her March 19, 2012, interview with the DOE Psychologist. In his report, the DOE Psychologist noted the individual's statement that "she had not consumed any alcohol since 12/31/11, New Year's Eve." Exhibit 4 at 8. As for her intentions regarding future use of alcohol, the DOE Psychologist referred to a statement by the individual in the PSI that "she wished to continue slowly decreasing her drinking . . ." *Id.* at 11. He noted, however, that in his interview with her, "she is once again determined to stop drinking now and completely. Her thinking may be maturing or simply influx. Only time will reveal whether she can control herself in this manner." *Id.* The likelihood that the individual will fulfill this intent is discussed later in this decision. Nonetheless, I cannot find that the Notification Letter accurately describes the individual's expressed intent at the time the LSO issued the letter.

Second, as noted above, regarding a 2001 automobile accident, the Notification Letter twice alleges that after the individual was taken to a hospital, "police identified alcohol in her car." Exhibit 1 at 2, 3. However, the arrest record referenced in the Notification Letter states that a "12oz beer bottle was located inside her automobile." Exhibit 10 at 2. In addition, the portion of the report of the DOE Psychologist cited in Notification Letter as support for this allegation states that an "empty 12-ounce beer bottle was found in her car by police." Exhibit 4 at 6 (emphasis added). Thus, I cannot find that the Notification Letter accurately represents the information that it cites in the record. The accuracy of this particular allegation aside, I note that the discovery of an empty beer bottle in an automobile could raise as much as, if not more, concern regarding the individual's use of alcohol than the presence of unconsumed alcohol in the vehicle.

Finally, the Notification Letter alleges that the individual "admitted in her March 19, 2012 psychological evaluation . . . that she willfully told an incorrect story" regarding the reasons for her termination from a job in 1997. Exhibit 1 at 5. However, while the inconsistencies regarding the individual's account are clear from the record, I do not find support in the report of the DOE Psychologist for the allegation that the individual admitted willfully providing a false account of this incident.

⁶ As noted above, one of the allegations contained in the Notification Letter is that the individual failed to provide proof of payment or a payment plan for approximately \$5,087 in delinquent debt despite her assurance in a 2002 PSI that she would do so. Exhibit 1 at 5. While a portion of the 2002 PSI was provided as an exhibit by the LSO, Exhibit 15, the portion of the 2002 PSI cited as support for this particular allegation was not included as part of the exhibits provided by the LSO. However, the individual has not disputed the validity of this allegation, and in fact stated in her 2012 PSI that she had previously been denied access authorization for failure to provide information requested regarding her finances. Exhibit 14 at 12, 117-18; *see also* Exhibit 10 (March 26, 2003, letter from the LSO to the individual advising her that, as she had "not provided the information as required, you are hereby advised that processing for 'Q' access authorization for you employment was administratively suspended . . ."). Therefore, I find the validity of this undisputed allegation to be adequately supported by the record in this case. Nonetheless, for completeness of the record, I requested that the LSO provide to both me and the individual a copy of the portion of the 2002 PSI not included in Exhibit 15. The LSO has done so, and the administrative record now contains the entirety of the 2002 PSI.

First, certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness, in this case both Personality Disorder NOS, and Alcohol Dependence being of concern under Criterion H. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Adjudicative Guidelines)*, The White House (December 19, 2005) at Guideline I. Moreover, the diagnosis of Alcohol Dependence and the undisputed allegations regarding the individual's past problematic use of alcohol raise significant security concerns under Criterion H and J related to excessive alcohol consumption, which often leads to the exercise of questionable judgment or the failure to control impulses, and calls into question the individual's future reliability and trustworthiness. *Id.* at Guideline G.

Under Criterion L, the valid allegations in the Notification Letter raise three distinct concerns. The undisputed criminal charges against the individual create doubt about her judgment, reliability and trustworthiness, as they call into question her ability or willingness to comply with laws, rules and regulations. *Id.* at Guideline J. In addition, any failure to provide truthful and candid answers during the security clearance process, in the present case the failure of the individual to provide consistent answers regarding her termination from a prior job, demonstrates questionable judgment, lack of candor, dishonesty, and/or unwillingness to comply with rules and regulations. *Id.* at Guideline E. Finally, the failure or inability of an individual to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Moreover, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.* at Guideline F.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient 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 regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. ANALYSIS

A. Concerns Stemming from the Diagnosis of Personality Disorder NOS

In his report, the DOE Psychologist considered whether the individual met the criteria for Borderline Personality Disorder set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, 4th edition, Text Revision (DSM-IV-TR). Exhibit 4 at 9-10. He found in the individual's history, among other things, "intense and unstable" relationship patterns, "impulsivity in her use of alcohol, reckless driving, and even sex," a "marked reactivity of moods," and noted how these meet certain criteria for Borderline Personality Disorder. *Id.* at 10. He concluded, however, that while the individual

has many behaviors of a Borderline Personality Disorder (301.83), she does not warrant the diagnosis. The features described above are enduring features and have produced significant stress and impairment in her relationships and occupational endeavors. She has another behavior often seen in personality disorders and that is the tendency to willfully and convincingly misrepresent the facts of an event for self-serving reasons. In regard to these tendencies, she warrants a diagnosis of Personality Disorder Not Otherwise Specified (301.9).⁷

Id. The individual did not present testimony or other evidence at the hearing that would undermine the factual basis for the diagnosis made by the DOE Psychologist, whose observations I find to be well-supported by the record.

Having reviewed the record and observed the testimony offered at the hearing, the DOE Psychologist stated that he heard nothing that would cause him to change the conclusions set forth in his report, Hearing Transcript (Tr.) at 83, and that the individual's condition would likely cause significant defects in the individual's judgment and reliability going forward. *Id.* at 92. He testified that successful treatment of this disorder would require intensive therapy, including sessions at least twice a week, lasting "for a minimum 18 months to two years, sometimes longer." I found the testimony of the DOE Psychologist in this regard to be persuasive, and therefore I cannot conclude that the individual has resolved the concerns raised by the diagnosis of Personality Disorder NOS.

B. Concerns Related to the Individual's Use of Alcohol

As discussed above, any excessive use of alcohol by a holder of access authorization raises serious security concerns. Thus, looking forward, the pertinent issue before me is the likelihood that the individual will use alcohol to excess in the future. In the individual's favor is her testimony that she has not consumed alcohol since the beginning of 2012. Tr. at 27. In addition, the individual expressed, both during her interview with the DOE Psychologist and at the hearing, her intent to not drink in the future. *Id.* at 27, 43; Exhibit 4 at 11.

Unfortunately, I have serious doubts regarding whether the individual will be successfully in fulfilling her intent. First, during her 2002 PSI, the individual was asked about her future intention

⁷The DSM-IV-TR describes the diagnosis of Personality Disorder Not Otherwise Specified as a category "for disorders of personality functioning . . . that do not meet criteria for any specific Personality Disorder." DSM-IV-TR at 729.

regarding her use of alcohol, and responded that her “[i]ntent is to never, never use it. . . . Nothing, nothing, I don’t want nothing to do with it.” Exhibit 15 at 51. The fact that the individual nonetheless began drinking alcohol again leads me to conclude that her expressed intent, without more, gives little assurance of success. As for what more the individual could do to improve her chances of remaining abstinent, the DOE Psychologist recommended in his testimony that she participate in Alcoholics Anonymous and receive alcohol counseling. *Id.* at 88. He added that he would “like her to be abstinent for 18 months total. Then – even the prognosis for me is probably only slightly above average.” *Id.*

Given that the individual had, as of the date of the hearing in this matter, abstained from using alcohol for a little over eight months, and received none of the treatment recommended by the DOE Psychologist, *see id.* at 36-37, I conclude the risk that the individual will use alcohol to excess in the future is simply too high, such that I cannot find that the individual has resolved the concerns raised by the diagnosis of Alcohol Dependence and her past problematic use of alcohol.

C. Concerns Related to the Individual’s Past Criminal Conduct

Regarding the criminal conduct cited in the Notification Letter under Criterion L, I consider it significant that three of the four criminal charges cited (occurring in 1994, 1997, and 2009) are alcohol-related. Exhibit 1 at 3-4. Had the individual resolved the concerns related to her use of alcohol, discussed above, I would necessarily take that into account in determining whether the Criterion L concern related to the same conduct had been resolved. 10 C.F.R. § 710.7(c) (requiring DOE officials to consider, among other things, the “the circumstances surrounding the conduct”).

Moreover, I must consider the fact that the only criminal charge cited in the Notification Letter that is not related to the individual’s use of alcohol occurred in 1979 or 1980, when the individual was age 13 or 14, and thus took place over 30 years ago. 10 C.F.R. § 710.7(c) (requiring consideration of the “recency of the conduct” and “the age and maturity of the individual at the time of the conduct”). In the absence of the individual’s subsequent alcohol-related criminal charges, I would likely find that the concerns raised by this charge had been resolved. At this time, however, given that the concerns raised by the individual’s use of alcohol remain unresolved, I cannot find that the individual has resolved the concerns raised by her prior criminal charges under Criterion L.

D. Concerns Related to the Individual’s Finances

As referenced above, the Notification Letter listed, as a concern under Criterion L, delinquent debts totaling \$2,999, as well as statements by the individual regarding her inability to pay her debts and inaction in taking steps to resolve her debts. Under the *Adjudicative Guidelines*, among the factors that may serve to mitigate security concerns raised by an individual’s financial problems are that the conduct happened long ago or was infrequent; the financial problems were largely beyond the person’s control and the individual acted responsibly under the circumstances; or that an individual has initiated a good faith effort to repay his or her outstanding creditors. *Adjudicative Guidelines* at Guideline F.

While the magnitude of the individual’s delinquent debts is less than that faced by individuals in other cases, *see e.g., Personnel Security Hearing*, Case No. TSO-1065 (2011) (over \$45,000 in delinquent debts), these debts raise serious concerns when viewed in the fuller context of this case.

The individual's current financial problems are not isolated in time, but appear to be a continuation of a pattern that goes back at least ten years. A check of the individual's credit by the OPM in 2002 revealed approximately \$5,000 in delinquent debts. Exhibit 6. It was the failure of the individual to provide information regarding these delinquencies that resulted in the suspension of her previous application for access authorization. *See* Exhibit 10. In her most recent PSI, the individual stated that, between 2002 and 2012, her financial situation would "get good," but then she would again "fall behind" and be unable to pay her bills. Exhibit 14 at 97.

In the PSI, the individual indicated that she has had particular difficulty with medical bills, specifically noting problems she has experienced with her thyroid, and medication she needs to take as a result. *Id.* at 99, 107. Indeed, of the \$2,999 in delinquencies identified in the OPM's more recent check of the individual's credit in 2011, over half of the debt appears to stem from unpaid medical expenses. Exhibit 5. However, while this might indicate that a significant part of the individual's problems were due to circumstances beyond her control, the individual has not claimed that these expenses were the result of an unexpected emergency that is unlikely to recur, but instead these appear to be regular, recurring medical expenses. *See Adjudicative Guidelines* at Guideline F (listing "unexpected medical emergency" as an example of a condition "largely beyond the person's control" and therefore potential mitigating).

Regarding her willingness and ability to satisfy her delinquent debts, the individual has submitted a July 31, 2012, credit report from a major consumer credit reporting agency, Exhibit D, copies of four money orders of \$20 paid toward her delinquent accounts, Exhibit E, and a list of her typical monthly expenses. Exhibits A. Having reviewed these documents and considered them in context of the entire record, I find that the individual has not sufficiently demonstrated that she is either willing or able to resolve the delinquencies she faces.

I first note that the credit report provided by the individual references only some of the accounts found to be delinquent by the OPM in its 2011 check of the individual's credit. As for those accounts that do appear on both the July 31, 2012, and the 2011 report, there is no indication that the individual has made significant progress toward reducing the delinquent balances on the accounts. *Compare* Exhibit D with Exhibit 5. In fact, it appears that, with regard to at least three of the four accounts for which the individual offered proof of payment by recent money orders, the balances on the accounts were either the same or more on July 31, 2012, than they were as reported to OPM in November 2011.

With respect to the individual's accounting of her monthly expenses, Exhibit A, the total of those expenses equals \$1,537 and, based upon her testimony, her net monthly income appears to be approximately \$1,800 per month. Tr. at 50-51. However, included in the accounting of her monthly expenses is her statement that it "does not include my cell phone, food, prescriptions, [and] emergencies at home such as appliances breaking." Exhibit A. She also states that the monthly utilities would be higher in the winter. Thus, the information provided by the individual is simply insufficient to determine whether her regular income would allow her to make progress toward paying down her outstanding debt, whereas what information there is regarding her current delinquencies indicate that she has either been unable or unwilling to do so.

Finally, even if the individual could demonstrate such progress toward financial stability and responsibility, Hearing Officers in prior cases have held that, once an individual has demonstrated a pattern of financial irresponsibility, he or she must demonstrate a new, sustained pattern of financial

responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely. *See, e.g., Personnel Security Hearing, Case No. TSO-1048 (2011), and cases cited therein.* Thus, at this point, it is clearly too early for me to find that the individual has demonstrated a sustained pattern of financial responsibility for a significant period of time relative to her lengthy past period of financial irresponsibility. As such, I cannot find that the individual has resolved the concerns in this case related to her handling of finances.

E. Concerns Related to Inconsistent Information Provided in the Security Clearance Process

The final concern to be addressed in this case stems from what the LSO describes as the individual's failure "to provide truthful and candid answers during the security clearance process." Exhibit 1 at 5. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *Personnel Security Hearing, Case No. PSH-12-0059 (2012) (citing Adjudicative Guidelines at Guideline E).*

Here, the information at issue concerns the reason for the individual's termination from a job in 1997. In her 2002 PSI, when asked whether she had ever been fired for drug use, the individual responded that she had been fired from a job "for alcohol." Exhibit 15 at 58. She explained that she had been at her house drinking with her nephew until 1:00 a.m. one night, and that when she arrived at work the next morning "they told me that I couldn't be there smelling like alcohol, so they terminated me." *Id.* at 59. She stated she was not "intoxicated" when she arrived at work that day, but "was still kinda like dizzy," and "still had a high." *Id.* at 61. She added that, "even though I brushed my teeth and everything . . . , my breath still smelled like alcohol." *Id.*

By contrast, when asked at the 2012 PSI about this incident, the individual stated that her supervisor accused her of smelling of alcohol, but "I didn't smell, I reported to [another supervisor's] office and he didn't smell anything on me, but that's what [her supervisor] had said and she terminated me for that." Exhibit 14 at 66. The individual went on to explain that her supervisor was at her house the night before the incident, the individual had a few beers with her, and that she mentioned to her supervisor that a man, who unbeknownst to the individual had been having an affair with her supervisor, had been flirting with her. *Id.* at 72. Thus, according to the individual, her supervisor "looked for that excuse" to fire her, but that the individual was not aware of this until years after the fact. *Id.* at 73. When confronted with the statement in her 2002 PSI that she drank until 1:00 am and felt dizzy the next morning, the individual responded, "No, that's impossible. I couldn't have, you know, I couldn't stay drinking until 1:00 and felt dizzy, I don't know. I know what happened, she just like I said, kind of gonna stick to that story, she said that I smelled of alcohol." *Id.*

The clear discrepancies in these two accounts are troubling, and the individual offered no explanation in her hearing testimony that would alleviate the concern they raise. In fact, her testimony contradicted what she stated in her most recent PSI, stating as she had in 2002 that her "nephew was at my house. [My supervisor] -- when I drank with her, it was at her house, and it was not that night." Tr. at 63. Ultimately, the individual conceded that she may have smelled of alcohol the day she was fired. "I'm not going to deny it, but I'm going to leave it at that, because I'm confused about it myself, you know." *Id.* at 68.

The DOE Psychologist, regarding statements made by the individual at his interview with her, remarked that it is “hard to know where she is and whether what she says at one time is going to hold two months or three months or a year.” *Id.* at 86. He explained that his understanding of the individual “is that when she makes statements like that, she believes them. She’s . . . not consciously lying. But . . . she’ll say one thing that’s almost true, not quite true, or not true, but it is hard to know which of those [is true].” *Id.*

Ultimately, whether the individual has made false statements intentionally or not, the lack of consistent, reliable information that she provides raises serious concerns. To make meaningful determinations regarding a person’s eligibility for access authorization, the DOE must rely upon applicants to provide accurate information in response to any questions it may have. Based on the information in the record, including the individual’s hearing testimony, I cannot find that the individual has resolved the grave concern that she cannot be relied upon in this fundamental respect.

V. CONCLUSION

For the reasons set forth above, I conclude that the individual has not resolved the DOE’s security concerns under Criteria H, J, and L. Therefore, the individual has not demonstrated that granting her access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not grant the individual a security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: October 25, 2012