

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	July 24, 2012)	
)	Case No.: PSH-12-0093
)	

Issued : November 15, 2012

Hearing Officer Decision

Wade M. Boswell, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization¹ 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 fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should be granted.

I. Background

The individual is an applicant for a DOE security clearance in conjunction with his employment by a DOE contractor. In October 2011, the individual completed a Questionnaire for National Security Positions (QNSP) as part of his application for a DOE security clearance and, on January 26, 2012, the Local Security Office (LSO) conducted a personnel security interview (PSI) with the individual to address concerns about various matters disclosed on the QNSP, including those related to the individual’s alcohol use. *See* Exhibits 7 and 8. Following the PSI, the individual was referred to a

¹ Access authorization is defined 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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

DOE consulting psychologist for an evaluation which took place on April 9, 2012. *See* Exhibit 6.

Since neither the PSI nor the DOE psychologist's evaluation resolved the security concerns arising from the individual's alcohol usage, the LSO informed the individual in a June 25, 2012, letter (Notification Letter) that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j) (hereinafter referred to as Criterion H and Criterion J, respectively).²

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO introduced nine numbered exhibits into the record and presented the testimony of one witness, the DOE psychologist. The individual, represented by counsel, introduced 12 lettered exhibits (Exhibits A-L) into the record and presented the testimony of seven witnesses, including that of himself and that of a forensic psychiatrist. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.³

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. 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), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

² Criterion J relates to information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or a licensed clinical psychologist, causes, or may cause, a significant defect in judgment or reliability . . ." and Criterion H relates to information that a person 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) and (h).

³ OHA decisions are available on the OHA website at www.oha.doe.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

The individual must come forward with evidence to convince the DOE that granting his 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 eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer’s Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all 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). I am instructed by the regulations to resolve any doubt as to a person’s access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cited two criteria as the bases for denying the individual’s security clearance, Criterion H and Criterion J. Criterion H concerns information that a person has “an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist causes, or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). It is well established that “certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” *See* Guideline I of the *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). Conduct involving such psychological conditions can raise questions about an individual’s ability to protect classified information. *Personnel Security Hearing*, Case No. PSH-11-0010 (March 1, 2012) (Alcohol Related Disorder, NOS, found to raise security concerns under Criterion H). With respect to Criterion H, the LSO relied on the April 9, 2012 report of the DOE psychologist which concluded that the individual met the *Diagnostic Statistical Manual of the American Psychiatric Association IVth Edition TR (DSM-IV-TR)* criteria for Alcohol-Related Disorder, Not Otherwise Specified (NOS), without adequate evidence of rehabilitation or reformation. Ex. 1 and Ex. 6. Based upon the report of the DOE psychologist, the LSO properly invoked Criterion H.

Criterion J refers to information indicating that an 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(h). Excessive alcohol consumption raises a security concern because it can lead to questionable judgment and the failure to control impulses, which in turn can raise questions about a person’s reliability and trustworthiness. *See* Adjudicative Guidelines at

Guideline G; *Personnel Security Hearing*, Case No. PSH-11-0035 (April 19, 2012). With respect to Criterion J, the LSO noted, *inter alia*, (1) two incidents (October 2008 and May 2009) in which the individual's alcohol intoxication led to police intervention, (2) the individual admitting that he had blacked-out approximately 75 times and passed-out approximately 50 to 100 times between September 2007 and May 2011 as a result of his use of alcohol, (3) the individual admitting that he had been intoxicated approximately 100 or more times between 2006 and 2010, and (4) the individual admitting that he had been intoxicated as recently as mid-January 2012. Ex. 1. Additionally, the DOE psychologist concluded that the individual is a user of alcohol habitually to excess and that his diagnosis of Alcohol-Related Disorder, NOS, is an illness or mental condition which has caused and could continue to cause significant defects in his judgment or reliability. Ex. 6. In light of these factors, the LSO properly invoked Criteria J.

IV. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)⁴ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be granted. The specific findings that I make in support of this decision are discussed below.

A. Mitigating Evidence

The individual testified that the DOE psychologist's report was an accurate description of his history with alcohol, with a few exceptions discussed below. Tr. at 73. Prior to relocating to commence employment with a DOE contractor, the individual had been a college and graduate student, completing both a four-year Bachelor of Science degree and a one-year Master of Science degree. *Id.* at 75. The university that he attended is regarded as a "party school" and consuming alcohol is a common aspect of the social environment at the school. For the individual, going out and drinking alcohol was a socially acceptable way to have fun and meet new people; it was something that he "chose to do as [his] social activity for the weekend after a long week of doing homework and studying." *Id.* at 74. His pattern of alcohol usage during this period of time was not viewed as unusual at his university. *Id.* at 60-63, 67, 71, 74.

On two occasions (October 2008 and May 2009), the individual's consumption of alcohol led to the involvement of law enforcement officers; however, neither of those occasions resulted in arrest or referral for treatment or counseling. *Id.* at 78, 84.

⁴ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his 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.

The individual's alcohol consumption while at the university resulted in numerous instances of intoxication, some of which led to him either blacking-out or passing-out. The individual defined blacking-out as where "you lose your memory for an extended period of time during [a] night" and passing-out as "where you go home, you remember everything, and ... you don't remember exactly getting into bed, but you're in bed." *Id.* at 88-89. The individual testified that when he was questioned about his alcohol consumption during the PSI and the DOE psychological evaluation, he wanted to be careful not to deceive the DOE as to the extent of his alcohol consumption. Therefore, he calculated the occasions on which he had used alcohol to excess during his university years based on his memory of his alcohol consumption during his junior year of college, which was the year in which he most frequently consumed alcohol to excess. *Id.* at 73-74, 87. As a result, he "over-reported" the occasions of his excessive use of alcohol to the DOE when previously asked. The individual currently estimates that, during his five years at the university, he blacked-out approximately 50 times and passed-out approximately 50 times. *Id.* at 89. From my perspective as the hearing officer, I suspect that the exact number of such occasions is unascertainable, but that the relevant and appropriate conclusion is that the individual engaged in excessive consumption of alcohol on a regular basis during his university years.

The individual stated that his excessive use of alcohol was limited to weekend evenings so as not to interfere with his classes or completing assignments. *Id.* at 75. He testified that "I would always get my schoolwork done before going out socially, whether I was drinking or otherwise. So I never let it affect any of my work." *Id.* He maintained a 3.67 grade point average as an undergraduate and a 4.0 grade point average as a graduate student. *Id.*

The individual testified that his pattern of alcohol consumption changed in September 2011 when he relocated to commence employment with a DOE contractor. Once he relocated, he tended to go out socially once a week and would limit his alcohol consumption to one or two drinks on those evenings; occasionally he would go out twice a week and, if an evening out stretched to five hours or so, he may have a third drink. *Id.* at 76, 86. He believes that the only time that he has used alcohol to excess since starting to work for the DOE contractor was in mid-January 2012; he has had no experiences of blacking-out or passing-out as a result of alcohol consumption since he was a student. *Id.* at 90-91. The individual testified that "Outside of the college atmosphere, I've matured.... [I]n my mind, it's not as acceptable, and since I am ... not a student anymore, I have to take on more responsibilities, as life is changing for me." *Id.* at 76. When the individual socializes in his current city, he usually does so with co-workers at the DOE contractor who hold security clearances. *Id.* at 86.

In July 2012, shortly after the individual received the report of the DOE psychologist diagnosing him with Alcohol-Related Disorder, NOS, and recommending that he abstain from alcohol consumption for six months, the individual discontinued use of alcohol. *Id.* at 77. He reported no symptoms of withdrawal and no alcohol cravings as a result of his abstinence. *Id.* at 79. He and his girlfriend maintain alcohol in their home for her use and for use by guests and he has been present in social setting with others who are drinking,

all without feeling any urge to consume alcohol. *Id.* at 79, 84-85. The individual reported that following any period of abstinence requested by the DOE, he expected that he would resume use of alcohol; however, it would be the pattern of limited consumption that he began in September 2011. *Id.* at 77-78, 86.

B. Review of Criterion H Security Concerns

Following the psychological evaluation of the individual in April 2012, the DOE psychologist concluded that the individual was suffering from Alcohol-Related Disorder, NOS. The DOE psychologist and the individual's forensic psychiatrist have each stated that the individual's alcohol use (past and present) did not suggest that the individual suffered from either alcohol dependence or alcohol abuse. Ex. 6, Tr. at 94. The individual's forensic psychiatrist testified that Alcohol-Related Disorder, NOS, is a diagnosis which he rarely uses in his practice and that he could not agree or disagree with the diagnosis as of the date it was given. *Id.* at 95.

The DOE psychologist testified that there is no body of evidence with respect to rehabilitation for Alcohol-Related Disorder, NOS; however, such rehabilitation would occur when a person demonstrated the ability to control his or her ingestion of alcohol. When a person is able to discontinue consumption of alcohol without symptoms of withdrawal or having strong cravings, it demonstrates that a person can control their ingestion of alcohol. *Id.* at 106. Although the DOE psychologist had recommended in his April 2012 report that the individual abstain from alcohol consumption for six months, the DOE psychologist testified that the individual's abstinence to date without symptoms of withdrawal or cravings has demonstrated his ability to control his alcohol use. The DOE psychologist does not believe that an additional period of abstinence would give him any greater confidence than he already has based upon the individual's abstinence to date. *Id.* at 105-106. The DOE psychologist testified that the individual has shown adequate evidence of rehabilitation or reformation with regard to Alcohol-Related Disorder, NOS, and, further, that the individual "no longer earns" the diagnosis of Alcohol-Related Disorder, NOS. *Id.* at 113-114.

Security concerns are triggered under Criterion H when a person has an illness or mental condition which in the opinion of a psychiatrist or licensed clinical psychologist could cause a significant defect in judgment or reliability. Those concerns may be mitigated when the person shows "no indication of a current problem." Adjudicative Guidelines at Guideline I, ¶ 29(e). In light of the DOE psychologist's testimony that the individual no longer meets the diagnostic criteria for Alcohol-Related Disorder, NOS, I find that the individual has resolved the Criterion H security concerns.

C. Review of Criterion J Security Concerns

The DOE psychologist did not diagnose the individual as alcohol dependent or as suffering from alcohol abuse and the security concerns raised under Criterion J relate to the individual's use of alcohol habitually to excess. Based upon the record, there is no question that the individual consumed alcohol habitually to excess during his university

years. The question remaining is whether the Criterion J security concerns are resolved by the individual's altered patterns of alcohol consumption since September 2011.

As noted above, the individual testified that upon entering the professional workforce in September 2011 he reduced his pattern of alcohol consumption and would ordinarily go out only once or twice a week and usually have only one or two drinks on any occasion. *Id.* at 76. Since September 2011, the individual believes he was intoxicated on one occasion only (mid-January 2012) and he has not drunk to the point of passing-out or blacking-out. *Id.* at 90-91. Subsequent to receiving the Notification Letter in July 2012, the individual has abstained from all alcohol consumption. *Id.* at 77. His description of his post-September 2011 alcohol consumption and abstinence was corroborated by the testimony of his girlfriend (who knew the individual during his student years as well) and several current co-workers with whom he socializes or plays sports. *Id.* at 27, 32-35, 38-43, 45, 47-55, 57, 60-68.

The DOE psychologist and the individual's forensic psychiatrist observed the administrative hearing and commented on the consistency of the individual's testimony with his prior statements to them during their respective interviews. *Id.* at 97, 104, 109. The individual's forensic psychiatrist commented favorably on the consistency in the testimony of the witnesses. *Id.* at 96-97.

In discussing the individual's probable consumption of alcohol in the future, both doctors differentiated between his alcohol consumption as a student and as a working professional. Each doctor discussed the transition from college into the workforce as a movement from one stage of development to another stage; entering the professional environment represents an opportunity to mature and to leave in the past behaviors that may have seemed acceptable in college but are not appropriate in the working world. *Id.* at 97, 100, 102, 110. The doctors concluded that the individual had made such a transition. *Id.* at 101, 102, 103, 110. The individual's forensic psychiatrist discussed four risk factors that might cause one who had used alcohol habitually to excess in an earlier period to abuse alcohol in a later period. He opined that those four risk factors (genetic history, external stressors, instability in relationships and concomitant psychiatric disorders) are absent in the case of the individual. *Id.* at 100-102.

Both doctors were in accord that the future risk of the individual using alcohol to frequent intoxication was low. *Id.* at 103, 108-109.

With respect to security concerns raised under Criterion J, Hearing Officers accord deference to the opinions of mental health professionals. The individual transitioned away from intense alcohol use and habitual intoxication upon leaving the university environment prior to any concerns being raised about his alcohol use by the DOE or his employer. The individual's voluntary adoption of a different relationship to alcohol supports the views of the doctors that he transitioned to a new developmental stage of life when he left college and entered the workforce. The Adjudicative Guidelines recognize that security concerns with respect to the use of alcohol habitually to excess may be mitigated if such use occurred in such unusual circumstances that it is unlikely to recur. *See* Adjudicative Guidelines at Guideline G, ¶23(a). In this case, the individual's use of

alcohol habitually to excess occurred only in the collegiate environment and two doctors have concluded that the likelihood of such use in the future is low. Based on the foregoing, I find that the individual has resolved the Criterion J security concerns.

C. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion H and Criterion J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth sufficient evidence to mitigate the security concerns associated with Criterion H and Criterion J. Accordingly, I have determined that the individual's access authorization should be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Wade M. Boswell
Hearing Officer
Office of Hearings and Appeals

Date: November 15, 2012