

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 of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, and a DOE consultant psychologist (the Psychologist). *See* Transcript of Hearing, Case No. PSH-12-0113 (hereinafter cited as "Tr."). The LSO submitted nine exhibits, marked as Exhibits one through nine, while the Individual submitted five exhibits, marked as Exhibits A through E.

II. FINDINGS OF FACT

The Individual has been arrested twice since 1996 for alcohol-related incidents. On August 2, 1996, police charged him with Interfering with a Police Officer. Exhibit 6 at 1. He admitted to consuming two shots and two beers over two hours prior to this incident. Exhibit 9 at 40. On April 4, 2002, police arrested and charged him with Driving Under the Influence (DUI). Exhibit 9 at 10-34. He admitted drinking eight or nine rum and cokes prior to the incident. *Id.* His breath alcohol content registered .20. *Id.*

At the request of the LSO, the Psychologist evaluated the Individual on May 30, 2012. The Psychologist reviewed selected portions of the Individual's personnel security file, administered a battery of standardized psychological tests to the Individual, and interviewed the Individual. Exhibit 4 at 1. After completing her evaluation of the Individual, the Psychologist issued a report on May 30, 2012, in which she specifically found that the Individual did not meet the criteria for a mental illness or mental condition set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revised (DSM-IV-TR.)² Exhibit 4 at 6, 9. However, the Psychologist found that the Individual was habitually using alcohol to excess. She based this finding on the information provided by the Individual. Specifically, the Individual informed her that he was consuming six to eight drinks a night, once or twice a week. *Id.* at 2-3. He told her that he intended to continue this pattern of alcohol consumption in the future. *Id.* The Psychologist concluded, on the basis of her review of the Individual's Personnel Security File, the clinical interview, and psychological testing, that the Individual has used alcohol excessively in the past and continues to do so. *Id.* at 8. She noted that the Individual drinks to a level of intoxication, which makes him feel "fuzzy" by having six to eight drinks over four to seven hours, once or twice a week. *Id.* She found that "his alcohol use does not seem to have negatively impacted any aspect of his life, including his relationships, employment, and military service." *Id.* at 9. The Psychologist opined that in order to be reformed or rehabilitated from his

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) (Criterion L).

² A copy of this Report appears in the record as Exhibit 9.

excessive alcohol use, he would need to reduce his alcohol consumption, to within NIH guidelines (less than four drinks per evening). *Id.*

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. Criterion J

The Individual's two alcohol-related arrests and his pattern of excessive alcohol consumption is a security concern because his alcohol use might lead to the exercise of questionable judgment or the failure to control impulses, or negatively impact his 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

The security concerns raised under Criterion J by the Individual's continuing pattern of habitually excessive alcohol use have not been resolved. The phrase “user of alcohol habitually to excess” is not set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision as a formal psychiatric diagnosis, nor is it defined in the Part 710 regulations. However, OHA Hearing Officers have addressed the application of this phrase in numerous Decisions, and have defined it as properly applying to individuals who drink to intoxication as a customary practice or pattern. *See, e.g., Personnel Security Hearing, Case No. TSO-0793 (2009); Personnel Security Hearing, Case No. TSO-0738 (2009); Personnel Security Hearing, Case No. TSO-0453 (2007).*³

At the hearing, the Individual testified that he believes that his present level of alcohol

³ 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>.

consumption is reasonable and does not constitute a threat to national security and the common defense. However, the facts in this case, in my view, speak otherwise. The Individual's pattern of drinking six to eight drinks a night, once or twice a week, falls squarely within the range of consumption that OHA Hearing Officers have found to constitute habitual use to excess. *See, e.g., Personnel Security Hearing*, Case No. VSO-0569 (2002) (drinking to intoxication once per month found to be habitual use to excess); *Personnel Security Hearing*, Case No. TSO-0086 (2004) (drinking to intoxication three times per week found to be habitual use to excess); *Personnel Security Hearing*, Case No. TSO-0393 (2006) (binge drinking all night on weekends once every two or three months found to constitute habitual use to excess); *Personnel Security Hearing*, Case No. TSO-0453 (2007) (drinking to intoxication once or twice per month found to be habitual use to excess); *Personnel Security Hearing*, Case No. TSO-0424 (2006) (intoxication 12 times per year between 1994 and 1998, 12 times in 2001, 18 times total in 2002 and 2003, 12 times in 2004 and 10 times in 2005 found to constitute habitual use to excess); *Personnel Security Hearing*, Case No. TSO-0738 (2009) (intoxication twice per month between 1998 and 2002 and every night between 2002 and 2007 found to be habitual use to excess). The record in this case indicates that the Individual drinks to intoxication as a customary practice or pattern. Consequently, I find that the Individual is a user of alcohol habitually to excess. An adjudication of an individual's eligibility for a security clearance is, in essence, a risk assessment. Every time an individual with a DOE security clearance drinks to the point of intoxication, they risk compromising national security. If an individual becomes intoxicated often enough, then the cumulative risk becomes unacceptable. Because the Individual continues to engage in heavy drinking on a weekly basis, I find that he has not sufficiently mitigated the security concerns raised under either Criterion J.

C. Criterion L

The Individual's two 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.

While the criminal conduct cited in the Notification Letter occurred over ten years ago, I find that the security concerns raised by the Individual's two alcohol-related arrests cannot be resolved by the passage of time alone. The Individual continues to habitually use alcohol to excess. Given the role that alcohol has played in the Individual's past conduct, combined with the fact that the Individual continues to drink alcohol habitually to excess, I am not convinced that the underlying conduct will not recur. In the end, the continuing habitual consumption of alcohol still raises concerns about the Individual's judgment, reliability and trustworthiness. Accordingly, I find that the security concerns raised under Criterion L by the Individual's two arrests have not been resolved.

V. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria J and L. I find that the Individual has not mitigated the security concerns under Criteria J and L. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's security clearance should not be granted 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: December 18, 2012