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

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	September 19, 2012)	
)	Case No.: PSH-12-0118
)	

Issued : January 17, 2013

Hearing Officer Decision

Wade M. Boswell, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 not be restored at this time.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. As a participant in the Human Reliability Program (HRP), 10 C.F.R. Part 712, the individual is evaluated annually by his employer’s staff psychologists; these evaluations include questions about alcohol use and personal finances. Transcript at 45-46. During his 2012 annual evaluation, the individual disclosed new indebtedness which resulted when the individual incurred approximately \$20,000 in charges at a “gentleman’s club” on the final evening of a business trip in February 2012; most of this amount was initially charged to the individual’s corporate credit card. The

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.

psychologist conducting the evaluation suspected that alcohol use contributed to the incident and referred the individual for further psychological evaluation. *See* Exhibit 7. As a result of the information generated during these evaluations, the Local Security Office (LSO) conducted a personnel security interview (PSI) with the individual on June 13, 2012. *See* Exhibits 8. Following the PSI, the individual was referred to a DOE consulting psychologist for an evaluation which took place on July 27, 2012. *See* Exhibit 4.

Since the PSI did not resolve the security concerns arising from the individual's use of his corporate credit card for personal expenditures and 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 August 23, 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 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 Criterion H, Criterion J and Criterion L, 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 consulting psychologist. The individual, represented by counsel, introduced 23 lettered exhibits (Exhibits A-W) into the record and presented the testimony of seven witnesses, including that of himself and that of an alcohol counselor from whom he has received treatment. 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

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 . . ."; 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 . . ."; and Criterion L relates to information that a person 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(j), (h)and (l).

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.

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).

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 three criteria as the bases for suspending the individual’s security clearance: Criterion H, Criterion J and Criterion L. 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. With respect to Criterion H, the LSO relied on the July 31, 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 Abuse, and that the individual’s judgment and

reliability were at risk until his Alcohol Abuse was in remission for a significant period of time, accompanied by acceptance and insight into his condition. Ex. 1 and Ex. 4 at 11.

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 that the individual reported becoming intoxicated each evening during a one-week business trip in February 2012 and that the individual acknowledged that alcohol consumption contributed to his incurring approximately \$20,000 of charges at a gentleman’s club on the final evening of the business trip. Additionally, the LSO relied on the July 31, 2012, report of the DOE psychologist which concluded that the individual met the *DSM-IV-TR* criteria for Alcohol Abuse, without adequate evidence of rehabilitation or reformation. Ex. 1 and Ex. 4 at 11.

Criterion L concerns information that an individual has engaged in conduct “which tends to show that the individual is not honest, reliable, or trustworthy....” 10 C.F.R. § 710.8(l). With respect to Criterion L, the LSO noted that the individual acknowledged that he violated his employer’s credit card policy by charging approximately \$20,000 for personal expenses to his company issued credit card during his visit to the gentleman’s club. The LSO also cited an internal report that the individual did not report this charge to his employer until it was discovered by his employer’s credit card oversight group. Ex. 1 at 4. Conduct reflecting questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations raises questions about an “individual’s reliability, trustworthiness and ability to protect classified information.” Adjudicative Guidelines at Guideline E.

In light of the information available to the LSO, the LSO properly invoked Criterion H, Criterion J and Criterion L.

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

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.

authorization should not be restored at this time. I cannot find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Mitigating Evidence

The individual testified that the purpose of his February business trip was to take a one-week training class, which concluded with an all-day certification examination. The individual had previously taken the class and failed the examination and, therefore, experienced a great deal of stress during the week leading up to the examination. Each evening after the class, he consumed alcohol to the point of intoxication in an attempt to relieve his stress. Tr. at 141, 142, 147, 148.

On the final day of the class (Friday) he took the examination and learned that he had passed the certification. *Id.* at 148, 149. He celebrated the successful conclusion of the class by having drinks and dinner with colleagues from the class. After dinner, he suggested to his colleagues that they continue their evening at a gentleman's club that he had visited during his prior class. His colleagues chose not to join him and he continued the evening on his own. *Id.* at 142, 149-151.

When he arrived at the gentleman's club, the bartender required a credit card in order for him to "run a tab." *Id.* at 152. From his prior visit to the club, the individual testified that he believed he had sufficient cash for the evening but that "running a tab" was more convenient. *Id.* at 143, 152. The only credit card that the individual had with him was a corporate credit card, which he gave the bartender in order to run a tab although he fully intended to pay in cash at the end of the evening. *Id.* at 152, 158. After several drinks, the individual asked to settle his tab but, before doing so, was persuaded by a dancer to purchase a private dance from her. He verified the cost of the dance and, knowing he did not have the cash for the dance, expected to use his personal debit card at an ATM on the premises so that he could still settle his tab (including the dance) in cash. *Id.* at 153-154. Hours and several more drinks later, he left the club having signed six to eight credit card receipts without looking at them. *Id.* at 155-157, 185.

The individual testified that following his return home from the training class, he drank three beers that Sunday and then resolved to stop drinking. *Id.* at 161. He has consumed no alcohol since February 19, 2012, and has resolved to not consume alcohol in the future. *Id.* at 137. On Monday, the individual called the gentleman's club to ascertain the total of the charges. His corporate credit card had been charged approximately \$17,000 and his personal debit card had been charged approximately \$2,700. *Id.* at 161, 163.

As noted above, as a result of the individual disclosing information relating to the February incident during his annual HRP examination, he was evaluated by his employer's lead psychologist and referred to an external counselor who, in May 2012, diagnosed the individual as suffering from Alcohol Abuse and recommended that he complete an intensive outpatient alcohol-treatment program (IOP). *Id.* at 19-21, 45, 47, 49; Ex. O. Prior to commencing the IOP, the individual was evaluated by a DOE

consulting psychologist who also diagnosed the individual as suffering from Alcohol Abuse. Ex. 4.

The individual believed that an IOP was unnecessary since he had already ceased drinking, but reluctantly commenced an IOP on August 2, 2012. Tr. at 170-175; Ex. F. Through his participation in the IOP, the individual came to realize that he was alcohol dependent and, after a couple of weeks in the IOP, came to fully embrace the recovery and treatment program. Tr. at 175. His insight and understanding of his use of alcohol tremendously increased and his attitude correspondingly changed. In addition to the individual's testimony describing his personal metamorphosis partway through the IOP, this change was also noted in the testimony of his wife, the lead psychologist at his place of employment and the outside counselor who had recommended an IOP. *Id.* at 22-23, 47-49, 117.

The individual completed the IOP on September 17, 2012, and extended his treatment at the IOP center for an additional week; he has continued after-care through the IOP center, including sessions with his treatment counselor; he has entered private counseling with the counselor who had originally recommended an IOP; and he has continued to be monitored by his employer's lead psychologist. *Id.* at 47, 176, 179; Ex. F, Ex. O. The individual has also joined Alcoholics Anonymous (AA) and has a sponsor with whom he is working steps. His AA sponsor is working with him to accomplish steps in greater depth than he had originally done and, at the time of the hearing, the individual was on step four. Tr. at 170-180. He had nearly completed attending 90 meetings and 90 days at the time of the hearing. Ex. H; Ex. U. Additionally, he and his family have joined a church with a strong recovery program. The director of the church's "Life's Healing Choices" testified that the individual had fully and openly participated in one of the program's eight-week classes over the past several weeks and that the director expects the individual will lead similar classes in the future. *Id.* at 125-126, 130. The individual's IOP counselor, his employer's lead psychologist and his private counselor have all indicated that they view the individual as having a good prognosis to the extent that he continues his current treatment and activities that support that treatment. *Id.* at 28, 37, 50; Ex. P.

B. Review of Criterion H and Criterion J Security Concerns

The individual was diagnosed as suffering from Alcohol Abuse by the counselor to whom he was referred by his employer in May 2012 and by a DOE consulting psychologist in July 2012. The individual has since come to self-identify as an "alcoholic." Ex. A at 2. The individual is not contesting the diagnosis underlying the security concerns raised by the LSO under Criterion H and Criterion J, but advocating that he has demonstrated adequate rehabilitation and reformation with respect to his use of alcohol and has, therefore, mitigated the concerns.

Following the individual's initial evaluation by the DOE's consulting psychologist in July 2012, the psychologist recommended that in order to demonstrate adequate rehabilitation and reformation the individual should abstain from all alcohol consumption for at least 12 months combined with compliant participation in an appropriate intensive outpatient treatment program or 24 months of abstinence without participation in a

treatment program or use of other rehabilitation aids. Ex. 4 at 11. At the hearing, after listening to the testimony of the individual and all of the other witnesses, the DOE psychologist testified that his recommendation remains unchanged. Tr. at 216. Although the individual has abstained from alcohol use since February 19, 2012, he did not begin participation in treatment until August 2012. *Id.* The DOE psychologist noted that the individual continued to be in denial with respect to his relationship with alcohol at the time of the initial evaluation in July and his understanding and insight into his condition did not begin until several weeks into his IOP. *Id.* at 217, 220. Further, the individual's responses to his questions during the hearing indicated that the individual was still experiencing alcohol cravings which would be expected at this stage of his recovery. *Id.* at 219. The DOE psychologist testified that alcohol disorders are "inherently relapsing conditions" and "alcohol abuse is a difficult condition to treat and it takes time in recovery to get there." *Id.* 219, 228. He believes the individual has now "impressively embraced" his recovery program and, for the purposes of demonstrating adequate rehabilitation and reformation, he would want the individual to have 12 months of abstinence from alcohol from August 2012, which is when the individual commenced the IOP. *Id.* 218, 227, 228.

Upon questioning by the individual's attorney, the DOE psychologist agreed that, if the individual continued his present progress, the individual may be able to achieve adequate rehabilitation and reformation with ten months of alcohol abstinence and treatment; however, at this time, the DOE psychologist did not alter his original recommendation of 12 months. *Id.* 223.

Neither of the mental health professionals testifying at the request of the individual opined that he had demonstrated adequate reformation and rehabilitation. His employer's lead psychologist agreed with the original recommendation of the DOE psychologist, although he would begin counting the 12 months from the beginning of the employee's abstinence in February 2012. *Id.* at 62. The private counselor who is currently treating the individual stated that she had no opinion as to the length of time necessary to demonstrate adequate reformation or rehabilitation but felt "if he continues to do the work he is currently doing, he will be successfully." *Id.* at 37. She described the individual as being in Early Full Remission, specifically referring to the definitions in the *DSM-IV-TR* distinguishing between Early and Sustained Full Remission.

In analyzing the individual's history with alcohol use, I note that when the individual initially applied for the HRP in 2006, his employer was concerned about his level of alcohol consumption and referred him to the counselor. Ex 7; Ex. O. At that time, the individual had five sessions with the counselor who also had him watch certain educational videos on alcohol disorders. Tr. at 16-18. The counselor testified that at the time she diagnosed him with Alcohol Disorder Not Otherwise Specified. *Id.* at 17. Following those sessions, the individual committed to reduce his alcohol use and succeeded in doing so, but was unable to maintain his alcohol consumption at the reduced level over time. Ex. 7. The individual's inability to maintain a reduced level of alcohol consumption following the 2006 education and counseling further weighs against mitigation of the security concerns under Criterion H and Criterion J. (*Cf.* Adjudicative Guidelines at Guideline G, ¶23(c) which states mitigation of alcohol conditions may be

considered if “the individual is a current employee who is participating in a counseling or treatment program, *has no history of previous treatment or relapse*, and is making satisfactory progress” (emphasis added).)

Hearing Officers customarily accord deference to the opinions of mental health professionals with respect to security concerns under Criterion H and Criterion J. The view of the DOE psychologist that the individual needs to complete 12 months of abstinence from the time he commenced his IOP in August 2012 in order to demonstrate adequate rehabilitation and reformation is particularly compelling in light of the relapsing nature of alcohol disorders and the individual’s earlier counseling for alcohol use in 2006. As of the date of the hearing, the individual had only been participating in a treatment program for three-and-one-half months; this is simply not enough time.

Although I believe the individual is to be commended for the manner in which he has embraced his recovery in recent months and is to be encouraged to continue his extraordinary progress, I find that based on the foregoing the individual has not mitigated the security concerns associated with Criterion H and Criterion J at this time.

C. Review of Criterion L Security Concerns

The LSO’s security concerns with respect to Criterion L were triggered by two sets of circumstances surrounding the February incident: (1) the individual’s use of his corporate credit card at the gentleman’s club, and (2) the individual’s failure to report the use of the credit card for an unauthorized expenditure until it was noticed by his employer’s credit card oversight group. These two aspects require separate analysis.

With respect to the manner in which the employer learned that the individual had used his corporate credit card at gentleman’s club, the individual offered credible testimony that he informed his supervisor of the situation on the first or second business day following his return from his business trip. He also testified that within those initial days back at his job he explained the situation to the person responsible for credit card oversight at his place of employment and she gave him guidance, which he followed, on how to dispute the charges. Tr. 164-165. The individual’s testimony was credibly corroborated by his supervisor and a co-worker. *Id.* at 67-68, 70, 79-80.

The only evidence in the record that suggests the individual did not disclose the situation until confronted by the employer’s credit card oversight personnel is a single comment to that effect in a summary report prepared by one of the employer’s staff psychologists. Ex. 7. The comment seems to be reporting information that the psychologist was told by others. When the psychologist testified, he offered no testimony on this detail and testified as to the honesty of the individual: the individual had always been honest and forthright in their discussions, even when the information might be to the individual’s detriment. *Id.* at 46.

On the basis of the foregoing, I find that the individual has established that he initiated disclosure of the incident to his employer in a timely and effective manner and has resolved security concerns under Criterion L with respect to such notification.

With respect to use of the his corporate credit card at the gentleman's club, the individual testified that it was improper, that he had never previously used his corporate card for unauthorized expenditures and had been put on probation by his employer as a result of his use of his corporate card at the gentlemen's club. *Id.* at 168, 196-198. Following the incident, the individual promptly notified his employer of the inappropriate use of his credit and promptly disputed the charges. *Id.* at 164-165. The individual also made inquiries and ascertained that he could borrow funds from his 401k retirement account in order to pay the charges in the event he was unsuccessful in disputing the charges. The individual testified that on the day that he learned that his challenge to the charges was unsuccessful, he finalized a loan of \$20,000 from his 401k account and used the proceeds of the loan to pay in full his corporate card balance before receiving his monthly statement with the charges. *Id.* at 204; Ex. V; Ex. W. In short, following what appears to be an isolated incident in February 2012, the individual undertook prompt, responsible action to assume and satisfy all debt arising from the misuse of his corporate card. *Cf.* Adjudicative Guidelines at Guideline F, ¶20(a) and (d).

Although the individual's actions following the event reflect responsibility with respect to the debt incurred, unresolved is the inappropriateness in tendering his corporate card to run a tab and subsequently allowing the card to be charged. All of the mental health professionals testifying at the hearing testified that the individual's use of alcohol that evening contributed to his inability to exercise proper judgment. Tr. at 19-20, 47, 217-218. The poor judgment that the individual exercised in the course of the evening is in stark contrast to the candor and responsibility that he displayed following his return home. Based on the record of the hearing, the individual had consumed considerable alcohol prior to his arrival at the gentleman's club and his consumption of alcohol greatly increased while he was at the club. His failure to exercise proper judgment with respect to his use of his corporate card appears integrally linked to his consumption of alcohol.

Until the individual has resolved the security concerns with respect to his use of alcohol, I cannot find that he has resolved the security concerns raised under Criterion L with respect to his honesty, reliability and trustworthiness.

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, Criterion J and Criterion L. 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 not brought forth sufficient evidence to mitigate the security concerns associated with Criterion H, Criterion J and Criterion L. Accordingly, I have determined that the

individual's access authorization should not be restored at this time. 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: January 17, 2013