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

In the Matter of:	Personnel Security Hearing	)	
		)	
Filing Date:	November 1, 2012	)	
		)	Case No.: PSH-12-0126
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Issued : February 1, 2013

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**Hearing Officer Decision**

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Wade M. Boswell, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> 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 subject to random breath alcohol tests (BATs). When the individual reported to work for his regularly scheduled afternoon shift on Monday, June 18, 2012, he was advised to report for a BAT. He tested positive on the BAT and, as a result, he was suspended by his employer. Subsequent to his return to work, the Local Security Office (LSO) conducted a personnel security interview (PSI) with the individual on July 25, 2012. *See* Exhibit 10. As a result of the positive BAT and concerns raised

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<sup>1</sup> 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.

during the PSI, the individual was referred for evaluation by a DOE consulting psychologist, who submitted a psychological assessment dated September 12, 2012. *See* Exhibit 7.

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 an October 4, 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 criteria 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).<sup>2</sup> *See* Exhibit 1.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. *See* Exhibit 2. 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 11 numbered exhibits into the record and presented the testimony of one witness, the DOE consulting psychologist. The individual introduced four lettered exhibits (Exhibits A-D) into the record and presented the testimony of four witnesses, including that of himself and that of a licensed psychologist who participated in his alcohol treatment program. 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.<sup>3</sup>

## **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 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

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<sup>2</sup> 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).

<sup>3</sup> OHA decisions are available on the OHA website at [www.oha.doe.gov](http://www.oha.doe.gov). A decision may be accessed by entering the case number in the search engine at [www.oha.gov/search.htm](http://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 suspending 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. With respect to Criterion H, the LSO relied on the September 12, 2012, report of the DOE psychologist which concluded that the individual has consumed alcohol to intoxication very frequently and this causes and could cause significant defects in the individual’s judgment and reliability. Ex. 1 and Ex. 7 at 6.

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 (1) the individual tested positive on a random BAT on June 18, 2012, (2) the individual reported consuming approximately 18 12-ounce

beers every weekend from August 2009 to July 2012 and becoming intoxicated almost weekly, and (3) the individual was arrested and charged with driving while intoxicated in September 1992. Additionally, the LSO relied on the September 12, 2012, report of the DOE psychologist which concluded that the individual has been and, until three months prior to the psychological assessment, continued to be an user of alcohol habitually to excess, without adequate evidence of rehabilitation or reformation. Ex. 1 and Ex. 7 at 5.

In light of the information available to the LSO, the LSO properly invoked Criterion H and Criterion 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)<sup>4</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access 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.

The individual's alcohol consumption was always limited to beer, which he began drinking when he was 18 years old. Tr. at 66; Ex. 10 at 84. Since his mid-20's, he has consumed sufficient quantities of alcohol to result in his intoxication at least once a month. The individual's alcohol consumption increased approximately three years ago following a divorce and, until his positive BAT, he was generally drinking an 18-pack of beer every weekend which resulted in him becoming legally intoxicated at least once a week. Ex. 7 at 3 – 4; Tr. at 55.

Notwithstanding his typical weekend alcohol consumption, the individual reported that he always made sure to abstain from alcohol consumption for at least eight hours prior to reporting to work as required by the HRP rules at his facility. *Id.* at 53. On June 17, 2012, the individual hosted a Father's Day cookout at his home and consumed beer from early evening through one o'clock the following morning. When the individual reported to work for his normal shift on Monday afternoon, he was selected for a random BAT on which he tested positive with a blood alcohol content (BAC) of .05 g/210L. Ex. 7 at 3; Ex. 10. Based on the result of the BAT and the individual's report of having stopped drinking at 1 a.m., the DOE psychologist calculated that the individual's BAC had likely reached .34. Ex. 7 at 3 – 4. The DOE psychologist testified that most people would be

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<sup>4</sup> 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.

unconscious at that level of intoxication and that the individual's severe alcohol consumption over a sustained period had resulted in his body's ability to tolerate that level of alcohol. Tr. at 73 – 74.

This was the first positive BAT the individual had had in his 18 years at the DOE contractor's facility. His supervisor confirmed that the individual had had no positive BATs during the 16 years of his supervision. *Id.* at 44 – 46.

Within a few days of the positive BAT, the individual decided to abstain from all alcohol. As of the date of the hearing, the individual had been abstinent from alcohol for 180 days. *Id.* at 57. Upon the suggestion of medical personnel at the facility and of a co-worker, the individual entered an intensive outpatient program (IOP) for alcohol treatment in July 2012, completing the program on September 4, 2012. *Id.* at 54; Ex. A.

A psychologist who participated in his treatment at the IOP testified that the individual participated fully in the program and has consistently participated in aftercare subsequent to completing the program, attending both group meetings and sessions with an individual therapist. Tr. at 18 – 19. The IOP psychologist testified that their initial assessment of the individual was that he lacked understanding and education of the impact of alcohol and of the tolerance for alcohol that his body had developed. *Id.* at 22. She testified that the individual “corrects ... behavior as soon as he's given the information to do so.” *Id.* She believes his prognosis is good and opined that if he continues his program and current abstinence he will demonstrate adequate rehabilitation and reformation as of March 4, 2013, which is six months following his completion of the IOP.<sup>5</sup> *Id.* at 22, 31.

The DOE psychologist evaluated the individual on September 10, 2012, shortly after the individual had completed the IOP. Ex. 7. As a result of the evaluation, the DOE psychologist concluded that the individual did not meet the criteria for any of the alcohol disorders defined in the *Diagnostic Statistical Manual of the American Psychiatric Association IVth Edition TR (DSM-IV-TR)*; however, based on the individual's historic pattern of alcohol consumption, the DOE psychologist diagnosed the individual as, until three months prior to the evaluation, a user of alcohol habitually to excess which was a condition that causes or could cause significant defects in his judgment and reliability.<sup>6</sup> Tr. at 82; Ex. 7 at 5 – 6. In his report, the DOE psychologist stated that the individual had demonstrated control over his drinking for only three months and opined that in order to demonstrate adequate rehabilitation and reformation of his condition the individual needed to participate in IOP aftercare and demonstrate responsible drinking (i.e., not to intoxication) for the six-month period following the psychological evaluation (i.e., until March 10, 2013). *Id.*

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<sup>5</sup> Earlier in her testimony, the IOP psychologist testified that the individual had demonstrated “reformation” with respect to alcohol usage. Tr. at 24.

<sup>6</sup> The IOP psychologist testified that the individual had been given a “working diagnosis” of Alcohol Abuse at her facility. On questioning, she acknowledged that the individual did not meet the criteria for Alcohol Abuse under the DSM-IV-TR, but that their program required a DSM diagnosis in order for someone to participate in their program. Tr. at 29 – 30.

After listening to all of the testimony at the hearing, the DOE psychologist testified that education and the passage of time are important with alcohol conditions. Tr. at 77. He noted that the individual had exceeded the psychologist's original recommendations by abstaining from alcohol consumption (as opposed to consuming alcohol in a responsible manner). *Id.* at 80. He felt the individual was "a man who strives for ... absolute honesty" and could be believed when he said he intended not to drink again. *Id.* at 79, 84. The psychologist testified that the individual's prognosis was very good, with a low probability of relapse. *Id.* at 79. Notwithstanding the progress demonstrated by the individual, the DOE psychologist testified that he wanted the individual to get through the end of the year holidays and complete the six-month period of continued abstinence or responsible alcohol use as originally recommended in the DOE psychologist's report. *Id.* at 79 – 80, 84; Ex. 7.

The individual does not contest the accuracy of the charges set forth in the Notification Letter but advocates that he has demonstrated adequate rehabilitation and reformation with respect to his use of alcohol and has, therefore, mitigated the concerns. Tr. at 8. As noted above, the individual had abstained from alcohol use for 180 days as of the date of the hearing. He also testified that, notwithstanding the assessment of the DOE psychologist that the individual could continue to consume alcohol if he did so in a responsible manner, he intends to abstain from all alcohol consumption in the future. *Id.* at 57.

Hearing Officers customarily accord deference to the opinions of mental health professionals with respect to security concerns under Criterion H and Criterion J. With respect to demonstrating adequate rehabilitation and reformation, the IOP psychologist testified that the individual would need to successfully continue his aftercare until March 4, 2013, and the DOE psychologist testified that the individual would need to successfully continue his IOP aftercare and demonstrate responsible use of alcohol (or abstinence) until March 10, 2013. These professional opinions are remarkably consistent. Both mental health professionals expressed that as of the date of the hearing the individual had met all of their requirements, except time.

Although I believe the individual is to be commended for his abstinence from alcohol and embracing a recovery program, I cannot find, based on the foregoing, that the individual has mitigated the security concerns associated with Criterion H and Criterion J at this time.

## **V. 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 not 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 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: February 1, 2013