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

In the Matter of: Personnel Security Hearing)
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Filing Date: February 11, 2013)
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Case No.: PSH-13-0016

Issued : June 20, 2013

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 not be restored.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance and participate in the Human Reliability Program (HRP).² An anonymous report to his employer triggered an investigation into an incident in August 2011 in which a co-worker came upon the individual naked outside of a local convenience store at approximately 2 a.m. As a result of the information generated during

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.

² The HRP is a security and safety reliability program designed to ensure that individuals who occupy positions affording access to certain materials, nuclear explosive devices, facilities, and programs meet the highest standards of reliability and physical and mental suitability. See 10 C.F.R. § 712.

this investigation, the individual's HRP certification was suspended and the Local Security Office (LSO) conducted a personnel security interview (PSI) with the individual on October 18, 2011 (2011 PSI). *See* Exhibit 15, Exhibit 18. Following the 2011 PSI, the individual was referred to a DOE consulting psychologist for an evaluation which took place on December 16, 2011 (2011 Evaluation). *See* Exhibit 12.

Prior to a decision with respect to the individual's HRP certification, a periodic reinvestigation of the individual's access authorization became due. The LSO noted discrepancies between statements made by the individual during the reinvestigation with respect to his alcohol usage and those made by him during the 2011 PSI and 2011 Evaluation. Exhibit 17 at 7. As a result, another PSI was conducted with the individual on October 18, 2012 (2012 PSI) and, subsequently, the individual was referred to the DOE consulting psychologist for another evaluation which took place on November 30, 2012 (2012 Evaluation). *See* Exhibit 11, Exhibit 17.

Since the 2012 Evaluation did not resolve concerns about either the individual's alcohol use or discrepant reporting, the LSO informed the individual in a letter dated January 2, 2013 (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).³ *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. 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 presented the testimony of one witness, the DOE consulting psychologist; the individual presented the testimony of two witnesses, including that of himself. The LSO introduced 19 numbered exhibits into the record; the individual tendered no exhibits. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.⁴

³ Criterion H 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 J 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(h), (j)and (l).

⁴ OHA decisions are available on the OHA website at www.energy.gov/oha. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

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).

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 2012 Evaluation in which a DOE consulting psychologist concluded that the individual met the *Diagnostic Statistical Manual of the American Psychiatric Association IVth Edition TR (DSM-IV-TR)* criteria for Alcohol Dependence, in Early Partial Remission, and that that is a condition that could cause significant defects in his judgment and reliability. Ex. 1 and Ex. 11 at 8.

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). The LSO noted (1) the individual’s acknowledgment that he had consumed a 12 pack of beer and passed out in a bar prior to being arrested and charged with Driving While Intoxicated in July 2001, and (2) the individual’s acknowledgment that he had consumed three or four 12-ounce beers prior to the incident in August 2011, in which a co-worker had come upon the individual naked outside of a local convenience store, and could not recall what had happened to him or how he had arrived at the store. Additionally, the DOE psychologist’s 2012 Evaluation concluded that the individual met the *DSM-IV-TR* criteria for Alcohol Dependence, without adequate evidence of rehabilitation or reformation. Ex. 1 and Ex. 11 at 8.

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 cited the individual’s discrepant reporting of his alcohol use during the 2011 and 2012 investigations. Additionally, the LSO noted that the individual had admitted to the DOE psychologist during the 2012 Evaluation that he had not been honest about his alcohol use during the 2011 PSI and 2011 Evaluation because he was concerned that he would lose his job. Ex. 11 at 3. 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. Findings of Fact

One evening in August 2011, the individual consumed three or four beers at a local bar that he frequented. Ex. 18 at 14. At approximately 2 a.m. the next morning, a co-worker found the individual incoherent and wearing no clothes outside of a local convenience store. *Id.* at 17. The co-worker helped the individual get home safely and the individual awoke later that morning feeling no adverse effects from the evening before but having no memory of the events between drinking at the bar and his co-worker finding him at the

convenience store. *Id.* at 20, 22 – 25. The individual did not seek medical examination or testing following this incident. *Id.* at 26 – 28.

The individual believes that a beer he drank that evening had been spiked with a Rohypnol, a “date rape” drug, that had been intended for one of the women at the table where he was sitting. Ex. 16 at 4, Ex. 12 at 3. The DOE psychologist opined that the effects described by the individual and his lack of symptoms the following morning are consistent with ingestion of Rohypnol and inconsistent with alcohol intoxication. Tr. at 42 – 43.

During the subsequent investigation of the incident by his site’s HRP official, the individual was interviewed by the LSO and evaluated by a DOE psychologist. At the commencement of the 2011 PSI, the individual signed an acknowledgment that 18 U.S. Code § 1001 imposes penalties for knowingly providing false information in a matter within the jurisdiction of a federal agency and, further, he provided an oral description of his understanding of those legal sanctions. Ex. 18 at 7 – 8, 102. At the end of the 2011 PSI, he confirmed that he had been honest and truthful during the interview. *Id.* at 97.

During the 2011 PSI and the 2011 Evaluation, the individual reported that his consumption of alcohol beginning in 2006 was three to four beers, four times per month, and that he had not been intoxicated since 2001.⁵ *Id.* at 52 – 54. The DOE psychologist, in reliance on this information, concluded that the individual met the criteria for Alcohol Dependence but no longer deserved that diagnosis in light of his moderate alcohol consumption and his not having been intoxicated since 2001; he further opined that the individual had evidenced adequate rehabilitation or reformation and did not have an illness or mental condition of a nature that causes or could cause a significant defect in judgment or reliability. Ex. 12 at 6.

Prior to the restoration of the individual’s HRP certification, the individual’s access authorization came due for periodic reinvestigation. During this investigation, the individual reported a higher level of alcohol consumption to the OPM investigator (i.e., 12 beers per week) and the LSO decided to conduct a PSI because of these discrepancies. Ex. 17 at 7 – 8. When confronted with the discrepancies during the 2012 PSI, the individual confirmed that the higher level of alcohol consumption that he reported to OPM was correct and speculated that the DOE psychologist may have misread his own handwriting. *Id.* 8 – 9.

When the DOE psychologist subsequently read to the individual portions of the transcript of the 2011 PSI which made clear the individual had fully understood the questions, the individual responded with “a brief flash of anger” and stated “I couldn’t say that I was getting intoxicated! I really want this job... I need this job... If I had said that I was getting intoxicated then you guys would take away my job! I was dishonest and that is why.” Ex 11 at 8. During the hearing, the individual confirmed that the DOE

⁵ In a later portion of the 2011 PSI when the investigator suggested a definition of intoxication that would include “being buzzed,” the individual acknowledged that he would have been intoxicated by that definition while in the military. Ex. 18 at 73 – 74.

psychologist had accurately quoted him and that he had knowingly provided false information in 2011. Tr. 29 – 31, 48 – 49.

Based on the revised information about the individual's alcohol usage, the DOE psychologist concluded that the individual warranted the continuing diagnosis of Alcohol Dependence (with the modifier of "in Early Partial Remission" based on the individual's reduced alcohol consumption during the three months prior to the evaluation) and that this is a condition that could cause significant defects in his judgment and reliability. Ex. 11 at 8. The DOE psychologist opined that in light of the revised information about the individual's alcohol consumption, the individual has not evidenced adequate rehabilitation or reformation. To do so, the individual would need to (1) remain abstinent for ten months, (2) be subject to frequent, random ethyl glucuroinide tests, (3) participate in an intensive outpatient alcohol treatment program and continue with aftercare meetings, and (4) be evaluated for mediation and/or cognitive/behavioral therapy for his depressive tendencies. *Id.*

The individual continues to consume alcohol. His current alcohol consumption is two or three beers, two or three times per week, and, when he drinks, he drinks to get a "buzz" but avoids "intoxication" which he defines as slurred speech, poor judgments, stumbling, and not being able to drive. Tr. 23, 28, 52 –53. The evening prior to the administrative review hearing, the individual consumed three beers. *Id.* at 26.

V. 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)⁶ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored. 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. Review of Criterion H and Criterion J Security Concerns

Following the revised information about the individual's alcohol consumption that was received during the 2012 PSI and the 2012 Evaluation, the DOE consulting psychologist diagnosed the individual as meeting the criteria set forth in the *DSM-IV-TR* for Alcohol Dependence, Early Partial Remission, without adequate evidence of rehabilitation or

⁶ 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.

reformation, and opined that this is a condition that could cause a significant defects in his judgment and reliability. Ex. 11 at 8. Although the individual is aware of the 2012 Evaluation, he does not believe that alcohol consumption is an issue for him. Tr. at 36, 52, 59.

The 2012 Evaluation outlined, as described above, the steps the individual would need to take in the opinion of the DOE psychologist to demonstrate adequate rehabilitation or reformation. The individual testified that he had understood the 2012 Evaluation to be a *recommendation* to DOE and that he did not interpret the measures set forth to evidence rehabilitation or reformation to be *requirements* of DOE. *Id.* at 33. He testified with respect to abstinence, for example, that he had abstained from consumption of alcohol for two years while deployed by the military and that he would abstain from alcohol again if someone were to tell him that that's what DOE required of him. *Id.* at 33, 34, 36, 39, 43. Since no one had contacted him about scheduling random ethyl glucuroinide tests (as recommended in the 2012 Evaluation), the individual testified that he thought he was "okay" as far as DOE was concerned. *Id.* at 63.

Whatever genuine confusion the individual may have had in this regard should have ended upon his receipt of the Notification Letter, which specifically sets forth DOE's concerns with respect to Criterion H and Criterion J. While instituting ethyl glucuroinide testing may have been outside the individual's control, abstaining from alcohol consumption and enrolling in an intensive outpatient alcohol treatment program were within his control and, in the five months between his receipt of the Notification Letter and the date of the administrative review hearing, he did not pursue either action.

The administrative review hearing provides an individual the opportunity to mitigate, or even refute, the LSO's security concerns. The individual presented no expert testimony or documentation with respect to the alcohol-related and psychological concerns set forth in the Notification Letter. To address these issues, he offered his own testimony. In light of the conclusions set forth in the 2012 Evaluation, the individual's own testimony that he drinks beer because he enjoys the taste of it and that he believes his consumption of alcohol is controlled because he has reduced his alcohol consumption to only two or three beers, two or three times per week (in each case to obtain a "buzz" but stopping at that point) does little to allay the concerns set forth in the Notification Letter. *Id.* at 24, 53. Drinking three beers the evening before an administrative review hearing on alcohol-related security concerns, as the individual testified he had done, could reflect the individual's view that his alcohol consumption is fully controlled, but seems more likely to suggest a misunderstanding of the personnel security concerns raised by the LSO or a lack of earnestness. I found no evidence presented by the individual sufficient to mitigate the Criterion H and Criterion J security concerns. *See* Adjudicative Guidelines at Guideline G ¶23 and Guideline I ¶29.

Hearing Officers customarily accord deference to the opinions of mental health professionals with respect to security concerns under Criterion H and Criterion J. At the hearing, the DOE psychologist who had been present throughout the hearing testified that, having heard the testimony of the individual, the psychologist would continue his

diagnosis of Alcohol Dependence,⁷ which is a condition that could cause the individual to have a significant defect in judgment or reliability. Tr. at 59 – 60, 63. The psychologist noted that the individual was becoming legally intoxicated as recently as August 2012. *Id.* at 65. With respect to evidencing adequate rehabilitation or reformation, the DOE psychologist stated that he would still want to see ten months of abstinence and participation by the individual in an intensive outpatient treatment program. *Id.* at 67. As of the date of the hearing, the individual has not established any period of abstinence subsequent to the 2012 Evaluation or commenced a treatment program.

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.

B. Review of Criterion L Security Concerns

The LSO's security concerns with respect to Criterion L⁸ were triggered by the individual's discrepant reporting of his alcohol consumption, specifically reporting an inaccurately low amount of alcohol consumption during the 2011 PSI and 2011 Evaluation. The individual testified that he really did not know the amount of alcohol he consumed over the various periods of life and had tried to provide accurate responses to questions asked; however, the security concerns raised in the Notification Letter under Criterion L are not with respect to statements where the individual had sincerely deficient memory. *Id.* at 21, 26.

The individual testified that during the initial investigation of the August 2011 incident he had been fully honest and, having always understood that if he told the truth to the HRP official everything would be fine, he felt "blind-sided" when his HRP certification was suspended during that investigation. He felt he had been punished for telling the truth. He testified that during the 2011 PSI and 2011 Evaluation he was afraid that he would lose his job if he told the truth about his alcohol consumption. *Id.* at 30, 49 – 50.

During the 2012 PSI, he was confronted with his discrepant reporting and did not take the opportunity to rectify his prior falsehoods. Instead, he tried to blame poor penmanship of the psychologist. Ex. 17 at 8 – 9. *Cf.* Adjudicative Guidelines at Guideline E at ¶ 17(a).

⁷ In light of the passage of time since the 2012 Evaluation, the DOE psychologist would modify the diagnosis from "Alcohol Dependence, Early Partial Remission" to "Alcohol Dependence, Early Full Remission." Tr. at 63.

⁸ The LSO brought no security concerns under Criterion F and no finding in this Decision is made under Criterion F. Criterion F relates to information that a person as "deliberately misrepresented, falsified, or omitted significant information from a ... personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization..." 10 C.F.R. § 710.8(f).

When confronted with the actual transcript of the 2011 PSI by the DOE psychologist, the individual acknowledged that he had been knowingly dishonest. He made a similar acknowledgement during the hearing.⁹ Tr. at 30.

Making false statements in order to influence a decision about eligibility for access authorization constitutes dishonesty that is relevant and material to the personnel security process. The individual was fully aware of his obligation to being honest during the process as reflected by his acknowledgment of 18 U.S. Code § 1001.

It is critical that those with access authorization are honest at all times. Dishonesty during the security clearance process raises concerns that an individual may be unwilling or unable to comply with required security procedures and regulations and raises questions about the individual's character, reliability, trustworthiness and judgment. Security concerns are particularly grave where an individual's dishonesty is economically motivated as it is in this case where the individual stated that his dishonesty was motivated by fear over the loss of his job. Holders of access authorization are expected to be honest at all times, even if that honesty is to their detriment. Engaging in dishonesty of this type makes one vulnerable to coercion should others learn of the deception, thereby creating additional security concerns.

During both the 2011 PSI and the hearing, the individual made statements to the effect that he had told the truth during the initial investigation of the August 2011 incident and that he had not needed to do so because all the HRP had at that time was hearsay or second hand information. This is simply not true – honesty is not optional when one holds access authorization.

The individual testified that he regretted his dishonesty and I believe that his regret is sincere. *Id.* at 23. However, regret is insufficient to mitigate these Criterion L concerns, particularly where the dishonesty was material to the security clearance process, was motivated by one's own economic interest and was only acknowledged after being confronted for a second time. Based on the foregoing, the individual has not mitigated the security concerns associated with Criterion L with respect to his honesty, reliability and trustworthiness.

VI. 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

⁹ The individual testified that following the suspension of his HRP certification, "I was scared if I told the truth... I was like, 'Well, if I keep telling the truth, then I'm going to lose my job, and I don't want to lose my job.'" Tr. at 30.

individual's access authorization should not be restored. 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: June 20, 2013