

irresponsibility, and (5) engaged in a pattern of criminal behavior which brought into question his honesty, reliability, and trustworthiness.²

The Notification Letter further 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 on April 8, 2013.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his former supervisor, his treating counselor (the Counselor), and a DOE consultant psychiatrist (the DOE Psychiatrist). See Transcript of Hearing, Case No. PSH-13-0041 (hereinafter cited as "Tr."). The LSO submitted 72 exhibits, marked as Exhibits 1 through 72, while the Individual submitted four exhibits, marked as Exhibits A through D.

II. FINDINGS OF FACT

The Individual was arrested three times between 1986 and 2003. On September 23, 1986, he was arrested for Terroristic Threats and Acts, Criminal Trespass, and Simple Battery. Exhibit 14 at 17. On October 28, 1998, the Individual was arrested for Battery/Simple Battery-Family Violence. *Id.* On August 17, 2003, he was arrested for Failure to Maintain Lane and Driving Under the Influence (DUI). *Id.*

The Individual has a longstanding pattern of moderate financial irresponsibility as evidenced by the following: Nine credit reports for the years 1999 through 2013 showing unpaid collections amounts varying from \$306 to \$1,388. Exhibits 7, 11, 15, 30, 34, 36, 38, 71. The May 8, 2013, credit report also shows that the Individual had incurred a number of liens, totaling \$3,277, placed upon his property for unpaid taxes in 2011. Exhibit 71. The May 8, 2013, credit report also shows that \$2,156 of these liens were released in 2012. *Id.*

The Individual also has a history of alcohol-related incidents. In addition to the DUI arrest in 2003, the record shows that, on December 24, 1981, the Individual received a ten-day suspension from his employer for consuming alcohol in a public place while wearing his uniform. On July 13, 2012, the Individual reported for duty and was required to take a random breath alcohol test by his employer, a DOE contractor. That test showed that the Individual had a blood alcohol

² 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 . . ." 10 C.F.R. §710.8(h). 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." 10 C.F.R. § 710.8(j). Criterion L defines as derogatory information that an individual 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. § 708.8(l).

level (BAL) of .036%, which exceeded the limit of 0.02 set for employees subject to the DOE's Human Reliability Program (HRP).³

A DOE Psychiatrist interviewed the Individual on December 13, 2012. The DOE Psychiatrist also reviewed selected portions of the Individual's personnel security file and administered a standardized psychological screening test to the Individual. Exhibit 4 at 1. After completing his evaluation of the Individual, the DOE Psychiatrist issued a report on January 9, 2013, in which he found that the Individual "is a person who suffers from Alcohol Abuse/Dependence . . . and Cognitive Disorder, NOS." Exhibit 4 at 4. The DOE Psychiatrist opined that both conditions "can cause problems with judgment and/or reliability." *Id.*

On several occasions, the Individual provided inconsistent information to the LSO about his alcohol use and the circumstances surrounding the three alcohol-related incidents described above.

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. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

The DOE Psychiatrist diagnosed the Individual with Alcohol Abuse/Dependence, raising security concerns about the Individual under Criterion J and Criterion H, since Alcohol Dependence/Abuse constitutes an illness or condition that causes, or may cause, a significant defect in the Individual's judgment and reliability. The Individual has also been arrested for DUI, on one occasion, and involved in alcohol-related incidents at work on two occasions. The

³ 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. Part 712. Among the numerous requirements for participation in the HRP are random alcohol tests. *See* 10 C.F.R. § 712.15(c) (mandating alcohol testing and setting limit of 0.02 percent blood alcohol concentration).

Adjudicative Guidelines provide: “alcohol-related incidents away from work, such as driving while under the influence, . . . and alcohol-related incidents at work, such as reporting for work or duty in an . . . impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent” can by themselves constitute conditions that may disqualify an individual from holding a security clearance. *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 ¶ 22. In the present case, an association exists between the Individual’s consumption of alcohol and his subsequent failure to exercise good judgment and to control his impulses, as evidenced by operation of a motor vehicle on public roads while in a state of intoxication, and his reporting for work at a DOE nuclear facility with a BAL of .036%.

The DOE Psychiatrist’s diagnosis of the Individual with CDNOS also raises security concerns about the Individual under Criterion H, since the DOE Psychiatrist opined that this condition causes, or may cause, a significant defect in the Individual’s judgment and reliability.

The Individual’s three arrests constitute criminal conduct that raises security concerns under Criterion L. “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.” Adjudicative Guideline E at ¶ 30. The Individual’s criminal activity, pattern of financial irresponsibility, two alcohol-related incidents at work, and repeated provision of false or misleading information to the LSO constitute conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations which raise questions about the Individual's reliability, trustworthiness and ability to protect classified information. Adjudicative Guideline E at ¶ 15.

Adjudicative Guideline E at ¶ 16(c) provides: “credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information” may disqualify an individual from holding a security clearance.

V. ANALYSIS

A. Criteria H and J

At the hearing, the Individual challenged the DOE Psychiatrist’s opinion that the Individual suffers from Alcohol Abuse/Dependence and Cognitive Disorder NOS. The Individual submitted Exhibit B, a letter dated July 19, 2012, from a DOE Designated Psychologist to the Local Manager of the DOE’s HRP. Exhibit B reports that the Individual was interviewed by the DOE Designated Psychologist on behalf of the HRP earlier that day, that he had taken a Substance Abuse Subtle Screening Inventory-3 (SASSI-3) test, and that the DOE Designated Psychologist concluded that “No diagnosable alcohol-related disorder or other psychological disorder was identified.” Exhibit B at 1.

The Counselor also testified on the Individual's behalf at the hearing. The Counselor testified that he is a master's level psychologist with a certification in substance abuse counseling. Tr. at 165. The Counselor testified that he began treating the Individual for adjustment disorder with anxiety on February 25, 2013, and has been meeting with the Individual on a weekly basis since then. *Id.* at 165, 169. The Counselor said that he had administered the SASSI-3 test to the Individual, which indicated that he had a low probability of having a substance abuse or dependency disorder. *Id.* at 167. The Counselor testified that he did not believe that the Individual had an alcohol problem. *Id.* at 171, 176.

The DOE Psychiatrist testified at the hearing that the Individual told him that he was not intoxicated at the time of his arrest for DUI, despite having a BAL of .13%. Tr. at 38. The DOE Psychiatrist noted that this statement was evidence that the Individual had developed a tolerance to alcohol. *Id.* at 38-39. The DOE Psychiatrist also testified that the Individual had stated that he stays home alone when he uses alcohol and does not use alcohol in the presence of his spouse. *Id.* at 39. The DOE Psychiatrist characterized this behavior as "isolation," which he found to be another indication of Alcohol Dependence. *Id.* He noted that the Individual's use of alcohol has caused recurrent problems with his spouse, which meets another criterion for Alcohol Dependence. *Id.* at 40, 60. The DOE Psychiatrist testified that the Individual's repeated attempts to curtail or stop drinking were a further indication that the Individual is Alcohol Dependent. *Id.* at 40, 82. The DOE Psychiatrist testified that diagnosing the Individual was complicated by the Individual's poor past history. *Id.* at 40. The DOE Psychiatrist could not determine whether the Individual's poor history was intentional or the result of the Individual's memory problem. *Id.*

I found several aspects of the DOE Psychiatrist's testimony problematic. First, the DOE Psychiatrist's testimony was often difficult to follow.⁴ The DOE Psychiatrist failed to articulate clearly the Individual's precise problem, if any, with alcohol. Second, during the cross examination, the Individual's attorney repeatedly mischaracterized the Diagnostic and Statistical Manual, Fourth Edition, Text Revision's (DSM-IV-TR) criteria for Substance Dependence.⁵ The DOE Psychiatrist failed to correct these mischaracterizations.

Finally, the DOE Psychiatrist failed to adequately defend or explain his alcohol dependence/abuse diagnosis. For example, he admitted that he could not show that three of the seven substance dependence criteria were present in the past twelve months and that the Individual did not meet the full criteria for Alcohol Dependence.⁶ *Id.* at 42-43, 63. The cross

⁴ I am concerned about the DOE Psychiatrist's failure to distinguish between alcohol dependence and alcohol abuse. The DSM-IV-TR specifically states that the criteria for substance abuse can only be met if: "The symptoms have never met the criteria for substance dependence for this class of substance." DSM-IV-TR at 199.

⁵ For example, the DSM-IV-TR's Substance Dependence criteria require that three or more of a set of seven criteria need to occur "at any time in the same 12-month period" in order to find alcohol dependence. DSM-IV-TR at 197. At the hearing, the Individual's attorney mis-characterized this requirement as a "12-month look-back period" which required the DOE to show that at least three of the seven diagnostic criteria occurred during the year prior to the date of diagnosis. Tr. at 61.

⁶ Rather perplexingly, the DOE Psychiatrist stated: "I could not give him a diagnosis of alcohol dependence . . . It's alcohol dependence and there's a partial remission." Tr. at 63.

examination of the DOE Psychiatrist conducted by the Individual's counsel revealed that the DOE Psychiatrist's diagnosis of "Alcohol Dependence/Alcohol Abuse" was equivocal and unreliable for purposes of the present proceeding.

Moreover, two mental health professionals, the DOE Designated Psychologist and the Counselor, have evaluated the Individual and concluded that the Individual does not suffer from either disorder. Accordingly, after careful consideration of all of the information in the record, I am unpersuaded by the DOE Psychiatrist's diagnosis, i.e., that the Individual is either alcohol dependent, or suffers from alcohol abuse. Conversely, I find that the other two experts' opinions to the contrary are entitled to greater weight.

The DOE Psychiatrist testified that a brief cognitive examination of the Individual revealed that the Individual has difficulty with his memory. *Id.* at 67- 69, 71-72. He further testified that "there may or may not be a problem here . . . they need to look at it" and that the Individual needed a full neurological evaluation in order to determine whether the Individual's CDNOS significantly affects his judgment or reliability. *Id.* at 69-71.

For these reasons, I find that the DOE Psychiatrist has not shown that the Individual 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 . . ." 10 C.F.R. §710.8(h). Nor has the LSO shown that the Individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychiatrist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). Based upon the foregoing, I find that the Individual has mitigated the security concerns raised under Criteria H and J.

B. Criterion L

The Individual's record of three arrests, three alcohol-related incidents, longstanding pattern of financial irresponsibility, and failure to provide accurate information to DOE security officials raise significant concerns about the Individual's judgment, reliability and trustworthiness under Criterion L when viewed together under the whole person concept. The Individual's three arrests constitute criminal conduct that raises security concerns under Criterion L. The incidents which led to these charges are examples of lapses in judgment on the part of the Individual. I note that the Individual's criminal conduct was sporadic, and that the last criminal incident, the DUI, occurred about ten years ago. These facts might mitigate the concerns about the Individual's judgment, reliability and trustworthiness raised by his criminal conduct in the absence of the other derogatory information raised under Criterion L.

The Individual's three alcohol-related incidents constitute conduct which raise security concerns under Adjudicative Guideline G. Once again, these incidents have been sporadic and the LSO has not shown that they evidence an alcohol-related disorder or habitual use of alcohol to excess. However, these incidents are further examples of lapses in judgment on the part of the Individual. The July 13, 2012, incident occurred in the recent past.

The Individual has a longstanding pattern of financial irresponsibility. He has consistently failed

to satisfy his debts, including his state taxes,⁷ for a period of time dating back to at least 1998 and continuing through the May 8, 2013, credit report, which showed that the Individual continued to owe unpaid collection accounts totaling \$331 two weeks prior to the hearing. The Individual testified that he has paid \$120 of the \$331 in unpaid collection accounts but admits that he has not paid the other unpaid collection account for \$211. Tr. at 153. Exhibit D documents that the Individual has paid the \$120 collection account. While the Individual's financial delinquencies are minimal, and have almost been fully remediated, they have also been longstanding in nature and include \$3,277 of fairly recent tax delinquencies. Moreover, the Individual's financial delinquencies are further examples of the Individual exhibiting less-than-ideal judgment and reliability.

The Individual provided contradictory and inconsistent information during his PSIs and psychiatric examination. For example, during his August 2, 2012, PSI, the Individual stated that the only alcohol he had consumed on July 13, 2012, was one 22-ounce beer that he consumed between 8:00 a.m. and 9:00 a.m. Exhibit 6 at 7. During his psychiatric interview, he told the DOE Psychiatrist that the only alcohol he consumed that day was a 24-ounce beer that he consumed in a 20-minute period around 11:00 a.m. Exhibit 4 at 1. Later that day, at approximately 6:30 p.m., the Individual was subjected to a random blood alcohol test which showed a BAL of .036%, which exceeded the maximum standard of .02% established by the HRP. At the hearing, the DOE Psychiatrist convincingly explained how the consumption of 24-ounces of beer as late as 11:30 in the morning could not have resulted in a BAL of .036%. Tr. at 41. This example shows that the Individual was either not being truthful about the amount of alcohol he consumed or was not being honest about when he consumed it. Moreover, the Individual's dishonesty apparently continued at the hearing, where the Individual testified that he was being truthful when stated that the only alcohol he consumed on July 13, 2012, was a 22-ounce beer that he had "earlier in the day." *Id.* at 146. Moreover this lack of candor was a continuation of a long-term pattern. Two months after his August 17, 2003, DUI arrest, the LSO conducted a PSI of the Individual on October 14, 2003, in which described his current alcohol consumption as three ounces of whisky per week. Exhibit 24 at 20. In June 2008, when an Office of Personnel Management (OPM) investigator asked him about his alcohol consumption, the Individual claimed that he had not used any alcohol since his August 17, 2003, DUI arrest. Exhibit 15 at 8. Similarly, during his most recent PSI, the Individual provided markedly inconsistent accounts of his alcohol consumption. During the August 2, 2012, PSI, the Individual stated: "Ten years ago, 11 years ago, I was a heavy drinker." Exhibit 6 at 7. A few moments later, the Individual reported that he had consumed little or no alcohol from 1979 until the night of the August 17, 2003, DUI arrest, and then went "completely dry, except for a beer occasionally" until the present. *Id.* at 12-13. Because these statements show that DOE security cannot rely upon the information provided by the Individual, I find that the security concerns raised by the Individual's inconsistent and illogical statements to DOE officials have not been resolved.

Accordingly, I find that the security concerns under Criterion L raised by the Individual's three arrests, two alcohol-related incidents at work, longstanding pattern of financial irresponsibility,

⁷ The Individual testified that his state tax debts were the result of an error on the part of his accountant. Tr. at 152. However, the state tax delinquencies were only resolved when the state revenue authority garnished the Individual's wages and set-off the remaining debts from a subsequent tax refund owed the Individual. Tr. at 151; Exhibit C at 1.

and failure to provide accurate information to LSO officials have not been resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H, J, and L. The Individual has sufficiently mitigated the derogatory information raised under Criteria H and J. However, I find that unmitigated security concerns remain under Criterion L. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be restored 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: June 26, 2013