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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: May 17, 2013 ) Case No. PSH-13-0061  
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Issued: August 22, 2013

\_\_\_\_\_ **Hearing Officer Decision** \_\_\_\_\_

Diane DeMoura, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXX (“the Individual”) to hold a Department of Energy (DOE) access authorization.<sup>1</sup> This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual’s suspended DOE access authorization should be restored. For the reasons detailed below, I find that the DOE should not restore the Individual’s access authorization at this time.

**I. BACKGROUND**

The Individual is a DOE employee who currently holds a suspended DOE access authorization. DOE Exhibit (“Ex.”) 3. In April 2012, the Individual was administered a random alcohol screening at work, on which he registered a 0.029 breath alcohol content (BAC) – 0.009 above the acceptable level. DOE Ex. 6. Shortly thereafter, the Local Security Office (LSO) requested that the Individual participate in a May 2012 Personnel Security Interview (PSI) to discuss the incident. DOE Ex. 11. The April 2012 incident also prompted a Fitness for Duty (FFD) evaluation of the Individual. See DOE Exs. 7-9. Upon receipt of certain information generated during the FFD evaluation, the LSO conducted a second PSI with the Individual in February 2013. DOE Ex. 10. In March 2013, a DOE consultant-psychologist (“the DOE psychologist”)

\_\_\_\_\_ <sup>1</sup> Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

evaluated the Individual and issued a report. DOE Ex. 4. In April 2013, the LSO informed the Individual that there existed derogatory information that raised security concerns under 10 C.F.R. §§ 710.8 (h) and (j) (Criteria H and J, respectively).<sup>2</sup> See DOE Ex. 1 (Notification Letter, April 23, 2013). The Notification Letter also informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the security concerns. *Id.*

The Individual requested a hearing on this matter. DOE Ex. 2. The LSO forwarded his request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. At the hearing, the DOE counsel introduced eleven exhibits into the record (DOE Exs. 1-11) and presented the testimony of one witness, the DOE psychologist. The Individual, testifying on his own behalf, did not present the testimony of any additional witnesses or tender any exhibits. Transcript of Hearing, Case No. PSH-13-0061 (hereinafter cited as “Tr.”).

## II. REGULATORY STANDARD

The regulations governing the Individual’s eligibility for access authorization are set forth at 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” The regulations identify certain types of derogatory information that may raise a question concerning an individual’s access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Hearing Officer considers relevant factors, including “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 of the individual at the time of the conduct; the voluntariness of 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,” and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors and considerations. See 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).

Ultimately, the decision concerning eligibility is “a comprehensive, common-sense judgment made after consideration of all relevant information, favorable and unfavorable . . . .” 10 C.F.R. § 710.7(a). In order to reach a decision favorable to the individual, the Hearing Officer must find that “the grant or restoration of access authorization to the individual will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R.

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<sup>2</sup> 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). Criterion J relates to conduct indicating that the Individual has “been, 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).

§ 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* See generally *Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

### III. FINDINGS OF FACT

The Individual, currently 66 years-old, began consuming alcohol at age eighteen while in college. He typically drank two beers each weekend night, but occasionally consumed more after finishing exams at the end of a semester or when attending parties. DOE Ex. 4 at 2. Over the years, the Individual’s pattern of alcohol consumption has purportedly remained relatively unchanged. From when he was 23 years of age until the present, approximately 43 years as of the hearing, the Individual has consumed six to ten beers each weekend. *Id.* at 2-3. In 1982, the Individual was arrested for Driving While Intoxicated (DWI).<sup>3</sup> DOE Ex. 11 at 28. According to the Individual, that is the only time that he has ever driven while “potentially” intoxicated. *Id.* at 67.

In April 2012, at the beginning of a typical four-day work-week, the Individual reported for work at 6:00 a.m. after his routine three days off. He was administered a random alcohol screening at 8:20 a.m., and registered a 0.029 BAC. DOE Ex. 4 at 4. Following the incident, the Individual was required to undergo a FFD evaluation, after several restrictions/conditions were placed on him. DOE Ex. 9. Among them were that the Individual “completely abstain” from alcohol, undergo random alcohol screenings and daily testing, and “participate in and successfully complete the designated treatment program.” *Id.* Because his BAC on the April 2012 test exceeded the acceptable threshold of 0.02, this required that the treatment program include participation in substance abuse counseling through the site’s Employee Assistance Program (EAP). DOE Ex. 4 at 1. The Individual’s involvement with the EAP was, by all accounts, difficult and unproductive. See DOE Ex. 8 at 1. The Individual’s view of the FFD evaluative process, in general, was little better. A psychologist affiliated with the FFD program described the Individual’s attitude as “contemptuous” of the program. The Individual believed that the FFD process and, more specifically, the requirement that he abstain from consuming alcohol, were vindictive or tantamount to blackmail or coercion. *Id.*; see also DOE Ex. 4 at 4-5. During the FFD process, the Individual tested positive for alcohol on two random screenings in May 2012 and June 2012. When asked to explain the positive results, he explained that he was aware of the abstinence requirement, but had not taken it seriously. DOE Ex. 8 at 1. He further indicated that, while reluctantly willing to resume his participation in alcohol education through the EAP, including meeting with another counselor and “play[ing] along” with the expectation while in the program, he intended to resume consuming alcohol upon completion of the FFD process. *Id.* at 2.

In March 2013, the DOE psychologist evaluated the Individual and diagnosed him with Alcohol Abuse, without adequate evidence of rehabilitation or reformation. DOE Ex. 4 at 7. The psychologist also noted that the Individual’s “self-reports of his alcohol consumption are at best inconsistent and at worst implausible.” *Id.* She added that concerns regarding the accuracy of

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<sup>3</sup> In that incident, the Individual was pulled over for driving too slowly, failed field sobriety tests, and, was arrested and charged with DWI. Those charges were ultimately dismissed on procedural grounds. *Id.* at 61-64.

the Individual's self-reporting of the extent of his alcohol use were increased by "his level of denial and minimization – to the point of irrationality." *Id.* Finally, the DOE psychologist identified certain personality traits or behaviors of the Individual which raised psychological concerns. The psychologist opined that the Individual's "psychological defenses of blaming others, distorting objective facts, and minimizing his responsibility for the consequences of his actions are indicative of a mental condition which has caused, and could continue to cause defects in his judgment and reliability." *Id.* at 9.

#### IV. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

As stated above, upon review of the Individual's complete personnel security file, including the DOE psychologist's report, the LSO issued a Notification Letter identifying security concerns under Criteria H and J of the Part 710 regulations. DOE Ex. 1.

As a basis for invoking Criterion H, the LSO cited the DOE psychologist's opinion that certain of the Individual's personality traits or behaviors are "indicative of a mental condition which has caused, and could continue to cause defects in his judgment."<sup>4</sup> *Id.* at 1. According to the regulations, information establishing that an individual 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" raises security concerns. 10 C.F.R. § 710.8(h) (emphasis added). In this case, in her March 2013 report, when the DOE psychologist noted that the Individual's above-mentioned personality traits or behaviors had caused, and could continue to cause, defects in his judgment and reliability, she did not indicate whether those defects were "significant" in her opinion. DOE Ex. 4 at 9. However, during her hearing testimony, in discussing the types of defects in judgment at issue, the DOE psychologist characterized them as significant. Tr. at 64-66, 69-70. According to the Adjudicative Guidelines, psychological conditions that cast doubt on an individual's judgment, reliability, and trustworthiness may raise security concerns. Adjudicative Guidelines, Guideline I, ¶ 27. In this case, I find that the DOE psychologist's determination that the Individual's judgment has been impaired, and may continue to be impaired, by his personality condition, and her opinion that such impairment may be significant, raises valid security concerns under Criterion H.

In support of its Criterion J concerns, the LSO cites issues pertaining to the Individual's excessive consumption of alcohol, including the April 2012 positive result on a random alcohol screening at work, the subsequent positive results in May 2012 and June 2012 during the pendency of his FFD evaluation and other issues related to the FFD process, and the DOE psychologist's subsequent diagnosis of Alcohol Abuse. DOE Ex. 1 at 1-2. There is no question

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<sup>4</sup> A majority of prior our Criterion H cases involve the diagnoses of specific psychological disorders or conditions by mental health professionals using diagnostic criteria set forth in the most current version of the Diagnostic and Statistical Manual of the American Psychiatric Association. Until recently, the Diagnostic and Statistical Manual of the American Psychiatric Association, 4th edition, Text Revision (DSM-IV-TR) was the most current version of the manual, and is most often cited in our prior decisions. However, the regulations do not require a formal diagnosis of a disorder in order to invoke Criterion H. See 10 C.F.R. § 710.8(h); Adjudicative Guidelines, Guideline I, ¶ 27 ("Certain emotional, mental, and *personality conditions* can impair judgment, reliability or trustworthiness. A *formal diagnosis of a disorder is not required* for there to be a concern under this guideline.") (emphasis added). See also *Personnel Security Decision*, OHA Case No. PSH-13-0006 (April 19, 2013).

that excessive use of alcohol raises security concerns because “excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines, Guideline G, ¶ 21. Based on the above-mentioned facts related to the Individual’s alcohol consumption, I find that the LSO had ample grounds for invoking Criterion J.

## V. ANALYSIS

In making a determination regarding the Individual's eligibility for DOE access authorization, I have thoroughly considered the record in this proceeding, including the hearing testimony and the documentary evidence. For the reasons set forth below, I am unable to find that restoring the Individual's suspended DOE 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).

The Individual did not dispute any of the specific underlying facts of this case. Rather, he asserted that his consumption of alcohol is not of concern, he is of sound judgment and reliability, and, therefore, the facts in this case do not warrant suspension or revocation of his access authorization. Tr. at 11-12.

The Individual testified that, the day before the April 2012 random alcohol screening at work, he underwent extensive dental work and was then in severe pain that evening. Tr. at 11, 23. According to the Individual, because he “was trying to report to work fit for duty,” he used alcohol to self-medicate – drinking “a few beers” to alleviate the pain and help him sleep. *Id.* The Individual testified that he began drinking that evening at 6:00 p.m., and stopped drinking at 10:00 p.m., when he went to bed. Tr. at 25. The next morning he was administered the alcohol screening on which he registered the impermissibly high BAC.

At the hearing, the Individual continued to maintain that he was “forced” or “coerced” into participating in the EAP substance abuse program and abstaining from alcohol. Tr. at 13, 14. However, he alleged that he “cooperated in this process fully all the way, every step of the way,” except for the two occasions when he consumed alcohol while in the EAP program and produced positive results on random alcohol tests in May 2012 and June 2012. Tr. at 28. He stated that he drank on those two occasions out of frustration with the counselor and the program, because he felt that “[he] was cooperating, and they weren’t.” Tr. at 29. Therefore, he stated, he “saw no reason to continue to abstain on those two occasions” given their “failure . . . to live up to their part of the agreement.” Tr. at 30.

The Individual stated several times throughout the hearing that he drinks beer because he finds it “relaxing.” *See, e.g.*, Tr. at 12, 20, 39. He also maintained that his drinking pattern does not indicate “any kind of dependency” or poor judgment. Tr. at 19-20, 32. To the contrary, the Individual stated that he drinks alone at home and, with the exception of the night before the April 2012 positive test, he does not drink the night before reporting for work. This, he asserted, “demonstrates good judgment and prudence.” Tr. at 19-20. Finally, the Individual stated that, since the April 2012 incident, he has changed his work schedule from four days per week to five days per week and, as a result, he now consumes alcohol only one night per week. The Individual typically drinks five beers over the course of the evening, and he does not believe that

drinking “five beers a week is abusing.” Tr. at 11-12. The Individual acknowledged that he had been resistant to counseling. He stated that he “didn’t see the need for counseling” because it indicated “some sort of illness or problem,” and he did not believe he had a problem. Tr. 49. Finally, the Individual indicated that he wanted to be found fit for duty and, therefore, he had been, and continued to be, “willing to cooperate to whatever extent required.” Tr. at 72, 77.

After listening to the Individual’s testimony, the DOE psychologist did not change her opinion regarding the Individual’s diagnoses.<sup>5</sup> In explaining the basis for her opinion regarding certain of the Individual’s personality traits that could significantly impair his judgment, the DOE psychologist noted the Individual’s minimization of the seriousness of the problems caused by his alcohol consumption. Tr. at 54. However, she explained that “of most concern” was a trait related to the Individual’s perception of reality. Specifically, she stated that when he “remolds events . . . when events are redescribed by him in a way which reconstructs them to fit his perspective and what he needs them to be[,] . . . that is of concern and goes to both maybe candor or at least the ability to see from a perspective which is more similar to that of others . . .” *Id.* Also of concern in the opinion of the DOE psychologist is the Individual’s “resistance to feedback.” *Id.* The DOE psychologist opined that openness to feedback is important because it is what allows people to make positive and lasting behavioral changes when necessary. Tr. at 55. The DOE psychologist indicated that the Individual’s personality trait of blaming others “remains of concern.” *Id.* To illustrate this point, she noted that the Individual’s continuing view that he was “forced” into abstaining and meeting with the EAP counselor, “seeing what most of us would see as a condition of employment as coercive or blackmailing . . . and not being able to follow that . . . and seeing as someone else’s responsibility . . . those two occasions [where he decided to drink while in the program] remains of concern.” Tr. at 55-56. According to the DOE psychologist, these personality traits or behaviors may cause significant defects in judgment by creating difficulty in “more accurately perceiving what other people see as reality, taking responsibility, candor, . . . a willingness to follow expectations, social norms, rules and regulations . . . .” Tr. at 65. The DOE psychologist noted that the Individual had not demonstrated evidence of rehabilitation for this personality-related condition, and recommended that he undergo one-year of individual counseling to address the foregoing issues. Tr. at 68-70.

Similarly, the DOE psychologist opined that the Individual was not rehabilitated from his diagnosis of Alcohol Abuse. Tr. at 59. She noted that while the Individual characterized his pattern of drinking as “five beers a week,” this did not accurately describe his consumption. Rather, by weekly consuming five beers in one evening over several hours, likely becoming intoxicated during those times, the Individual was likely habitually drinking to intoxication four times per month. Tr. at 59. The DOE psychologist recommended that, at a minimum, the Individual should undergo one year of counseling and establish one year of abstinence to demonstrate rehabilitation from his alcohol-related condition. Tr. at 69.

In this case, upon consideration of the evidence in the record, I find that the Individual has not presented sufficient evidence to mitigate the security concerns cited in the Notification Letter.

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<sup>5</sup> The DOE Psychologist explained that she considered the alternative DSM-IV diagnosis, Personality Disorder, Not Otherwise Specified, but ultimately determined that it was “sufficient and accurate” to describe the Individual’s condition as personality traits which had caused defects in his judgment. Tr. at 64-65.

As an initial matter, the Individual elected not to offer any additional testimonial or documentary evidence during this proceeding. As a result, his testimony remains wholly uncorroborated in the record. This is especially of concern because, in addition to the Individual's denial and minimization of his alcohol consumption and the resultant problems, there is at least one significant instance in which the Individual appears to have provided discrepant information when recounting his drinking the evening prior to the random alcohol screening, altering the facts to be more favorable to him.<sup>6</sup> In addition, there are several instances documented in the record in which the Individual explains his behavior by attributing blame to others, rather than accepting responsibility for his own conduct. Finally, the Individual blatantly violated restrictions placed on him during his FFD evaluation regarding consumption of alcohol, yet easily rationalized his behavior while maintaining that he fully cooperated with the program. The Individual has repeatedly demonstrated a willingness to say what he hopes will sufficiently alleviate concerns raised by his drinking, but will still allow him to continue his habit. This leaves me with serious doubts regarding the veracity of the Individual's statements regarding his drinking, both in the past and at present. Consequently, the absence of supporting evidence in this case looms large, and I find it difficult to accord the Individual's testimony much weight.

However, even absent my doubts regarding the reliability of the Individual's testimony, and assuming, *arguendo*, that his assertions regarding his alcohol consumption are true, I would, nonetheless, conclude that the Individual has not mitigated the security concerns raised in this case. With respect to the security concerns cited in the Notification Letter under Criterion H, the Adjudicative Guidelines identify the following possible mitigating factors: "demonstrated ongoing and consistent compliance" with a treatment plan; voluntary participation in counseling or treatment with a favorable prognosis by a duly qualified mental health professional; a recent opinion by a duly qualified mental health professional that the condition controlled "and has a low probability of recurrence or exacerbation;" and, "there is no indication of a current problem." Adjudicative Guidelines, Guideline I, ¶ 29. In this case, the Individual has consistently failed to acknowledge that he has any psychological condition necessitating treatment, despite the uncontroverted evidence to the contrary in the record. Further, other than his cursory participation in the EAP substance abuse program and related counseling sessions – which, by all accounts, he undertook solely because he was required to do so after testing positive for alcohol at work - the Individual has not sought out any treatment. Therefore, I conclude that the condition that prompted the Criterion H concerns remains untreated. Consequently, the Criterion H concerns remain unresolved.

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<sup>6</sup> During the May 2012 PSI, which took place just two weeks after the April 2012 random alcohol screening at issue in this proceeding, the Individual stated that he drank six 12-ounce beers between 8:00 p.m. and 11:30 p.m. the evening before the positive test. DOE Ex. 11 at 9. In her report, using these numbers, the passage of time, and the Individual's height and weight, the DOE psychologist calculated the Individual's BAC at 8:20 a.m. on the morning of the random alcohol screening in April 2012, and arrived at the same estimated BAC that he registered on the April 2012 test: 0.029. DOE Ex. 4 at 3. However, during the May PSI 2012, the Individual was informed that it appeared that he had violated the workplace prohibition on reporting to work within eight hours of having consumed alcohol since he allegedly drank until 11:30 p.m. and reported to work at 6:00 a.m.. *Id.* Since that time, in recounting his drinking the evening before the April 2012 test, the Individual has revised the times downward, now stating that he stopped drinking at 10:00 p.m., exactly eight hours before he reported to work. *See, e.g.* DOE Ex. 4 at 3-4; Tr. at 25.

Similarly, the Individual has not mitigated the Criterion J concerns. Among the factors that may serve to mitigate security concerns raised by an individual's alcohol use are that "so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," that "the individual acknowledges his or her alcoholism or issues of alcohol abuse [and] provides evidence of actions taken to overcome this problem . . .," and that "the individual has successfully completed inpatient or outpatient counseling or rehabilitation . . ., has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations . . . and has received a favorable prognosis by a duly qualified medical professional . . ." Adjudicative Guidelines, Guideline G, ¶ 23. In this case, the Individual refuses to acknowledge that his alcohol consumption is a problem. Other than his unproductive involvement with the EAP substance abuse program, the Individual has not engaged in voluntary and sustained treatment or counseling for his alcohol problem. He continues to drink habitually to excess, likely drinking to intoxication at least once per week, every week, with no intention of discontinuing that pattern. Based on these facts, I am convinced by the DOE psychologist's opinion that the Individual has not demonstrated rehabilitation from his diagnosis of Alcohol Abuse. Consequently, I find that the Individual has not mitigated the Criterion J concerns.

## **VI. CONCLUSION**

Upon consideration of the entire record in this case, I find that there was evidence that raised doubts regarding the Individual's eligibility for a security clearance under Criteria H and J of the Part 710 regulations. I also find that the Individual has not presented sufficient information to fully resolve those concerns. Therefore, I cannot conclude that restoring the Individual's suspended DOE 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). Accordingly, I find that the DOE should not restore the Individual's suspended DOE access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Diane DeMoura  
Hearing Officer  
Office of Hearings and Appeals

Date: August 13, 2013