

LSO informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. Exhibit 4. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for an access authorization.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and the OHA Director appointed me the Hearing Officer in this case. The DOE introduced 11 exhibits into the record of this proceeding, and called the DOE psychologist as a witness. The individual introduced six exhibits, and presented the testimony of two witnesses, in addition to his own testimony.

II. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether restoring the individual's security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring 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 regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

III. NOTIFICATION LETTER AND ASSOCIATED SECURITY CONCERNS

The Notification Letter cited derogatory information within the purview of 10 C.F.R. § 710.8, subsection (j) (hereinafter referred to as Criterion J). Exhibit 4.³ Under this criterion, the LSO cited (1) the report of the DOE psychologist, in which he concluded that the individual "has been in classic denial of what is a credible diagnosis of Alcohol Dependence" which "has attenuated to Alcohol Abuse . . . over the past two years . . .;" (2) the recommendation of the individual's primary care physician that the individual stop consuming alcohol and the physician's diagnoses of alcoholism, alcoholic hepatitis, liver damage, and type 2 diabetes; and (3) statements by the

³Under Criterion J, information is derogatory if it indicates that the individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychologist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

individual regarding his use of alcohol and efforts at recovery, including a statement to his physician that he was drinking six beers per day.

With two exceptions,⁴ the individual does not dispute any of the allegations in the Notification Letter, and I find that each of these allegations is valid and well supported by the record in this case. Tr. at 11-14; 10 C.F.R. § 710.27(c) (requiring Hearing Officer to “make specific findings based upon the record as to the validity of each of the allegations contained in the notification letter”). I further find that this information adequately justifies the DOE’s invocation of Criteria J, as it raises significant security concerns related to excessive alcohol consumption, which often leads to the exercise of questionable judgment or the failure to control impulses, and calls into question the individual’s future reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 19, 2005) (Adjudicative Guidelines) at ¶ 21 (Guideline G).

IV. FINDINGS OF FACT AND ANALYSIS

The individual is 45 years old, and has worked for a DOE contractor since 2005. Exhibit 8. Information from the individual’s primary care physician, obtained in an Office of Personnel Management (OPM) background investigation, indicates that the individual consulted the physician on April 13, 2001, and “asked for alcoholism medication, Revia, he had read about to help him with his alcohol abuse—still drinking six beers per day.” Exhibit 10 at 54-55. The physician prescribed the medication, but stopped in June 2001 after the individual reported gastrointestinal side-effects, as well as anxiety and irritability, which the individual attributed to the medication. *Id.* at 55.

On April 30, 2003, the individual reported to the physician that “he was drinking six beers per week,” and on March 10, 2010, told the physician that “he was still drinking six beers per week.” *Id.* On January 7, 2011, the individual “reported that he had laboratory work done at his workplace, and that it showed elevated liver functions. . . . [The individual] reported drinking six beers ‘on weekend days.’” *Id.* The medical record further stated that, on December 28, 2011, the individual reported “drinking six beers per day.” *Id.* Laboratory work done on December 13, 2011, “showed that [the individual’s] liver functions were elevated two to three times above normal. [The physician] told the [the individual] that this was due to his alcohol abuse, and to stop drinking alcohol.” *Id.*

During his June 1, 2012, PSI, the individual stated that he had “reduced significantly” his alcohol consumption and drank two to three six-packs on weekends. Exhibit 9, June 2012 PSI at 6-7. The LSO, at the individual’s request, conducted a second PSI on October 9, 2012, in which the individual stated that he drank “typically” on weekends, and “may drink a six (6) pack on Friday and

⁴ The individual stated at the hearing that he took issue with a statement in the Notification Letter that his physician had diagnosed him as having Obsessive-Compulsive Disorder (OCD), and a statement of the DOE psychologist, quoted in the Notification Letter, that the individual’s “inability to remember in turn raises questions about the accuracy of his self-report and history throughout this evaluation process.” Exhibit 1; Hearing Transcript (Tr.) at 11-14. I find that the referenced allegations in the Notification Letter are valid, in that the record supports the fact that his physician diagnosed the individual with OCD, Exhibit 10 at 55, and that the report of the DOE psychologist did contain the statement quoted in the Notification Letter. Exhibit 11 at 4. I also note that neither allegation directly supports a finding that the individual has been, or is, a user of alcohol habitually to excess, or has been diagnosed as alcohol dependent or as suffering from alcohol abuse.

a (6) pack on Saturday, . . .” Exhibit 9, October 2012 PSI at 1, 8, 10. At the hearing in this matter, the individual testified that he last consumed alcohol “between three and four months ago.” Tr. at 33. He stated that he began to attend a church-based recovery program in 2012, which he now attends “basically every other week.” *Id.* at 44, 50.

The Adjudicative Guidelines set forth the following conditions that “could mitigate security concerns” arising from excessive alcohol consumption.

(a) 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;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Adjudicative Guidelines at ¶ 23 (Guideline G).

Regarding condition (a), I cannot find in this case that the individual's excessive use of alcohol was “infrequent” or happened under “unusual circumstances.” Based upon the medical records referenced in the OPM report, there appear to be at least two periods in the individual's life when he was drinking six beers per day, *i.e.*, not infrequently, first in 2001, and again in 2011. As for the circumstances under which the individual drank excessively, the individual called a counselor to testify at the hearing. The individual and his then-wife sought marriage counseling from the counselor prior to their divorce in September 2011. Tr. at 16; Exhibit 8 at 6. The counselor testified that he believed

the primary impetus for you turning to alcohol was just the emotional distress you were experiencing with your children being turned against you by [your ex-wife] and your children even being set up to be spies for [your ex-wife], just the emotional drain of trying to be a responsible parent in terms of disciplining your children and expecting them to be respectful and these types of things and then everything being undermined by their mother, who had no set of boundaries for the children's behavior.

Tr. at 20.

The counselor testified that the individual told him that “he had gotten to the point where he was drinking a six-pack a night” and that this was “new behavior as far as I knew.” *Id.* at 21. As shown by the contemporaneous medical records referenced in the OPM report, however, this pattern of drinking was not new for the individual, having occurred previously in 2001, only to recur in 2011. If the circumstances surrounding the individual’s excessive use of alcohol were truly unique, this would be relevant to any assessment of the risk of such use in the future. That does not appear to be the case here.

Separately, I could conclude that the individual has met condition (a), (b), or (c), respectively, were I to find that: (a) so much time has passed that the behavior is unlikely to recur; (b) the individual has established a pattern of abstinence; or (c) the individual is making satisfactory progress in his counseling or treatment program. Notably, the Part 710 regulations require my consideration of similar factors, specifically “the recency of the conduct,” and “the absence or presence of rehabilitation or reformation,” and “the likelihood of continuation or recurrence.”

The application of certain of these factors explicitly requires looking back at what the individual has accomplished to date. Thus, in considering whether he “has established a pattern of abstinence,” the most relevant fact is that the individual had, at the time of the hearing, abstained from alcohol use for between three and four months. Regarding whether the individual “is making satisfactory progress in his counseling or treatment program,” although the individual testified that he attends a church-based recovery program approximately every other week, there is no evidence that he has engaged a particular course of treatment within that program and no evidence by which to gauge his progress in recovery. Any such evidence, both as to the individual’s abstinence and his progress in treatment, would also be relevant to the consideration of the presence of rehabilitation and reformation.

Taking into account what steps the individual has taken and where he stands as of the date of the hearing, I must assess the factor at the heart of the security concern in this case going forward, that is, the likelihood of recurrence, here whether the individual will return to excessive alcohol use in the future. Expert opinion as to an individual’s prognosis can also be very helpful in this regard. Here, the record contains the report of the DOE psychologist, which states that, in order to “begin his actual rehabilitation from Alcohol Abuse, he would need to become actively involved in Alcoholics Anonymous [AA, and] would need to establish an accountable relationship with an experienced sponsor in AA and demonstrate his sobriety for a period of no less than one year.” Exhibit 11 at 4.

The DOE psychologist was present for the entire hearing and testified last. Asked about the individual’s risk of relapse, the DOE psychologist opined that

[r]ight now he is terrified of relapsing and for the next six months or so that terror will probably hold him pretty safe. After that six months when he's less terrified and when there is less pressure and more opportunity without the kind of ongoing support and structure that I'm describing, I think [his risk of relapse] is quite high.

Tr. at 83-84.

The counselor who testified on behalf of the individual, by contrast, saw the individual's risk of relapse as "low." *Id.* at 60. According to the counselor, the individual "has become much more stable in his thought process, less emotionally agitated than I would say a year-and-a-half ago. The last six months I would say he's functioning normally again." *Id.* at 23. Asked how the individual would respond to future stressors, he characterized the individual as "more able to cope with this. He seems to be pretty resolute in accepting the situation with his family," *Id.* at 23-24.

Having considered the testimony of both the DOE psychologist and the counselor, I am more persuaded by the opinion of the DOE psychologist that the risk of relapse for the individual going forward, at least after the next six months, is high. First, as to relative expertise, I note that the DOE psychologist testified that he "spent [the] first fifteen plus years of my work primarily treating substance use and substance abuse and I'm currently a commissioner on the [state colleague assistance program]." He further explained that he has "been in the field for some time doing assessments for the [state medical association], for the nursing association, for the bar association through those types of referrals." *Id.* at 63.

The counselor, who holds a master's degree in Biblical counseling and a doctorate of theology, primarily performs marriage counseling, though stated that he has been counseling individuals with substance abuse issues for over 23 years, and that "probably about 20 percent of what I do is dealing with people with substance abuse." *Id.* at 15, 22, 25-26. It appears then, that the DOE psychologist has more concentrated and specialized experience in the treatment of substance use issues. I also find it significant that the counselor had not read, and therefore could not comment on, the DOE psychologist's report, *id.* at 26, and that the counselor appeared to be unaware that the individual had a history of excessive alcohol use that occurred well before his marital difficulties. *Id.* at 21 ("It was new behavior as far as I knew. Before I know he may have a beer occasionally").

Moreover, the DOE psychologist's recommendation that the individual would need to demonstrate "sobriety for a period of no less than one year" comports with common sense. 10 C.F.R. 710.7(a) ("decision as to access authorization is a comprehensive, common-sense judgment"). Here, the individual has not yet passed through the full cycle of events, occasions, and seasons marked throughout an entire year. This rationale for requiring a full year of abstinence has been cited as significant in the testimony of expert witnesses in prior cases, and Hearing Officers in those cases have relied upon that testimony in reaching determinations both favorable and unfavorable to those seeking a clearance. *See, e.g., Personnel Security Hearing, Case No. PSH-12-0100 (2012); Personnel Security Hearing, Case No. TSO-0591 (2008); Personnel Security Hearing, Case No. TSO-0445 (2007); Personnel Security Hearing, Case No. TSO-0256 (2005).*

With this in mind, and given that I am to resolve "any doubts concerning the individual's eligibility for access authorization in favor of the national security," I cannot find, with sufficient confidence, that the individual was, as of the time of the hearing in this matter, at a low risk of relapsing into excessive alcohol use. As such, I cannot find that the individual has resolved the concerns related to his excessive use of alcohol under Criterion J.

V. CONCLUSION

For the reasons set forth above, I conclude that the individual has not resolved the DOE's security concerns raised in this case. Therefore, the individual has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not restore the individual's security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: September 12, 2013