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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: June 5, 2013	)	Case No.: PSH-13-0071
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Issued: October 10, 2013

**Hearing Officer Decision**

Kimberly Jenkins-Chapman, Hearing Officer:

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxxxxx (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should be restored.

**I. Background**

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. In March 2013, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address concerns about his alcohol use. In addition to the PSI, the LSO requested the individual’s medical records and recommended a psychological evaluation of the individual by a DOE consultant psychologist (DOE psychologist). The DOE psychologist examined the individual in April 2013 and memorialized her findings in a report (Psychological Report). According to the DOE psychologist, the individual suffers from Alcohol Abuse. The DOE psychologist further

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<sup>1</sup> Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

concluded that the individual's Alcohol Abuse is a mental illness that causes or may cause a significant defect in his judgment and reliability.

In January 2013, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created substantial doubt regarding his eligibility to hold an access authorization. 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 Criteria H, J and L respectively).<sup>2</sup>

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the individual presented his own testimony and that of seven witnesses. The DOE Counsel called one witness, the DOE psychologist. Both the DOE and the individual presented a number of written exhibits prior to the hearing.

## **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 denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring 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 may be

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<sup>2</sup> 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 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). Finally, Criterion L relates, in relevant part, 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(l).

admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

## **B. Basis for 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 in favor of the national security. *Id.*

## **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, the LSO cites three criteria as bases for suspending the individual's security clearance: Criteria H, J and L. To support Criterion H, the LSO relies on the diagnosis of the DOE psychologist that the individual suffers from Alcohol Abuse, and the expert's opinion that Alcohol Abuse is a mental illness that could cause a significant defect in the individual's judgment and reliability. As for Criterion J, the LSO cites the DOE psychologist's opinion and the individual's alcohol use, as well as the individual's three alcohol-related arrests. *See* DOE Exh. 1.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under both Criteria H and J. First, a mental condition such as Alcohol Abuse can impair a person's judgment and reliability and 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). Second, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G.

Finally, to support its reliance on Criterion L, the LSO cites the individual's pattern of criminal conduct, and lists the individual's February 2013 arrest for Driving Under the Influence (DUI), a 2010 Disorderly Conduct and Concealed Identity charge and a 2008 Open Container charge.

## **IV. Findings of Fact**

On February 13, 2013, the individual was arrested and charged with DUI and cited for having an open container in his vehicle. *See* DOE Exh. 3. According to the police report, the individual was parked in the middle of a roadway, passed out behind the wheel of his vehicle. *Id.* Due to the individual's high level of intoxication, no field sobriety tests were conducted, but a blood sample was taken at a local hospital. The results of the blood test indicated that the individual registered a blood alcohol content (BAC) of .20. *Id.* In his March 2013 PSI, the individual admitted that he drank a mixture of vodka and Gatorade before he was arrested. *Id.* This was

the individual's first DUI. However, he had two previous alcohol-related arrests. In 2010, the individual was charged with Disorderly Conduct and Concealed Identity. He admitted that he consumed alcohol on the evening of the arrest. In addition, in March 2008, the individual was charged with two counts of Open Container. He also admitted to consuming alcohol prior to this arrest. *Id.*

Based on this information and the fact that the individual had a prior history of alcohol-related offenses, the individual was referred to a DOE psychologist. On April 9, 2013, the DOE psychologist evaluated the individual. In her Report, she concluded that the individual met the criteria for Alcohol Abuse. The DOE psychologist further concluded that the individual's Alcohol Abuse is an illness or mental condition, which causes, or may cause, a significant defect in judgment and reliability. DOE Exh. 4.

## **V. Analysis**

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)<sup>3</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. I 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. The Diagnosis of Alcohol Abuse**

The individual does not dispute the DOE psychologist's diagnosis of Alcohol Abuse. Therefore, the focus of the analysis will be on whether the individual has demonstrated adequate evidence of rehabilitation or reformation from Alcohol Abuse.

### **B. Evidence of Rehabilitation and Reformation from Alcohol Abuse**

During the hearing, the individual acknowledged his 2008 and 2010 alcohol-related incidents, as well as his February 2013 DUI as bad choices and mistakes. Transcript of Hearing (Tr.) at 107. According to the individual, on the night of his DUI, he ran into an old high school friend who invited him to his new house. *Id.* He testified that his friend offered him a drink of vodka which was the alcohol the friend had in the house. The individual stated that he drank although he had refrained from drinking hard liquor since his 2010 alcohol-related incident. He further stated that after the DUI, he was very disappointed in himself, depressed, scared and angry. *Id.* at 115. The individual stated that it was at this point he researched the signs of alcohol abuse on the

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<sup>3</sup> Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

internet and found literature on Alcoholics Anonymous (AA). He stated that he decided to attend an AA meeting and schedule an appointment with the Employee Assistance Program at work. *Id.* at 117.

The individual testified that his EAP counselor referred him to a psychotherapist for alcohol treatment. According to the individual, he successfully completed an Intensive Outpatient Program (IOP). He further testified that he has learned a great deal from his alcohol treatment, including how to address triggers. *Id.* at 122. The individual stated that he has a very supportive family and believes he has gone above and beyond his treatment recommendations. *Id.* at 123. Although the individual believes that he does not need AA to prevent him from drinking, he testified that he continues to attend AA because he enjoys the fellowship. *Id.* at 124. The individual testified that he has never had cravings for alcohol and is serious about remaining abstinent from alcohol in the future. *Id.* at 127 and 128. He stated that he has not drunk any alcohol since the date of his February 2013 DUI. Finally, the individual testified that he is remorseful for his DUI, stating that he never knew what his relationship with alcohol was until his DUI. *Id.* at 129.

During the hearing, the individual offered the testimony of a psychotherapist and his treating therapist. The psychotherapist, who is a licensed alcohol counselor, testified that the individual was referred to his treatment program by the individual's EAP Counselor in May 2013.<sup>4</sup> After evaluating the individual, the psychotherapist diagnosed the individual with Alcohol Abuse and recommended an IOP which consisted of nine hours of group therapy and one hour of individual therapy per week. *Id.* at 74. The psychotherapist testified that the individual successfully completed the IOP and was very open and honest throughout treatment. *Id.* According to the psychotherapist, the individual's past and present problems with alcohol warranted the diagnosis of alcohol abuse, but he pointed out that the individual is not a habitual drinker. *Id.* at 76. However, the psychotherapist stated that when the individual does drink alcohol, he has the propensity to drink to excess which causes problems for him. *Id.* After spending over a 120 hours with the individual in treatment, the psychotherapist stated that he never perceived that the individual was in denial. *Id.* at 77. He believes the individual has reached a point in his life where he is convinced that using alcohol is counterproductive to his life goals. The psychotherapist, who is still currently treating the individual, does not believe the individual has a drinking problem. He testified that the individual's prognosis is good for the future. *Id.* at 78. The psychotherapist further testified that he believes the individual is reformed. *Id.* at 79.

The individual's therapist, who is a licensed counselor and also works with substance abuse issues, testified that she began meeting with the individual in 2011 to work on issues related to stress and managing divorce. His therapist, who has seen the individual for 25 sessions, testified that she does not believe the individual meets the criteria for Alcohol Abuse under the Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> Edition, Text Revision (DSM-IV-TR) because the individual's three alcohol-related incidents occurred over a period of time and did not occur within a 12-month period of time as required by the Alcohol Abuse criteria in the

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<sup>4</sup> During the hearing, the individual also offered the testimony of the EAP Counselor. The EAP Counselor stated that he was surprised when the individual contacted him because he had previously worked with him on coping issues after his 2010 alcohol-related incident. *Id.* at 51. Although he testified that the individual is dedicated to the EAP program, he stated that was not in a position to offer a prognosis of the individual. *Id.* at 53 and 55.

DSM-IV-TR. *Id.* at 97 and 98. She specifically noted that the individual's February 2013 DUI was not a recurrent alcohol-related incident. *Id.* The individual's therapist testified that as of the date of the hearing, she would not diagnose the individual with Alcohol Abuse. She testified that the individual is not a problem drinker, that alcohol does not alter the individual's perceptions and that alcohol does not play a role in how the individual deals with his life. *Id.* at 102. Finally, she testified that the individual's prognosis is good, noting that the individual is a disciplined person and she does not believe he will relapse. *Id.* at 103 and 104.

The individual also offered the testimony of his AA sponsor, his wife, his supervisor and a co-worker/friend. The individual's AA sponsor testified that he has been the individual's sponsor for about two months and that the individual participates in weekly AA meetings. *Id.* at 35. He stated that to his knowledge, the individual has been sober since his February 2013 DUI and is totally dedicated to his sobriety. *Id.* at 37. The individual's wife, who has known the individual for seven years, testified that the individual was disappointed and remorseful after his DUI and that she has not seen the individual drink since his DUI. *Id.* at 60. She further testified that the individual has been diligent with his treatment. Both the individual's supervisor and his co-worker/friend testified that the individual is reliable, exercises good judgment and is dedicated to abstinence. *Id.* at 13 and 21.

The DOE psychologist listened to all the testimony at the hearing before testifying herself. She testified that as of the date of the hearing, she believes the individual has achieved adequate evidence of rehabilitation. The DOE psychologist stated that the individual's prognosis is very good that he will remain abstinent. *Id.* at 138. She noted that she does not often change the time frame of recommended abstinence, which was 12 months in this case. The DOE psychologist testified that a year of abstinence is not an arbitrary time frame because it gives individuals time to encounter triggers. She also stated that after a one year time frame, the relapse rate declines to nine percent. *Id.* at 138. However, she noted in this case where the individual has achieved six months of abstinence as of the date of the hearing, the individual's depth of his commitment as well as his family support, lifestyle changes and lack of denial are significant and that based on these factors, the individual has demonstrated adequate evidence of rehabilitation. She reiterated that the individual does not have an illness that causes a significant defect in his judgment and reliability. *Id.* at 141.

### **C. Hearing Officer's Evaluation of the Evidence**

In the administrative process, Hearing Officers accord deference to the expert opinion of psychiatrists, psychologists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing*, Case No. TSO-0728 (2009).<sup>5</sup> At the outset, I am persuaded by the favorable testimony of the DOE psychologist, the psychotherapist and the individual's therapist that the individual has achieved adequate evidence of rehabilitation. Moreover, the Adjudicative Guidelines describe factors that could mitigate security concerns involving both psychological conditions and alcohol consumption. *See Adjudicative Guideline, Guidelines G and I, ¶ 23 and ¶ 29, respectively.* In this case, the individual has satisfied the

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<sup>5</sup> Decisions issued by OHA are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

following mitigating factors: (1) the individual has acknowledged his alcohol abuse, provided evidence of actions taken to overcome his problem and has established a pattern of responsible use; (2) the individual has successfully completed an IOP with required aftercare, has demonstrated a clear and established pattern of abstinence in accordance with his treatment recommendations, i.e., his participation in AA meetings, and has received a favorable prognosis by a duly qualified medical professional; and (3) the DOE psychologist has opined that the individual has a low probability of recurrence. *Adjudicative Guidelines G and I, ¶ 23 (b) and (d) and ¶ 29 (c), respectively.* For these reasons, I find that the individual has mitigated the DOE's security concerns under Criteria H and J.

#### **D. Criterion L**

The DOE's concerns under Criterion L security concerns relate to the individual's pattern of criminal conduct, specifically his alcohol-related incidents occurring in 2008, 2010 and most recently his February 2013 DUI.

Among the factors which could serve to mitigate the security concerns raised by the individual's pattern of criminal conduct are (1) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; (2) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life; (3) evidence that the person did not commit the offense; and (4) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement. *Adjudicative Guideline J at ¶ 32 (a)-(d).* In this case, the individual is remorseful for his conduct, has successfully completed an IOP and has demonstrated adequate evidence of rehabilitation. After considering the "whole person," I am convinced that the DOE can rely on the individual's ability to make sound judgment calls regarding the safeguarding of classified information. *See Adjudicative Guidelines at ¶ (2)a.* I therefore find that the individual has sufficiently mitigated the LSO's concerns under Criterion L.

#### **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 Criteria H, J and 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 find that the individual has brought forth convincing evidence to mitigate the security concerns associated with Criteria H, J and L. I therefore find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should 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.

Kimberly Jenkins-Chapman  
Hearing Officer  
Officer of Hearings and Appeals

Date: October 13, 2013