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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: July 3, 2013 )  
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 ) Case No.: PSH-13-0083  
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Issued: October 21, 2013

**Hearing Officer Decision**

Steven L. Fine, Hearing Officer:

This Decision concerns the eligibility of XXX X. XXX (hereinafter referred to as “the Individual”) to hold a security clearance 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 discussed below, after carefully considering the record before me in light of the relevant regulations, I conclude that the Individual’s security clearance should not be restored.

**I. BACKGROUND**

The administrative review proceeding began when a Local Security Office (LSO) issued a Notification Letter to the Individual. *See* 10 C.F.R. § 710.21. The letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. Specifically, the LSO stated that the Individual had been diagnosed by a psychiatrist with Alcohol Abuse, and engaged in behavior (including a pattern of criminal behavior) which brought into question his honesty, reliability, and trustworthiness.<sup>1</sup>

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<sup>1</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 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).

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 July 3, 2013.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, a co-worker, his father, his counselor (the Counselor) and a DOE consultant psychiatrist (the DOE Psychiatrist). *See* Transcript of Hearing, Case No. PSH-13-0083 (hereinafter cited as "Tr."). The LSO submitted 20 exhibits, marked as Exhibits 1 through 20, while the Individual submitted 15 exhibits, marked as Exhibits A through O.

## II. FINDINGS OF FACT

The Individual has a history of three alcohol-related arrests. On July 14, 2002, when the Individual was 20 years old, police arrested and charged him with Underage Consumption of Alcohol (UCA). On October 11, 2002, police arrested the Individual and charged him with UCA and Driving Under the Influence of Alcohol (DUI). On September 18, 2011, the Individual was arrested and charged with Public Intoxication (PI).

At the request of the LSO, the DOE Psychiatrist evaluated the Individual on November 22, 2011. Exhibit 13 at 2. After completing his evaluation of the Individual, the DOE Psychiatrist issued a report on November 28, 2011, in which he found that the Individual met the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revised (DSM-IV-TR) for "Alcohol-Related Disorder Not Otherwise Specified (NOS)." Exhibit 13 at 10. However, the DOE Psychiatrist opined that the Individual's Alcohol Disorder NOS was **not** an illness or condition that causes, or may cause, a significant defect in the Individual's judgment and reliability. *Id.* The DOE Psychiatrist further found that the Individual was not, and had not been, a user of alcohol habitually to excess, or alcohol dependent or suffering from alcohol abuse. *Id.* at 11.

On January 29, 2013, a staff psychologist (the HRP Psychologist) employed by the Individual's employer, who had been monitoring the Individual pursuant to the DOE's Human Reliability Program (HRP), contacted a number of DOE security officials in order to express his concerns that the Individual met the criteria for Alcohol Dependence and had been temporarily removed from the HRP.<sup>2</sup> Exhibit 14 at 1. The HRP Psychologist further reported that the Individual had enrolled in an Intensive Outpatient Program (IOP) but had subsequently tested positive for alcohol use on January 24, 2013. *Id.* The Individual entered an Inpatient Treatment Program (ITP) on January 29, 2013. *Id.*

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<sup>2</sup> 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.

The LSO conducted a Personnel Security Interview (PSI) of the Individual on March 28, 2013. During this PSI, the Individual confirmed that he had enrolled in the IOP at the instruction of the HRP. Exhibit 17 at 9-12. He further indicated that his HRP clearance had been suspended. *Id.* at 12. The Individual stated that eight months after he assured the HRP Psychiatrist that he would not drink for the foreseeable future he began using alcohol again. *Id.* at 13-17. When the HRP Psychiatrist was informed that he was using alcohol again, he recommended that the Individual enroll in the IOP. *Id.* at 25. The Individual stated that he began attending the IOP on January 10, 2013, and continued his treatment there for two months. *Id.* at 26-27. After first denying that he had received inpatient treatment for his Alcohol Abuse, the Individual admitted that he transitioned from the IOP to the ITP. *Id.* at 28. As part of his IPT, he began the Alcoholics Anonymous (AA) Twelve-Steps Program. *Id.* at 30. Initially during this PSI, the Individual denied that he had used alcohol while he was in the treatment program. *Id.* at 31. However, when pressed by the interviewer, the Individual admitted that he had been caught using alcohol while in the IOP. *Id.* at 32. The Individual claimed that he had successfully completed the ITP, intends to permanently abstain from using alcohol, and intends to continue in his aftercare program. *Id.* at 43, 54, 137. The Individual was unsure of his sobriety date. *Id.* at 55. The Individual claimed that he had never abused alcohol. *Id.* at 124. When he was asked if he had a “problem” with alcohol he stated: “I think I’m a binge drinker, I don’t think I have to have it, it’s just sometimes when I do drink, I have too much.” *Id.*

At the request of the LSO, the DOE Psychiatrist conducted a second evaluation of the Individual on April 24, 2013. Exhibit 12 at 1. After completing this evaluation of the Individual, the DOE Psychiatrist issued a report on April 30, 2013, in which he found that the Individual met the criteria set forth in the DSM-IV-TR for “Alcohol Abuse.” Exhibit 12 at 10. The DOE Psychiatrist further found the Individual’s Alcohol Abuse to be an illness or condition that causes, or may cause, a significant defect in the Individual’s judgment and reliability. Exhibit 12 at 11. Noting that the Individual was not yet rehabilitated or reformed, the DOE Psychiatrist opined that in order to be reformed or rehabilitated from his Alcohol Abuse, the Individual needs to attend “either a structured inpatient or outpatient treatment program, with documented participation in 12-step recovery meetings and familiarity with a recovery model,” and that “at least a year of complete sobriety would be necessary for fulfillment of adequate rehabilitation.” Exhibit 12 at 11.

### **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 Individual has been arrested for three alcohol-related incidents. 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. *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) Guideline G at ¶ 21. 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 his three alcohol-related arrests.

On April 30, 2013, the DOE Psychiatrist diagnosed the Individual with Alcohol Abuse. This information raises security concerns about the Individual under Criterion H, since the Individual's Alcohol Abuse constitutes an illness or condition that cause, or may cause, a significant defect in the Individual's judgment and reliability. Exhibit 4 at 12; Adjudicative Guidelines I at ¶ 27 and G at ¶21, 22(e).

The Individual's three alcohol-related arrests constitute a pattern of criminal conduct that raises security concerns under Criterion L. "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." Adjudicative Guideline E at ¶ 15. "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 G at ¶ 30.

#### **V. ANALYSIS**

##### **A. Criteria H and J**

I find that the Individual has not adequately mitigated the security concerns raised under Criteria H and J by his Alcohol Abuse diagnosis and three alcohol-related arrests.

In his request for a hearing, dated August 15, 2013, the Individual identified himself as an "alcoholic" and stated that he has "no desire to ever drink again." Exhibit L at 1. At the hearing, the Individual reiterated his intention to permanently abstain from alcohol use and presented evidence showing that he has taken a number of actions to address his Alcohol Abuse. Tr. at 94. The Individual testified that his last use of alcohol had occurred on January 20, 2013, seven months prior to the hearing. Tr. at 91, 121. On January 13, 2013, the Individual began the IOP. Tr. at 97. The Individual testified that he tested positive for alcohol use on two occasions while attending the IOP, because he had not truly committed to his sobriety. Tr. at 97-98, 104. The

Individual completed the ITP on March 28, 2013. Tr. at 92, 100. He also attends five or six AA meetings a week. Tr. at 92. The Individual is now working on Step Three of AA's Twelve-Step Program, and has obtained a sponsor.<sup>3</sup> Tr. at 91; Exhibit N. He testified that he intends to continue attending AA meetings and seeing the Counselor. Tr. at 94. The Individual testified that he attends aftercare meetings once a week. Tr. at 102; Exhibit M. The Individual testified that he likes being sober. *Id.* at 118.

The Individual's Counselor testified on his behalf at the hearing. The Counselor testified that she had been treating the Individual since April 2013. Tr. at 15. She testified that she had met with the Individual weekly for the past five months on approximately 35 occasions. Tr. at 18. The Counselor diagnosed the Individual with Alcohol Dependence. Tr. at 31, 43. She testified that the Individual realizes that he has an alcohol problem. Tr. at 27. She described the Individual as "extremely motivated" to achieve his sobriety, and "extremely dedicated" to his treatment. Tr. at 16, 32. She strongly believes that the Individual has been abstaining from alcohol use. Tr. at 21. The Counselor testified that the Individual is now in the maintenance phase of his treatment, having completed the ITP. Tr. at 25. She noted that he is extremely close to his family who provides him with a support system. Tr. at 26-27. The Counselor testified that the Individual's prognosis is "very good" to "excellent." Tr. at 34. She further opined that the Individual had "demonstrated . . . adequate rehabilitation and reformation." Tr. at 33. The Counselor admitted that she did not know the Individual's sobriety date. Tr. at 49. The Counselor testified that the Individual's likelihood of relapse is "low." Tr. at 57.

At the hearing, the DOE Psychiatrist observed the testimony of each of the other witnesses before he testified. He testified that he diagnosed the Individual with Alcohol Abuse. Tr. at 130. He further noted that the Individual also met some of the DSM-IV-TR criteria for Alcohol Dependence. Tr. at 130, 144. The DOE Psychiatrist testified that he originally found that the Individual needed to abstain from using alcohol for at least twelve months to establish reformation or rehabilitation from his Alcohol Abuse. Tr. at 145-146. The DOE Psychiatrist did not see any reason to adjust that recommendation downward. Tr. at 146. He did not see any evidence that the Individual's recovery was proceeding any faster than is typical. Tr. at 171. He opined that the Individual's prognosis is "fairly good" but that his likelihood of relapse remains "fairly high." Tr. at 163, 165. The DOE Psychiatrist testified that he was concerned about the Individual's past tendency to fail to meet commitments concerning his alcohol use. Tr. at 132. The DOE Psychiatrist testified that he was concerned about the Individual's use of alcohol during the IOP. Tr. at 133. The DOE Psychiatrist was also concerned that the Individual claimed that he was not an alcoholic, shortly after being discharged from the ITP. Tr. at 134. The DOE Psychiatrist testified that after observing the Individual's father's testimony, he was concerned about the quality of the Individual's support system, and did not see that the Individual had done enough to address his social isolation. Tr. at 135-137. The DOE Psychiatrist stated that the Individual has only been sober for a short time, but is now on the right track. Tr. at 164-165. He testified that the Individual has "a lot of anxiety" and "doesn't have much in the way of social support." Tr. at 165. The DOE Psychiatrist further opined that the Individual was using alcohol

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<sup>3</sup> The Individual testified that he had completed Steps One through Five of AA's Twelve-Step Program while in the IOP/ITP. Tr. at 109. However, his sponsor had him re-start the 12-Step Program with Step One when he began working with him. Tr. at 109-110.

as a medication to address his anxiety and social isolation. Tr. at 165.

Given the relative severity of the Individual's alcohol disorder, and his history of setbacks during his treatment, I am not convinced that the Individual has abstained from using alcohol for a sufficient period of time to establish reformation or rehabilitation from his Alcohol Abuse. Nor has the Individual shown that his likelihood of relapse is sufficiently low to resolve the security concerns raised by his Alcohol Abuse. Based upon the foregoing, I find that the Individual has not sufficiently mitigated the security concerns raised by his Alcohol Abuse under Criteria H or J.

### **B. Criterion L**

The Individual's three alcohol-related arrests constitute a pattern of criminal conduct that raises security concerns under Criterion L. The DUI is clearly a symptom of his Alcohol Abuse. Given the role that alcohol has played in the Individual's past conduct, I find that until the concerns raised by his Alcohol Abuse are sufficiently resolved, those concerns about the Individual's judgment, reliability and trustworthiness raised by his DUI will also remain unresolved.

Accordingly, I find that the security concerns raised under Criterion L by the Individual's pattern of criminal conduct have not been resolved.

## **VI. CONCLUSION**

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H, J, and L. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has not adequately mitigated the Criteria H, J, and L security concerns. 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: October 21, 2013