

Individual in May 2013, and issued a report. DOE Ex. 6. In August 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).² See DOE Ex. 1 (Notification Letter, August 1, 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 eight exhibits into the record (DOE Exs. 1-8) 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-13-0104 (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

² 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).

common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 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 56 years old, began consuming alcohol in 1971 or 1972, at age fourteen or fifteen. DOE Ex. 6 at 4. He drank alcohol regularly, with his heaviest period of alcohol consumption occurring in the mid 1980s, when he often consumed one pint to one quart of whiskey over a six-hour period on a daily basis. *Id.* Beginning in 1986, the Individual’s pattern of consumption changed. He began drinking light beer on a daily basis. *Id.* Since approximately 1986 until the present, approximately 27 years as of the hearing, the Individual’s pattern of daily alcohol consumption has purportedly remained relatively unchanged. He drinks two-to-three beers over approximately a two-hour period on Monday to Thursday evenings, and twelve-to-eighteen beers over the remaining three days of the week, averaging twenty to thirty beers a week. *Id.* at 3. The Individual also occasionally drinks one or two shots of whiskey. *Id.*

In May 2013, the DOE psychologist evaluated the Individual and diagnosed him with Alcohol Dependence, without adequate evidence of rehabilitation or reformation. DOE Ex. 6 at 10. The psychologist noted that this is an illness or condition which causes, or may cause, a significant defect in judgment or reliability. *Id.* at 11. The psychologist opined that the Individual’s “chronic consumption of alcoholic beverages” is “not trivial.” *Id.* at 8. According to the psychologist, the Individual “exceeds common standards” of moderate alcohol use, and “his level of consumption . . . implies he has developed tolerance to alcohol.” *Id.* The DOE psychologist was troubled by the “ample evidence” that the Individual did not believe his drinking was of concern, as well as his stated intention to continue drinking. *Id.* at 10. Based on these facts, the psychologist concluded, “[the Individual’s] prognosis for rehabilitation or reformation is poor at this time.” *Id.* The DOE psychologist added that, until the Individual’s Alcohol Dependence is “in full and sustained remission, for a significant period of time . . . accompanied by acceptance and insight into his condition, his judgment and reliability are at risk.” *Id.* at 11. With respect to how the Individual could demonstrate adequate evidence of rehabilitation or reformation, the DOE psychologist recommended a minimum of twelve months of abstinence from alcohol, as well as active participation in alcohol-related counseling and in a twelve-step program with a sponsor. *Id.* at 10-11.

IV. THE NOTIFICATION LETTER AND ASSOCIATED SECURITY CONCERNS

As stated above, the LSO issued a Notification Letter identifying security concerns under Criteria H and J of the Part 710 regulations. DOE Ex. 1. In support of its concerns, the LSO cited the Individual’s history and pattern of alcohol consumption, as well as the DOE psychologist’s diagnosis that the Individual meets the criteria for Alcohol Dependence, an illness or condition which causes, or may cause, defects in his judgment or reliability. *Id.* It is well-established 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. Similarly, certain mental conditions "can impair judgment, reliability, or trustworthiness." *Id.*, Guideline I, ¶ 27. Therefore, there is no question that the diagnosis of such a condition by a duly qualified mental health professional may raise security concerns.

In this case, given the facts regarding the Individual's routine excessive alcohol consumption and the DOE psychologist's subsequent diagnosis, I find that the LSO had ample grounds for invoking Criteria H and 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 granting the Individual a 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. However, he disagreed with the DOE psychologist's diagnosis, and asserted that his consumption of alcohol is not a problem. Tr. at 9. The Individual did not consult with any other medical or substance abuse professional in reaching his conclusion regarding the DOE psychologist's diagnosis. Instead, he "talked to four or five other [relatives and friends] and talked it through," and he concluded based on those discussions that he did not have a problem. Tr. at 10. The Individual testified that he does not intend to abstain from alcohol in the future; rather, he will likely continue his current pattern of consumption. Tr. at 18. He also does not intend to adopt any of the DOE psychologist's recommendations because, given his intention to continue drinking, he "would just be wasting [his] time" following any of the recommendations. Tr. at 19. Finally, the Individual vehemently disagreed that his alcohol consumption impacted his judgment or reliability. Tr. at 39.

After listening to the Individual's testimony, the DOE psychologist did not change his opinion regarding the Individual's diagnosis of Alcohol Dependence. Tr. at 34-35. The psychologist also opined that, as of the hearing, the Individual did not demonstrate any evidence of rehabilitation or reformation because he continued to consume alcohol with no intention of discontinuing his use in the future. *Id.* The DOE psychologist noted that following his May 2013 evaluation of the Individual, he determined that the Individual's prognosis was "poor" due to "the chronicity of his use and his lack of insight." At the hearing, the DOE psychologist did not change his opinion in this regard. Tr. at 43. His subsequent recommendations for rehabilitation or reformation also remained unchanged. Tr. at 35.

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. As an initial matter, I note that the Individual elected not to offer any additional testimonial or documentary evidence during this proceeding. As a result, his testimony and assertions remain wholly uncorroborated in the record. This is of particular significance because, as noted above,

once a security concern is raised, the burden is on the individual to present sufficient information to fully resolve the concern. In evaluating the evidence offered by an individual in mitigation of valid security concerns, should any doubt remain regarding that individual's eligibility for an access authorization, I must resolve that doubt in favor of the national security. 10 C.F.R. § 710.27(a). Consequently, corroborating evidence is of critical importance in these proceedings.

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. Similarly, with respect to evidence of certain psychological conditions, such as the Alcohol Dependence diagnosis in this case, 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 is under control "and has a low probability of recurrence or exacerbation;" and, "no indication of a current problem." Adjudicative Guidelines, Guideline I, ¶ 29.

In this case, the Individual has a long-standing history of drinking alcohol on a daily basis. According to the Individual's self-reports, for almost three decades, his pattern of consumption has included a weekly average of twenty to thirty beers, and occasional shots of whiskey. He has consistently maintained that his drinking is not problematic, and denies that he has any psychological condition necessitating treatment, despite the uncontroverted evidence to the contrary in the record. Consequently, the Individual has not consulted with any mental health or substance abuse professionals or sought out any treatment for Alcohol Dependence. He continues his regular pattern of alcohol consumption, with no intention of discontinuing his drinking in the future. Based on these facts, I conclude that the Individual's Alcohol Dependence remains untreated and I am, therefore, convinced by the DOE psychologist's opinion that the Individual has not demonstrated rehabilitation or reformation. Consequently, I find that the Individual has not mitigated the Criteria H and 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, and Guidelines G and I of the Adjudicative Guidelines. I also find that the Individual has not presented sufficient information to fully resolve those concerns. Therefore, I cannot conclude that granting the Individual a 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 grant the Individual 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: December 20, 2013