

security clearance. The Individual requested a hearing, and the LSO forwarded the Individual's request to the OHA. The Director of OHA appointed me as the Administrative Judge in this matter on October 29, 2013.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, two co-workers, his spouse, and a DOE consultant psychologist (the Psychologist). See Transcript of Hearing, Case No. PSH-13-0114 (hereinafter cited as "Tr."). The LSO submitted 14 exhibits, marked as Exhibits 1 through 14, while the Individual submitted no exhibits.

II. FINDINGS OF FACT

On September 15, 2006, the Individual was arrested and charged with Driving Under the Influence of Alcohol (DUI) and Open Container. On May 15, 2013, the Individual and his spouse consumed sufficient quantities of alcohol to become intoxicated. The Individual let his spouse attempt to drive them home. The police arrested them both, and charged the Individual with DUI by Consent and Possession of a Handgun While Under the Influence of Alcohol.

At the request of the LSO, the Psychologist evaluated the Individual on July 2, 2013. Exhibit 6 at 2. After completing his evaluation of the Individual, the Psychologist issued a report on July 9, 2013, in which he found that the Individual met the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V) for "Alcohol Use Disorder, Moderate Severity."² Exhibit 6 at 8. The Psychologist further found the Individual's Alcohol Use Disorder to be an illness or condition that causes, or may cause, a significant defect in the Individual's judgment and reliability. Exhibit 6 at 10. According to the Psychologist, while the Individual was in an appropriate treatment program, he was still at an early stage of his recovery and therefore was not yet rehabilitated or reformed. Exhibit 6 at 10. The Psychologist opined that in order to be reformed or rehabilitated from his Alcohol Use Disorder, the Individual needs to:

Abstain from alcohol consumption for at least 12 months and *follow all advice from evaluating and treating professionals*. This should include successful completion of his intensive outpatient treatment program [(IOP)], regular use of a 12-step program (e.g. [Alcoholics Anonymous] AA) with a sponsor multiple times per week ([the Individual's IOP] recommends 90 meetings in 90 days followed by 4-5 times a week) *as well as compliance with all recommendations from his counselors and treatment program*. He should provide documentation of full participation and compliance.

undertaken to bring OHA staff in line with the title used at other federal agencies for officials performing identical or similar adjudicatory work.

² The Psychologist also found that the Individual met the criteria for set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revised (DSM-IV-TR) for "Alcohol Dependence." Exhibit 6 at 9. Essentially, the Psychologist found that the Individual's symptoms would be considered Alcohol Use Disorder (Moderate Severity) under the DSM-V, while under the previous edition of the DSM, the DSM-IV-TR, those symptoms would constitute Alcohol Dependence. In this decision, I use the updated nomenclature adopted in the DSM-V.

If he wished to demonstrate reformation without use of rehabilitation aids, which I do not recommend, he should abstain from use of alcohol for at least 24 months and provide evidence of this through occasional random BAC assessments.

Exhibit 6 at 10 (emphasis supplied).

III. STANDARD OF REVIEW

The Administrative Judge'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 a history of two alcohol-related arrests. 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 operation of a motor vehicle on public roads, and his possession of a firearm while in a state of intoxication.

On July 9, 2013, the Psychologist and diagnosed the Individual with Alcohol Use Disorder (Moderate Severity). This information raises security concerns about the Individual under Criterion H, since the Individual's Alcohol Use Disorder (Moderate Severity) constitutes an illness or condition that cause, or may cause, a significant defect in the Individual's judgment and reliability. Exhibit 6 at 10; Adjudicative Guidelines I at ¶ 27 and G at ¶ 21, 22(e).

The Individual's two arrests for offenses including DUI, DUI by Consent, Open Container, and Possession of A Firearm While Intoxicated, constitute 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. Alcohol Use Disorder/Alcohol Dependence (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 Use Disorder, and two alcohol-related arrests.

At the hearing, the Individual identified himself as an alcoholic and presented evidence showing that he has taken a number of actions to address his Alcohol Use Disorder. Tr. at 56. The Individual successfully completed an Intensive Outpatient Treatment Program (IOP) in July 2013. Tr. at 53. The IOP included twelve hours a week of group therapy, and at least three hours of AA meetings a week. Tr. at 53. The Individual has changed his social circles and activities in order to avoid alcohol.³ Tr. at 49-50. The Individual's spouse has stopped using alcohol. Tr. at 57. The Individual testified that his last use of alcohol occurred on May 5, 2013, seven months and seven days prior to the hearing.⁴ Tr. at 62, 66. The Individual testified that he understands that he can never use alcohol again. Tr. at 56. The Individual testified that he is a much happier person without alcohol in his life. Tr. at 53. He testified that he will never use alcohol again. Tr. at 53, 66. The Individual believes that his family, friends and church provide him with a strong support network. Tr. at 57-58.

The Individual admitted that his IOP recommended that he attend 90 AA meetings in 90 days upon his discharge. Tr. at 54, 62. The Individual testified that he continued to attend AA when he was discharged from the IOP, but eventually stopped attending AA meetings. Tr. at 55. He obtained an AA sponsor, but lost contact with the sponsor. Tr. at 55. The Individual testified that he is no longer receiving any treatment for his Alcohol Use Disorder, other than his bi-weekly visits with an Employee Assistance Program Psychologist (the EAP Psychologist) who is monitoring him on behalf of his employer. Tr. at 56. He admitted that the EAP Psychologist advised him that he should continue attending AA meetings. Tr. at 57. The EAP Psychologist also recommended that the Individual see a counselor. Tr. at 72. The Individual testified that he intends to see a counselor in the future. Tr. at 72. The Individual also admitted that he has only attended three or four aftercare meetings since completing the IOP in July. Tr. at 53, 69. The Individual testified that he is not concerned about the possibility of relapse. Tr. at 70.

At the hearing, the Psychologist listened to the testimony of each of the other witnesses before he testified. The Psychologist testified that he had diagnosed the Individual with an Alcohol Use Disorder of Moderate Severity and recommended that the Individual: abstain from using alcohol for at least 12 months, “follow all the advice from evaluating and treating professionals,” successfully complete the IOP, participate in AA, implement an AA twelve-step program, and

³ This testimony was corroborated by the testimony of the Individual's spouse at the hearing. Tr. at 11, 19-20.

⁴ This testimony was corroborated by the testimony of the Individual's spouse at the hearing. Tr. at 13.

obtain an AA sponsor. Tr. at 78. The Psychologist noted that the IOP recommended that the Individual attend 90 AA meetings in 90 days. Tr. at 78. The Psychologist testified that the Individual did not follow his or the IOP's recommendations. Tr. at 78-79. The Psychologist testified that the Individual is not currently in an adequate treatment program and has not implemented "robust relapse prevention strategies." Tr. at 79. The Psychologist believes that the Individual needed to be involved in outpatient counseling if he did not use a twelve-step-type program. Tr. at 89. He testified that the Individual is "a very earnest and kind and nice young man." Tr. at 79-80. However, the Psychologist testified that he was concerned about the Individual's potential for relapse. Tr. at 80. The Psychologist opined that the Individual does not fully appreciate the danger of relapse or its likelihood. Tr. at 85, 90. He testified that the Individual "seems not to have put a lot of effort into [the IOP] recommendations once he left [the IOP]." Tr. at 84. The Psychologist testified that he still believes that the Individual needs to abstain from all alcohol use for at least 12 months before he is considered to be reformed or rehabilitated and he does not see any reason to adjust that recommendation downward. Tr. at 81. The Individual has still not demonstrated sustained remission from his Alcohol Use Disorder. Tr. at 82. The Psychologist testified that "anybody with an active diagnosis of a substance use disorder . . . is at risk for possibly demonstrating impaired judgment and reliability." Tr. at 82. He opined that the Individual's prognosis is "fair to marginal on a long term basis." Tr. at 86-87. The Psychologist estimated that the Individual has a 40 to 50 percent chance of relapsing during the next year. Tr. at 87-88.

After carefully considering all the evidence, I am not convinced that the Individual has received sufficient treatment, and abstained from using alcohol for a sufficient period of time to establish reformation or rehabilitation from his Alcohol Use Disorder. The Individual has offered no expert testimony to the contrary. Based upon the foregoing, I find that the Individual has not sufficiently mitigated the security concerns raised by his Alcohol Use Disorder under Criteria H or J.

B. Criterion L

The Individual's two arrests demonstrate a pattern of criminal conduct that raises security concerns under Criterion L. This conduct is clearly symptomatic of his Alcohol Use Disorder. Given the role that alcohol has played in the Individual's past conduct, I find that until the concerns raised by his Alcohol Use Disorder are sufficiently resolved, the concerns about the Individual's judgment, reliability and trustworthiness raised by his criminal conduct will also remain unresolved.

Accordingly, I find that the security concerns raised under Criterion L by the Individual's 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 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
Administrative Judge
Office of Hearings and Appeals

Date: January 23, 2014