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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	November 29, 2013)	
)	Case No.: PSH-13-0124
_____)		

Issued: April 23, 2014

Administrative Judge Decision

Wade M. Boswell, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization¹ 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 not be restored.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance and participate in the Human Reliability Program (HRP).² When the individual was initially an applicant for access authorization, the Local Security

¹ 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.

² 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. § 712.

Office (LSO) identified security concerns arising from his consumption of alcohol; these concerns were resolved in the individual's favor following an administrative review hearing in 2008 (2008 Hearing).³ *See* Exhibit 15.

Following the 2008 Hearing, the individual was granted access authorization and commenced employment with a DOE contractor. Under security regulations, the individual is required to report certain occurrences which may be relevant to his continued access authorization. In compliance with those regulations, the individual reported in May 2013 that he had been arrested and charged with Driving While Intoxicated (DWI) and Unlawful Carrying of a Weapon following an automobile accident of which he had no memory. *See* Exhibit 14. At the time of the accident, he was reportedly driving in the wrong direction on an interstate highway. The individual was transported from the site of the accident to a local hospital where his blood alcohol concentration (BAC) was measured at .228 g/210L. From the hospital, the individual was transported to a local jail, where he was held until his father arranged for him to be released on bail.

Following receipt of this information, the LSO commenced an inquiry and conducted a personnel security interview with the individual on June 18, 2013 (PSI). *See* Exhibit 22. The PSI did not resolve concerns over the individual's arrest or his use of alcohol. As a result, the individual was referred for evaluation by a DOE consulting psychologist, who conducted a psychological evaluation of the individual in August 2013. *See* Exhibit 11.

Since neither the PSI nor the DOE psychologist's evaluation resolved the security concerns arising from the individual's arrest or alcohol usage, the LSO informed the individual in a letter dated October 22, 2013 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. 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 Criterion H, Criterion J and Criterion L, respectively). *See* Exhibit 1.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. *See* Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter (2014 Hearing). Subsequent to the 2014 Hearing, the record was re-opened to receive new evidence from the LSO and the individual's response, as well as the following testimony: (a) the individual's long-term mental health counselor who had been unavailable on the date of the initial 2014 Hearing, (b) the individual with respect to new evidence submitted by the LSO subsequent to the initial 2014 Hearing, and (c) the DOE consulting psychologist with respect to such testimony and to the new evidence

³ The decision on the individual's earlier administrative review hearing is reported at *Personnel Security Hearing*, Case No. TSO-0633 (September 29, 2008).

(collectively, Subsequent Testimony). The LSO introduced 26 numbered exhibits into the record of the case and presented the testimony of one witness, the DOE consulting psychologist. The individual introduced five lettered exhibits (Exhibits A-E) into the record and presented the testimony of seven witnesses, including that of himself, of his alcohol treatment counselor and of his long-term mental health counselor. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.⁴

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 denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward 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 evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Administrative Judge’s Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge 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 eligibility in favor of the national security. *Id.*

⁴ OHA decisions are available on the OHA website at www.oha.doe.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cited three criteria as the bases for suspending the individual's security clearance: Criterion H, Criterion J and Criterion L. Criterion H concerns information that a person has "an 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). It is well established that "certain emotional, mental, and personality conditions can impair judgment, reliability, or 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). Conduct influenced by such psychological conditions can raise questions about an individual's ability to protect classified information. With respect to Criterion H, the LSO relied on the evaluation by the DOE consulting psychologist which concluded that the individual has met the *Diagnostic Statistical Manual of the American Psychiatric Association IVth Edition Text Revision (DSM-IV-TR)* criteria for alcohol abuse for at least the last several years and that his alcohol abuse, which is not in remission, has caused and can continue to cause significant defects in the individual's judgment and reliability. Ex. 1; Ex. 11 at 9 – 10.

Criterion J refers to information indicating that an individual 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(h). Excessive alcohol consumption raises a security concern because it can lead to questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. See Adjudicative Guidelines at Guideline G; *Personnel Security Hearing*, Case No. PSH-11-0035 (April 19, 2012). With respect to Criterion J, the LSO relied upon the evaluation by the DOE psychologist which concluded that the individual suffers from alcohol abuse and that there is no evidence of rehabilitation or reformation. Ex. 1; Ex. 11 at 9. Additionally, the LSO noted, *inter alia*, that: (a) the individual had been arrested and charged in May 2013 for DWI after hitting a car while driving in the wrong direction on an interstate highway, subsequent to which his BAC measured .228 g/210L; (b) the individual resumed consuming alcohol subsequent to the 2008 Hearing, notwithstanding that he had completed an outpatient treatment program on alcohol use prior that hearing and had testified at that hearing that he had decided to permanently abstain from consuming alcohol; and (c) a DOE consultant psychiatrist had evaluated the individual in January 2008 and issued a report that concluded the individual met the *DSM-IV-TR* criteria for alcohol abuse, without adequate evidence of rehabilitation or reformation. Ex. 1 at 1 – 2.

Criterion L concerns information that an individual has engaged in conduct "which tends to show that the individual is not honest, reliable, or trustworthy...." 10 C.F.R. § 710.8(l). Conduct reflecting questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations raises questions about an "individual's reliability, trustworthiness and ability to protect classified information." Adjudicative Guidelines at Guideline E. With respect to Criterion L, the LSO alleges a pattern of criminal conduct

by the individual based upon four instances between July 1999 and May 2013 in which the individual was cited, charged and/or arrested for violations for the law. Ex. 1 at 3.

In light of the information available to the LSO, the LSO properly invoked Criterion H, Criterion J and Criterion L.

IV. Findings of Fact

The individual does not contest the facts cited by the LSO in issuing the Notification Letter. Tr. at 74, 107 – 108. Where there are inconsistencies between statements made by the individual and other information in the record, I have carefully evaluated the individual's statements in reaching the findings of facts set forth below.

The individual began consuming alcohol while in high school and continued to do so upon entering college. Ex. 23 at 44 – 52. In July 1999, shortly before his 21st birthday, he was cited as a Minor in Possession of alcohol. He paid a fine as a result of this citation. *Id.* at 31 – 35.

From 2000 until 2005, the individual served in the United States military, which service included two tours of duty in Iraq. *Id.* at 54, 61 – 62, 67, 64. For his service in Iraq, the individual received multiple awards recognizing both his meritorious performance and his heroic acts in combat. *See* Ex. A. Nothing herein is intended to detract from the selfless acts performed by the individual in protection of his fellow servicemen and in service to his country.

In November 2002, the individual consumed alcohol on a military base one evening prior to going out with other servicemen. Ex. 23 at 17. After consuming additional alcohol at a bar, the individual left the bar to drive to an automated teller to get cash. *Id.* at 12, 18. He was stopped by the police for making an illegal turn and for failure to stop at a red light. *Id.* at 12, 15. The police officer requested that the individual take a Breathalyzer test, which he refused to do even after the “implied consent” law with respect to such tests was explained to him. *Id.* at 12. He was arrested and charged with driving under the influence of alcohol (DUI). The individual's driver's license was suspended for one year due to his refusal to take a Breathalyzer test. *Id.* at 14, 20 – 22. At the recommendation of his military command, he completed a week-long substance abuse and counseling program in November – December 2002. *Id.* at 24 – 26. Adjudication on the DUI charge was delayed while the individual was deployed to Iraq; upon his return, the charge was reduced to reckless endangerment on which he was found guilty and fined. *Id.* at 13 – 14, 23 – 24.

In May 2007, the individual drank eight to ten beers one evening while with members of his softball team, following the suicide of one of their teammates. *Id.* at 37. He later drove to a convenience store, while intoxicated. According to the individual's account, he went into the store to purchase something to eat and police officers, who were in the store as customers, approached the individual and asked him if he had been drinking. Upon responding that he had been, the individual reports that he was arrested for public intoxication. *Id.* at 35 – 41; Ex. 24 at 148. The individual's account of being approached

by police officers for no apparent reason while he was trying to make a purchase in a convenience store, though earnestly and consistently recounted, does not seem credible.

In contrast to the individual's account of his May 2007 arrest is the police report on the arrest: police responded to a call of a person being passed out behind the steering wheel of his car and, as a police officer approached the car, the individual climbed out of his vehicle through the window of the driver's side of the vehicle. Officers observed the individual stumbling around the parking lot, appearing to be talking to himself, and smelled a strong odor of alcohol. The individual "seemed disoriented and was not even aware he crawled out of the vehicle window." *Id.* at 84. Officers placed the individual under arrest for public intoxication fearing that he would attempt to leave in his vehicle if he was left at the scene. After being booked at a local jail, the individual "became very argumentative and began pounding on bars. The officers then placed [the individual] in a hole cell where [he] continued to pound on doors and bars." *Id.* The police report provides a more credible description of the individual's May 2007 arrest and, therefore, I accept as accurate the facts described therein.

In 2007, the individual was an applicant for access authorization and the LSO referred him to a DOE consulting psychiatrist for an evaluation. *See* Ex. 12. The DOE consulting psychiatrist noted that the individual had a tendency to "binge [drink] in conducive situations and when intoxicated, he manifests impaired judgment in his actions.. ." *Id.* at 19. She determined that the individual met the *DSM-IV-TR* criteria for alcohol abuse at least in the two years preceding his May 2007 arrest and that he had not adequately evidenced rehabilitation or reformation. *Id.* at 14 – 16, 20. In her report issued in January 2008, she opined that the individual could demonstrate rehabilitation through satisfactory completion of a 50-hour substance abuse treatment program and reformation by not engaging in excessive and/or hazardous drinking for a minimum of one year following his May 2007 arrest, noting that any subsequent resumption of drinking alcohol to excess would evidence that the individual was not showing adequate evidence of rehabilitation and reformation. *Id.* at 20 – 21.

In July 2008, the individual completed a 12-week, 72-hour outpatient treatment program for alcohol. Ex. 16 at 14. The individual's completion of this program was presented as mitigating evidence at the 2008 Hearing and, at that hearing, the individual acknowledged his problem with alcohol and testified that he had decided to permanently abstain from consuming alcohol. *Id.* at 14, 106, 112 – 113, 123. The individual confirmed at the 2014 Hearing that he had intended to be understood at the 2008 Hearing as committing to permanent abstinence. Tr. at 79 – 81.

The individual did not maintain abstinence from alcohol following the 2008 Hearing. His reports with respect to resuming alcohol consumption are vague and inconsistent; however, based upon the record as a whole, I conclude that the individual resumed drinking alcohol in early 2010, consuming to the point of intoxication several times a year thereafter and operating a motor vehicle while under the influence of alcohol at least three times prior to his May 2013 arrest. Ex. 11 at 5; Ex. 22 at 60 – 65, 68 – 69, 117; Ex. 24 at 78; Tr. at 76 – 79.

The individual and his then-wife were having significant marital problems in May 2013. Prior to confronting his wife about certain issues in their marriage, he asked a relative to hold his two handguns so as to not “do anything stupid,” as he wanted to take the weapons “out of the equation.” Ex. 22 at 26. Several days later, on May 11, 2013, the individual retrieved the weapons and had them in the trunk of his car when he later went to a bar alone. *Id.* at 10, 27. He recalls drinking only three beers at the bar that evening and has no memory of leaving the bar. *Id.* at 11, 14. The individual next recalls being arrested at approximately 1:30 a.m. on May 12, 2013, following his having hit another vehicle when he was driving the wrong way on an interstate highway, events of which the individual has no memory. *Id.* at 15, 18, 20. The individual’s BAC, when subsequently tested at a hospital, registered .228 g/210L or nearly triple the legally accepted standard for intoxication. Ex. 11 at 6. The individual was arrested for DWI and for Unlawful Carrying of a Weapon, for the handguns in his trunk. Ex. 24 at 83 – 84. Police later determined that the individual had a valid license permitting him to carry the handguns and that, since they were locked in his truck and inaccessible to him at the time he was intoxicated, he had not violated local law. The weapons charge was not prosecuted. Ex. C at 1. With respect to the DWI charge, the individual was adjudicated guilty of a Class A misdemeanor in January 2014 and sentenced to six days in the county jail and fined \$750.00. Ex. B; Tr. at 94.

Subsequent to the individual’s May 2013 arrest, the individual enrolled in a five-week intensive outpatient program (IOP) on the use of alcohol, which he completed on July 24, 2013. Ex. 11 at 7; Tr. at 14. He continued in aftercare meetings sponsored by his IOP until November 25, 2013, but testified at the 2014 Hearing that since that date he has participated in neither aftercare nor Alcoholic Anonymous meetings. *Id.* at 15, 90 – 91, 114. The individual’s IOP supervisor testified at the 2014 Hearing at the individual’s request. She testified that: for treatment purposes she had diagnosed the individual as meeting, as a minimum, the *DSM-IV-TR* criteria for alcohol abuse; the individual had completed the IOP and four months of aftercare meetings; the individual would need to be abstinent for at least one year to evidence adequate reformation and rehabilitation with respect to his alcohol abuse; on-going counseling was paramount for the individual; and, as long as the individual continues to drink alcohol, he would have an illness or mental condition that could cause a significant defect in his reliability or judgment. *Id.* at 14 – 16, 23 – 25, 28.

As a result of the individual’s May 2013 arrest, the LSO referred the individual to a DOE consulting psychologist for an evaluation. *See* Ex. 11. The psychologist noted the individual “has the characteristics of a binge drinker in that he can apparently control his use [of alcohol] for a while but then under periods of intense stress can become highly intoxicated. There are likely more intense life stresses in store for him and therefore he should permanently relinquish the use of alcohol.” *Id.* at 10. In his evaluation dated August 2013, the DOE psychologist concluded that the individual had suffered from alcohol abuse “over at least the last several years,” which was not in remission and that this is a condition that has caused and can continue to cause significant defects in his judgment and reliability. *Id.* at 9 – 10. The individual had not evidenced adequate reformation and rehabilitation, in the view of the DOE psychologist, and to do so would need to remain abstinent for six months and, “more importantly,” have frequent “verbal

therapy” that would focus on the individual’s “use of alcohol to mitigate his anxieties . . .” *Id.* Additionally, the psychologist recommended that the individual continue in his IOP’s aftercare program for at least six months and that he actively explore the usefulness of participating in AA and obtaining a sponsor. *Id.* at 10.

At the 2014 Hearing, the individual testified that he had been abstinent from alcohol since his May 2013 arrest.⁵ Tr. at 93. The DOE psychologist, noting such abstinence, testified that the individual had satisfied that aspect of the psychologist’s recommendations but that the individual had not undertaken the “verbal therapy” which had been recommended.⁶ *Id.* at 142 –145.

Subsequent to the 2014 Hearing, the individual self-reported to his employer that, hours after the hearing, he went to a bar and had nine to ten beers, which he states is the first alcohol he had drank since his prior arrest. *See* Ex. 25. He reported that when he left the bar he was pulled over by the police and arrested for DWI with a BAC of .153 g/210L. (February 2014 arrest). *Id.* at 3; Tr. at 178. During the Subsequent Testimony, his long-term mental health counselor testified that the individual had been stopped by the police after he “crossed the line” while driving after he left the bar; the individual endorsed this account of his arrest by correcting other aspects of his counselor’s testimony on this incident and testifying that he had no other comments on the incident. *Id.* at 166 – 167, 176.

During the Subsequent Testimony, the DOE psychologist testified as the final witness in order to have the benefit of hearing the other witnesses. In light of the additional DWI arrest, the DOE psychologist opined that to evidence adequate rehabilitation and reformation the individual would need to abstain from consuming alcohol for 12 months (but that the individual should not be drinking at all) and should undertake verbal therapy focused on coping issues for an indeterminate period of time. *Id.* at 183 – 185. The individual’s prognosis for continued abstinence is low. *Id.* at 182.

Following the reopening of the record for Subsequent Testimony, the LSO submitted additional New Evidence under 10 C.F.R. § 710.30. *See* Ex. 26. Although the individual reported that his February 2014 arrest occurred after he had been pulled over by the police, a different arrest scene was described by the five police officers who were involved in the arrest of the individual, each of whom prepared a separate written report.

⁵ I found the individual an unreliable reporter with respect to his alcohol consumption and, although no evidence was introduced to challenge the individual’s self-reported abstinence, I make no finding with respect thereto. Unlike the 2008 Hearing in which the individual produced numerous witnesses who could corroborate his abstinence, at the 2014 Hearing the individual produced no similar witnesses who could testify with respect to his personal life or conduct.

⁶ The individual testified that he was been in counseling periodically since 2005 with the same counselor at the U.S. Department of Veterans Affairs. The counselor was unavailable to testify until the administrative review hearing was reopened for Subsequent Testimony, at which time the DOE asked the counselor about the nature of his work with the individual. After such testimony, the DOE psychologist testified as to the insufficiency of such counseling to meet the requirements of his recommendations. Tr. at 180 – 182.

According to those collective reports, the police responded to reports at approximately 2 a.m. that the individual was “passed out” in his car while in the drive-thru lane at a fast-food restaurant, with the car engine running and the car in gear. *Id.* at 9. The police reported that they applied standard procedures to rouse the individual and then tried to get him to exit through his passenger side door of his car, as the driver’s door was blocked by a wall along the drive-thru lane. The individual became aggressive and belligerent and, in order to facilitate the individual’s exit from his car, the police used a Taser to electrically shock the individual. *Id.* at 7. The individual was then arrested and transported to the local police station, where at approximately 3:30 a.m. his BAC was measured twice – the first test registered .158 g/210L and the second .153 g/210/L. *Id.* at 11.

The individual was given the opportunity to provide a written response to the police reports. He states that he cannot deny or verify the police reports and that he based his self-report and testimony about his February 2014 arrest upon information he received from the booking officer at the police station. He notes that he is skeptical of the police reports because (1) his car has high torque and, therefore, he could not have kept it stationary if it had been in gear without applying significant braking effort which would have been unlikely had he actually been passed out, and (2) he would have remembered had he actually been shocked with a Taser. Ex. E at 2.

Although I believe the individual is sincere in his report of having no memory of his February 2014 arrest and in his skepticism, such skepticism does not overcome the reports of five police officers which were prepared in the ordinary course of their law enforcement activities and, while not identical, are consistent on the major aspects of the individual’s February 2014 arrest. I find that the police reports are an accurate description of the February 2014 arrest.

V. Analysis

I have thoroughly considered the record of 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)⁷ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual’s access authorization should not be restored. I cannot 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.

⁷ 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.

A. Review of Criterion H and Criterion J Security Concerns

The 2008 evaluation by a DOE psychiatrist, the 2013 evaluation of a DOE psychologist and the 2014 testimony of the individual's IOP supervisor are all in accord: the individual suffers from alcohol abuse. Ex. 11 at 9 – 10; Ex. 12 at 14 –16, 20; Tr. at 16. The individual does not dispute the accuracy of the diagnoses of the DOE mental health experts. *Id.* at 10, 107.

At the 2014 Hearing, the individual acknowledged the relapsing nature of alcohol conditions and stated, in light of his improved understating of alcohol conditions, he was in error to have committed at the 2008 Hearing to permanently abstain from alcohol. *Id.* at 81 – 85. 115. He believes that anyone who has suffered from an alcohol disorder cannot make such a pledge. *Id.* at 83, 115. He testified at the 2014 Hearing that his goal is abstinence and that through his relapses he has achieved growth and has developed greater skills to facilitate future abstinence. *Id.* at 114 – 117. I found the individual's testimony troubling as he seemed to suggest that the fact that he has had relapses should be viewed favorably. However, with respect to security concerns under Criterion J, a more accurate conclusion would be that frequent relapses and recent relapses trigger the need for greater scrutiny and caution. *Cf.* Adjudicative Guidelines at Guideline G ¶22(f) (relapsing following completion of an alcohol rehabilitation program creates a security concern) and Guideline G ¶23(c) (mitigation of a alcohol concern is possible if an employee is participating in an alcohol program and has no history of relapse).

The Adjudicative Guidelines recognize the relapsing nature of alcohol conditions and therefore, to mitigate such concerns, require evidence that an individual can control his or her use of alcohol and *not* relapse into misuse. *See Id.* at Guideline G ¶23(a) – (d). Both the Adjudicative Guidelines and DOE practice have traditionally looked at two factors as a predicator of appropriate use of alcohol in the future: (1) education and treatment with respect to alcohol use and (2) the amount of time during a person has abstained or control their alcohol use. In this case, the individual has gone through some form of alcohol education and/or treatment at least three times (in 2002, 2008 and 2013) and has relapsed each time. Ex. 11 at 7; Ex. 16 at 14; Ex. 23 at 24 – 26; Tr. at 14. While I commend the individual for immediately enrolling in an IOP following his May 2013 arrest, I cannot find in light of his subsequent relapse that completion of the IOP in 2013 mitigates the existing Criterion J security concerns.

With respect to alcohol-related security concerns, Administrative Judges traditionally defer to the opinions of mental health professionals. Both the DOE psychologist (during the Subsequent Testimony) and the individual's IOP supervisor opined that to evidence rehabilitation and reformation, the individual would need to abstain from alcohol for at least 12 months and would need to undertake intensive verbal counseling to assist him in developing coping mechanism with respect to his life stressors. *Id.* at 23 – 24, 28, 183 – 185. The individual had not undertaken such verbal therapy as of the 2014 Hearing and the individual relapsed less than 12 hours following the hearing, consuming alcohol to the extent and in a manner that he was once again arrested. Ex. 25; Ex. 26; Tr. at 81 – 85. The individual's relapse and arrest less than a day following the 2014 Hearing demonstrates that the individual was overly optimistic about the progress he had made as

a result of his prior relapses and reinforces the caution that must be exercised in mitigating security concerns arising from conditions which are inherently relapsing. During the Subsequent Testimony, the DOE consulting psychologist testified that the prognosis for the individual to remain abstinent in the future is low. *Id.* at 182.

The DOE psychologist and the individual's IOP supervisor both testified at the 2014 Hearing that the individual's alcohol abuse is an illness or mental condition that causes or can cause a significant defect in the individual's judgment or reliability. *Id.* at 25, 185. In addition to the concerns which arise with respect to judgment and reliability due to the nature of alcohol abuse, in this case the individual has twice, in a nine-month period, placed himself and others at risk of serious bodily harm: (1) in May 2013 when he drank himself into an alcoholic blackout and drove in the wrong direction on an interstate highway and (2) in February 2014 when he passed out while intoxicated and behind the wheel of a running vehicle in a drive-thru lane at a restaurant. Ex. 22 at 18 – 20; Ex. 26 at 7, 11.

Based on the foregoing, I find that the individual has not mitigated the security concerns associated with Criterion H and Criterion J.

As the Administrative Judge in this matter, I feel obligated to add an additional caution. The individual seems to have approached DOE's concerns in the past with a "check the box" mentality. While completing the recommendations of the DOE mental health consultants, he has avoided the deeper, transformative processes which underlie the security community's belief that individuals with alcohol disorders can be reformed and rehabilitated. Even if the individual were to "complete" the recommendations offered by the mental health experts at the 2014 Hearing with respect to their *DSM-IV-TR* diagnoses, the individual's history of binge drinking to severe imparity could continue to be a security concern under Criterion J. *See* Adjudicative Guidelines at Guideline G ¶22(c).

B. Review of Criterion L Security Concerns

The Notification Letter cites the individual's arrests in 1999, 2002, 2007 and 2013 to support the security concern that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable or trustworthy. These four incidents, each of which included an alcohol-related infraction by the individual, are cited by the LSO as evidencing a pattern of criminal conduct on the part of the individual. *See* Ex. 1 at 3. Less than a day after the 2014 Hearing, an additional relevant incident occurred when the individual was arrested for DWI, which was his second DWI arrest within nine months. Ex. 25.

In the Notification Letter, the LSO refers to the individual's arrest in May 2013 for both DWI and Unlawful Carrying of a Weapon. Ex. 1 at 3. The weapons charge was not prosecuted as the individual had a permit that allowed him to carry the two handguns. Apparently, local law was not violated by the individual having two handguns in his car trunk at the time he was arrested for DWI, having caused an accident by driving the wrong direction on an interstate highway. Ex. C at 1. Notwithstanding the decision by local officials to not prosecute the weapons charge, the individual's underlying behavior

can still be considered to the extent relevant to the Criterion L security concern. *Cf.* Adjudicative Guidelines at Guideline J ¶31(c) (criminal conduct can be disqualifying even if not formally charged, formally convicted or convicted) and Guideline E ¶16(d) (adverse information not explicitly covered under other specific guidelines may support a whole-person assessment of questionable judgment).

The individual in an exercise of good judgment had given his weapons to a relative to hold prior to confronting his then-wife on certain marital issues so that, in his own words, the weapons would “not be part of the equation” and he would not “do anything stupid.” Ex. 22 at 26. His decision to retrieve the weapons several days later when he was still experiencing emotion upheaval from the confrontation with his wife is concerning. On two of the three nights prior to retrieving the weapons, the individual consumed a significant amount of alcohol (perhaps to the point of intoxication) and, the same day he retrieved the weapons, he drank to such a degree that his BAC later measured .228 g/210L. Ex. 11 at 5. This is at a time that the individual acknowledges that he had thoughts with respect to a man with whom his wife was having an extra-marital affair of “not killing him just hurting him.” *Id.* at 6. At the hearing, the individual testified that he believed having such thoughts was normal under the circumstances and that they were just thoughts. Tr. at 111 – 113. I cannot agree. Unlike the good judgment the individual showed in initially placing his handguns outside of his control, he showed extremely poor judgment in retrieving weapons that would allow him to act upon his thoughts on the same day that he was experiencing such emotional turmoil that he drank himself into an alcohol black-out. While this behavior alone may not be disqualifying under Criterion L, it reinforces the concerns raised by the other patterns of the individual’s behavior. *See* Adjudicative Guidelines at Guideline E ¶16(d) (adverse information not explicitly covered under specific guidelines may, when combined with all available information, support a whole-person assessment of questionable judgment, unreliability or unwillingness to comply with rules and regulations).

In mitigation of the Criterion L security concerns, the individual argues that he has demonstrated a pattern of exemplary behavior while in the military and during his employment with the DOE contractor. The individual’s has been decorated for his performance in the military, particularly in combat, and he is respected for those achievements. Ex. A; Tr. at 98 – 99. While I do not dispute that his conduct in the military was exemplary, the Part 710 regulations do not permit excellent behavior in one part of one’s life to exempt from scrutiny or to excuse conduct in another part of one’s life.

While the five alcohol-related criminal charges against the individual are alone disqualifying under Criterion L, analysis of the incidents shows additional patterns of behavior that are concerning. In at least three of his four adult arrests, the individual responded to law enforcement officers with some degree of aggression or belligerence: in 2002, he refused to take a Breathalyzer test even after he was advised of the jurisdiction’s “implied consent” laws (which refusal resulted in the loss of his driver’s license for a year); in 2007, he created a disturbance following his arrest by pounding on his jail cell’s door and bars (which behavior resulted in him being placed in a “hole cell” where he continued his behavior); and, in 2014, he was verbally belligerent towards the responding

police officers and refused to comply with their instructions to exit his vehicle (which behavior resulted in his being “Tased” into compliance). Such aggression and belligerence toward law enforcement officers create legitimate doubt about the individual’s ability or willingness to comply with rules and regulations as is expected of holders of access authorization. Ex. 23 at 12, 14, 20 –22; Ex. 24 at 84; Ex. 27 at 7.

In recounting these incidents, the individual tends to blame bad luck or focus blame on others. While the consistency of such characterizations is suspect, most disturbing from a Part 710 analysis is the contrast between the individual’s reports to the LSO of his arrests in 2007 and 2014 and credible police reports which were prepared in the ordinary course of law enforcement activity. With respect to his 2007 arrest, the individual reported that he had been drinking with other members of his softball team following the suicide of a teammate and, on his way home, he stopped at a convenience store to get something to eat. Two police officers who were patrons in the same store asked him if he had been drinking. When he truthfully answered that he had, they arrested him for public intoxication. Ex. 23 at 35 – 41; Ex. 24 at 148.

In contrast, the police report prepared with respect to the 2007 arrest states that police responded to a call that the individual was passed out behind the steering wheel of his car and, as a police officer approached the car, the individual climbed out of his vehicle through the window of the driver’s side of the vehicle. Officers observed the individual stumbling around the parking lot, appearing to talk to himself, and smelled a strong odor of alcohol. The individual “seemed disoriented and was not even aware he crawled out of the vehicle window.” Officers placed the individual under arrest for public intoxication fearing that he attempt to would leave the scene in his vehicle. *Id.* at 84.

With respect to his February 2014 arrest, which occurred less than a day after the 2014 Hearing, the individual reported that he had gone to a bar and had his first drink since his May 2013 arrest and, upon leaving the bar, was pulled over and arrested for DWI. Ex. 25; Tr. at 166 – 167, 176. In contrast to the individual’s report are the reports from five different police officers who were dispatched at approximately 2 a.m. in response to initial reports of a medical emergency. The police found the individual intoxicated and passed out behind the wheel of his car, which was in a drive-thru lane at a fast-food restaurant, with the motor running and in gear. Ex. 26 at 7, 9, 11. When given the chance to explain the discrepancy, the individual stated that he does not remember what happened, but merely reported what he had been told by the booking officer following his arrest. Ex. E at 2. Unfortunately, this explanation creates further concerns as the individual never reported to the LSO that he had no memory of the events until after he was confronted with the conflicting reports. Notwithstanding his lack of memory, the individual offered speculation as to why the separate written reports of five police officers, prepared in the ordinary course of law enforcement activity, were not credible from his perspective, only diminishing his own credibility within this administrative review proceeding. *Cf.* Adjudicative Guidelines at Guideline E ¶17(a) (mitigation possible when individual has made prompt, good-faith effort to correct information prior to being confronted with the facts).

The individual's description of his 2007 and 2014 arrests demonstrate both unreliability and a lack of candor. Even if these reports were not intentionally false, the individual has provided the LSO with inaccurate information on multiple occasions. Holders of access authorization are expected to be honest with the DOE at all times and, in light of the individual's history of inaccurate reporting of information, the DOE cannot assume honesty with respect to the individual or rely upon the accuracy of information provided by him in the future.

The individual's February 2014 arrest bears all the characteristics of his earlier arrests and occurred *following* the 2014 Hearing, clearly demonstrating that the individual's pattern of unacceptable behavior is continuous and on-going. *Cf.* Adjudicative Guidelines at Guideline J ¶32(a) (mitigation possible if so much time has elapsed since the behavior occurred or the behavior happened under such unusual circumstances that it is unlikely to recur). I find no mitigation of the security concerns raised under Criterion L with respect to the individual's honesty, reliability and trustworthiness.

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 have found that the individual has not brought forth sufficient evidence to mitigate the security concerns associated with Criteria H, J and L. Accordingly, I have determined that the individual's access authorization should not 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.

Wade M. Boswell
Administrative Judge
Office of Hearings and Appeals

Date: April 23, 2014