

requested the individual's medical records and recommended a psychological evaluation of the individual by a DOE consultant psychologist (DOE psychologist). The DOE psychologist examined the individual in September 2013 and memorialized his findings in a report (Psychological Report). According to the DOE psychologist, the individual suffers from Alcohol Abuse. The DOE psychologist further concluded that the individual's Alcohol Abuse is a mental illness that causes or may cause a significant defect in her judgment and reliability.

In October 2013, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created substantial doubt regarding her eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j) (hereinafter referred to as Criteria H and J, respectively).²

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

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring her 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 her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very

² Criterion H relates to information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion J relates to information that a person has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

broad range of evidence at personnel security hearings. Even appropriate hearsay may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

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

III. The Notification Letter and the Security Concerns at Issue

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

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under both Criteria H and J. First, a mental condition such as Alcohol Abuse can impair a person's judgment and reliability and trustworthiness. *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines). Second, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G.

IV. Findings of Fact

On May 18, 2013, the individual was arrested and charged with Driving While Intoxicated (DWI) and Open Container. According to the individual, after visiting a friend who had been hospitalized for a serious illness, she spent the afternoon at another friend's home and drank three or four 12-ounce beers. As she was leaving her friend's home around 4:00 pm, her friend gave her a cup of beer and placed another unopened can of beer in the front seat of the individual's car. While driving home, the individual stated that she considered stopping to get tea, but decided to finish the beer in the cup. She was stopped by a police officer who smelled

the beer and saw the unopened can on the front seat. The individual was arrested after taking sobriety and Breathalyzer tests. DOE Exh. 1.

During her June 2013 PSI, the individual admitted that prior to her DWI arrest, she consumed approximately three to four 12-ounce beers and part of another beer while driving. She further admitted that beginning in approximately 2007, her alcohol consumption increased as she used alcohol to calm down and to relieve stress. According to the individual, by 2010, she was consuming three to four 16-ounce beers, two to three times per week. She indicated that she felt that alcohol was becoming a problem for her because she was self-medicating and again, drinking was the only way that she could calm down. Despite these concerns, she continued to consume alcohol and was arrested and charged with DWI on May 18, 2013. In addition, during her June 2013 PSI, the individual admitted that from 2010 to May 2013, she would become intoxicated one time per month after consuming six beers. She also admitted that in approximately 2012, she sought treatment with the Employee Assistance Program where she expressed concern to the counselor regarding her alcohol use because she felt that alcohol was the only way she could calm down enough to sleep. During this same time period, the individual's husband expressed concern about her alcohol consumption as he felt she was drinking too much. Despite these concerns, the individual continued to consume alcohol. *Id.*

Based on this information, the individual was referred to a DOE psychologist for a psychological evaluation. On September 5, 2013, the DOE psychologist evaluated the individual. In his Report, he concluded that the individual met the Diagnostic Statistical Manual of Mental Disorders, IVth Edition TR (DSM-IV-TR) criteria for Alcohol Abuse. The DOE psychologist further concluded that the individual possesses an illness or mental condition, which causes, or may cause, a significant defect in judgment and reliability. DOE Exh. 6.

V. Analysis

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)³ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. Based on the facts in this record, I find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. The Diagnosis of Alcohol Abuse

³ 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.

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

B. Evidence of Rehabilitation and Reformation from Alcohol Abuse

During the hearing, the individual readily acknowledged her May 18, 2013, DWI as well as her alcohol problem. Transcript of Hearing (Tr.) at 70. She testified that she has completed an intensive outpatient program (IOP) and has been going to counseling on a weekly basis. *Id.* at 73. The individual stated that she learned a great deal during her IOP and gained better insight into the reasons for her excessive alcohol consumption. According to the individual, she discovered that she used alcohol as a coping mechanism to deal with work-related stress. *Id.* at 80. She is now participating in an aftercare program, where she has learned new coping skills and relaxation techniques to deal with her stress. *Id.* at 83. The individual further testified that her life is better today than it was a year ago. *Id.* at 84. She attributes her new life perspective to her participation in the IOP as well as her ongoing counseling sessions. *Id.* The individual believes that her stress and anxiety are under control. She testified that she has only consumed alcohol twice since her May 2013 DWI, consuming one beer in June 2013 while doing yard work and consuming a glass of champagne in August 2013 at her son's college graduation event. *Id.* at 75 and 98. The individual testified that she regrets consuming alcohol on those two occasions, but stated that these two instances occurred before she went into IOP and that she had a different understanding of alcoholism at that time. *Id.* at 76. She testified that she has a wonderful support system including her family members, her counselor and the aftercare program. *Id.* at 94 and 95. Finally, the individual testified that her future intention is to completely abstain from alcohol.

During the hearing, the individual also offered the testimony of her counselor, her supervisor, her co-worker/friend, her husband and her sister. The individual's counselor testified that he first met with the individual in October 4, 2013, to discuss personal and alcohol issues. *Id.* at 106. He stated that when he first met with the individual, she tended to minimize her alcohol use. However, he stated that it was not long after starting IOP and the counseling process that he noticed a significant change in the individual's attitude. According to the counselor, the individual began to acknowledge her alcohol problem as she became more acquainted with her alcohol issues and the process of IOP. *Id.* at 108. The counselor testified that the individual's work-related stress significantly affected her life and that she did not possess the good coping skills to manage the stress. *Id.* She began treating the individual with cognitive behavioral therapy and using various types of coping skills, including deep breathing, progressive muscle relaxation exercises, non-guided imagery, journaling and shredding. *Id.* at 109. The counselor opined that the individual has made significant progress in her weekly sessions since October 4, 2013. *Id.* He noted that the individual's stress level has decreased and that she is learning to set appropriate boundaries. *Id.* at 110. The counselor further opined that the individual should

continue to attend her weekly therapy sessions as well as to attend her aftercare program for the rest of the year to ensure that she has the support system she needs to be successful. *Id.* at 113. However, he further opined that, at this time, the individual has a low risk for relapse. ⁴

The DOE psychologist listened to all the testimony at the hearing before testifying himself. He testified that he met with the individual in September 2013 and concluded that she is suffering from Alcohol Abuse which was related to a great deal of anxiety and stress. *Id.* at 121. The DOE psychologist stated that his recommendation in September was that the individual abstain from alcohol for 12 months and that she completes an IOP. He further recommended that the individual participate in therapy for six months to assist her with both alcohol and coping mechanisms for her anxiety and stress. The DOE psychologist testified that he was deeply impressed with the individual's therapist and current participation in cognitive behavioral therapy and opined that the therapy is appropriate for the individual and exactly what he recommended. *Id.* at 124. He testified that he was also impressed with the individual's testimony regarding the benefits and lessons she learned from her IOP. The DOE psychologist opined that, in light of the strength of the individual's therapy as well as the significant benefits the individual has received from her IOP, the individual has achieved adequate rehabilitation and reformation at five months of abstinence. *Id.* at 127 and 128. He further opined that, based on the individual's testimony, he has no reason to lack confidence in her ability to maintain her sobriety and noted that he would not gain more confidence by observing additional months of abstinence. *Id.* The DOE psychologist reiterated that he was impressed by the quality of the individual's therapy and her "idiosyncratic fitting" of the experience of the IOP and therapy to herself as a person, noting that the individual keenly understood how she used alcohol to cope with her anxieties. *Id.* at 126 and 127.

C. Administrative Judge's Evaluation of the Evidence

In the administrative process, Administrative Judges accord deference to the expert opinion of psychiatrists, psychologists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing, Case No. TSO-0728 (2009).*⁵ At the outset, I am

⁴ The individual's husband testified that the individual's alcohol consumption increased when she began having problems at work. *Id.* at 10. He stated that her personality changed as she tried to cope with her work-related stress. *Id.* at 11. However, he noted that after the individual entered IOP and counseling, she learned how to handle her stress and no longer uses alcohol as a "crutch." *Id.* at 22. The individual's husband further testified that the individual last consumed alcohol in August 2013 at their son's graduation. *Id.* at 18. The individual's supervisor testified that he has known the individual for about 18 years. *Id.* at 33. However, he stated that when the individual began to work directly with him, about two and a half years ago, it was clear that her previous work environment was not good and "hampered her on a personal level." *Id.* at 34. He further testified that the individual's happiness has improved and that she is better able to handle her stress and personal issues. *Id.* at 37. The individual's supervisor believes she is honest and trustworthy. Likewise, the individual's co-worker/friend testified that the individual is honest and has good judgment and reliability. *Id.* at 51. She testified that the individual deeply regrets her alcohol use and believes she has learned a great deal through her recovery process. *Id.* at 52. The individual's sister also testified that the individual is now better equipped to handle her stress. *Id.* at 61.

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

persuaded by the testimony of the DOE psychologist that the individual achieved adequate evidence of rehabilitation. Moreover, the Adjudicative Guidelines describe factors that could mitigate security concerns involving psychological conditions and alcohol consumption. *See Adjudicative Guideline, Guidelines G and I, ¶ 23 and ¶ 29, respectively.* In this case, the individual has satisfied the following mitigating factors: (1) the individual has acknowledged her alcohol problem, provided evidence of actions taken to address her problem and has established a pattern of responsible use; (2) the individual has successfully completed an IOP with required aftercare, has demonstrated a clear and established pattern of abstinence in accordance with her treatment recommendations, i.e., her participation in therapy, and has received a favorable prognosis by a duly qualified medical professional; and (3) the DOE psychologist has opined that the individual's condition has a low probability of recurrence. *Id.* For these reasons, I find that the individual has sufficiently mitigated the DOE's security concerns under Criteria H and J.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Criteria H and J. After considering all the relevant information, favorable and unfavorable in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the individual has brought forth convincing evidence to mitigate the security concerns associated with Criteria H and J. I therefore find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Officer of Hearings and Appeals

Date: April 16, 2014