

(Criteria H, J and L, respectively).² See DOE Ex. 1 (Notification Letter, November 18, 2013). The Notification Letter also informed the Individual that he was entitled to a hearing before an Administrative Judge³ 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 Administrative Judge. At the hearing, the DOE counsel introduced nine exhibits into the record (DOE Exs. 1-9) and presented the testimony of one witness, the DOE psychologist. The Individual submitted three exhibits and presented his own testimony, as well as the testimony of five witnesses: his father; his girlfriend; his supervisor; a co-worker; and his site's Employee Assistance Program (EAP) counselor, who evaluated the Individual following his July 2013 DWI arrest and met with him on multiple occasions thereafter to provide education and counseling regarding alcohol abuse. See *Indiv. Exs. A-C; Transcript of Hearing, Case No. PSH-14-0002* (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 Administrative Judge 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 Administrative Judge 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*

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). Criterion L pertains to circumstances tending to show that the Individual is "not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(1).

³ Effective October 1, 2013, the titles of attorneys in the Office of Hearings and Appeals (OHA) changed from Hearing Officer to Administrative Judge. See 78 Fed. Reg. 52389 (August 23, 2013). The title change was undertaken to bring OHA Hearing Officers in line with the title used at other federal agencies for officials performing identical or similar adjudicatory work. See *Personnel Security Hearing, Case No. PSH-13-0114* at 1 n.1 (2014).

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 Administrative Judge must find that “the grant or restoration of access authorization to the individual will not endanger the 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

A. The Individual’s Alcohol Consumption

The Individual is currently thirty-two years of age. He began consuming alcohol at age sixteen, typically drinking six or more cans of beer once or twice per month on social occasions with friends. DOE Ex. 4 at 4; DOE Ex. 9 at 9-12. The Individual’s alcohol consumption increased to three or four times per week after his twenty-first birthday, and this remained his drinking pattern for the next several years. DOE Ex. 4 at 2-3. One evening in December 2006, the Individual consumed five or six beers over nearly six hours, and proceeded to drive home. During the drive, a local police officer pulled the Individual over after observing him swerving in his lane. The officer ultimately arrested the Individual for DWI, First Offense, after the Individual failed a battery of field sobriety tests. *Id.* at 3; DOE Ex. 8 at 11. According to the Individual, the arrest scared him, and he reduced his alcohol consumption. DOE Ex. 9 at 24.

A few years later, the Individual abstained from alcohol during his former wife’s pregnancy with their son and for several months after his birth. Tr. at 84. When he resumed drinking, he generally drank only on weekends. DOE Ex. 4. After the Individual’s marriage ended in 2010, he and his ex-wife agreed to joint custody of their son, dividing their time with the child equally. The Individual did not drink alcohol during the times that he had his son with him. Tr. at 78-79. At other times, the amounts and frequency of the Individual’s drinking during the week varied, ranging from no alcohol at all to one to three beers one or two weekdays and up to six beers on a weekend day. DOE Ex. 4-5.

The Individual began a new relationship in May 2013. In July 2013, during an evening out with his girlfriend, the Individual consumed approximately six beers in two hours. During their drive home, a police officer witnessed the Individual commit a traffic violation and pulled him over. DOE Ex. 4 at 5; DOE Ex. 9 at 44-50. The officer suspected that the Individual had consumed alcohol prior to driving, and administered field sobriety tests to the Individual, which he failed. The Individual was arrested for DWI, Second Offense, having registered a breath alcohol content (BAC) of 0.14. *Id.*; DOE Ex. 6.

In October 2013, the DOE psychologist evaluated the Individual and determined that he did not meet the diagnostic criteria for an alcohol-related disorder. DOE Ex. 4 at 6. However, the DOE psychologist concluded that the Individual was a user of alcohol habitually to excess, and his pattern of alcohol consumption caused or may cause a significant defect in judgment or reliability. *Id.* at 7-8. In his report, the DOE psychologist noted as positive factors that the Individual had established a three-month period of abstinence as of the evaluation and that he appeared “honestly motivated to stop drinking for his own sake.” Nonetheless, the DOE psychologist opined that the Individual’s established period of abstinence as of the evaluation was too short to demonstrate that he could control his drinking. *Id.* With respect to how the Individual could demonstrate adequate evidence of rehabilitation or reformation from his alcohol-related condition, the DOE psychologist recommended that he abstain from alcohol for nine months. *Id.* at 8. In addition, he recommended that the Individual participate in the Alcoholics Anonymous (AA) program, working with a sponsor, three times per week for a minimum of six months. *Id.*

B. The Individual’s Non-Alcohol Related Citations

In addition to the two DWI arrests described above, the Individual’s criminal record includes citations that he received for moving violations in 2000 and 2001. In August 2000, he received a citation for Reckless Driving. He failed to pay the associated fine as required, which resulted, unbeknownst to him, in a warrant for his arrest. He was arrested later that year when the warrant was discovered during a subsequent unrelated traffic stop. DOE Ex. 9 at 57-59. In April 2001, the Individual received a speeding ticket (97 miles per hour (mph) in a 75 mph zone), and again neglected to pay the associated fine. The Individual was arrested for this violation in 2004.⁴ *Id.*; DOE Ex. 4 at 3. *See also* *Indiv. Ex. B.*

IV. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

As stated above, the LSO cited security concerns under Criteria H, J and L of the Part 710 regulations. *See* DOE Ex 1.

In support of its Criteria H and J concerns, the LSO cited the Individual’s history and pattern of alcohol consumption, his previous alcohol-related arrests, and the DOE psychologist’s opinion that the Individual was a user of alcohol habitually to excess, which causes, or may cause, defects in his judgment or reliability. *Id.* at 1. 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

⁴ Although the Notification Letter lists this arrest as having occurred in May 2010, this is an error. As set forth in the Individual’s criminal record, a copy of which he submitted as a hearing exhibit, the arrest took place in 2004. *See* *Indiv. Ex. B*; *see also* *Tr.* at 87-92; DOE Ex. 3. The incorrect date appears to have originated in an Office of Personnel Management (OPM) investigator’s report of investigation pertaining to the Individual (“the OPM Report”), and then been inadvertently cited by the DOE psychologist in his October 2013 report. *Tr.* at 91; DOE Ex. 4 at 4. The LSO, in turn, obtained the date from the DOE psychologist’s report and noted it as the date of arrest in the Notification Letter. DOE Ex. 1.

health professional may raise security concerns. In light of the Individual's admitted pattern of alcohol consumption, including two past alcohol-related arrests, and the DOE psychologist's determination that the Individual was a user of alcohol habitually to excess, I find that the LSO had ample grounds to invoke Criteria H and J.

As a basis for invoking Criterion L, the LSO cited the Individual's August 2000 and April 2001 citations, and the resulting arrests for failure to pay the associated fines, as well as his 2006 and 2013 DWI arrests. DOE Ex. 1 at 2. It is well-established that criminal conduct raises security concerns under Criterion L. Such conduct "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." *See* Adjudicative Guidelines, Guideline J, ¶ 30. In light of the Individual's prior arrests and citations, I find that the LSO properly invoked Criterion L.

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 conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and security, and is clearly consistent with national interest." 10 C.F.R. § 710.7(a).

A. Criteria H and J – Alcohol Use

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, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)," and that "the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program." Adjudicative Guidelines, Guideline G, ¶ 23.

The Individual testified at the hearing that, since his July 2013 DWI arrest, he has learned about the role that alcohol played in his life. Tr. at 73. According to the Individual, until he met with the DOE psychologist, he never understood that his level of alcohol consumption constituted "excessive drinking." Tr. at 83. The Individual found that his sessions with the EAP counselor further helped him to better understand "the effects of alcohol" and "people's behaviors." Tr. at 74-75.

The Individual has been abstinent from alcohol since July 2013, seven months as of the hearing. Tr. at 77. He does not have any alcohol in his home, and alcohol is no longer part of his social life. Tr. at 81-82. The Individual stated that his friends and family are aware that he does not drink anymore. Tr. at 82. The Individual has not found it difficult to abstain from alcohol in social settings, and is now usually the designated driver of his social group. Tr. at 82-83. He stated that his abstinence from alcohol has been a positive experience. For example, he has noticed improvements in his physical health. Tr. at 80. In addition, according to the Individual, by not consuming alcohol, he has been able to be a better and more present parent for his son. Tr. at 75-76, 79. According to the Individual, "it's a whole different life now." Tr. at 82.

After becoming abstinent from alcohol, the Individual began attending AA meetings. Tr. at 75; *Indiv. Ex. A*. He has enjoyed his experience in AA. Tr. at 75. He currently has an AA sponsor, with whom he is working the program's twelve steps. *Indiv. Exs. A, C*. According to the Individual, participating in AA meetings, and listening to the stories shared by other members, has given him another perspective on life and the long-term effects that alcohol can have on people. *Id.* The Individual has also noticed a positive change in his personality, which he attributes to his participation in AA. Specifically, the Individual stated that he has become a better listener, has learned to be more respectful of others, and has become more even-tempered. Tr. at 76. As a result, the Individual believes that AA has helped strengthen his relationship with his son. *Id.* Specifically, the Individual stated that he "enjoy[s] every second" with his son, and he believes that he will now "be a better role model" for him, and "do things for [his son] now that alcohol probably [would not] have let [him] do." *Id.*

Through his participation in AA, the Individual came to realize that he did, in fact, have a problem with alcohol. Tr. at 83. Although indefinite abstinence was not one of the DOE psychologist's recommendations, the Individual has found abstinence beneficial to him and intends to maintain his abstinence in the future. Tr. at 78-80, 85. He has a strong support system to help him attain that goal. Tr. at 78-79. For example, the Individual's family and friends are aware of his abstinence and participation in AA, and are supportive of his efforts. Tr. at 78, 82-83. He also feels that he can go to his girlfriend or to his father for support whenever necessary. Tr. at 78. The Individual is also comfortable relying on his sponsor and other AA members as part of his support system. Tr. at 78. Most importantly, the Individual credits his young son as his strongest motivation for remaining abstinent. Tr. at 78-79.

The Individual's testimony regarding his abstinence and his participation in AA was corroborated by the testimony of his other witnesses. Several of the Individual's witnesses, from his girlfriend, with whom he spends the majority of his time outside of work, to his coworker, were aware not only that the Individual had stopped drinking alcohol, but also that he was actively involved in AA and found the program beneficial. Tr. at 32, 42, 68. The Individual's girlfriend testified that the Individual has not consumed alcohol in the last seven months. Tr. at 41. She added that he regularly attends at least two AA meetings per week, but tries to attend three meetings per week, depending on his schedule with his son. Tr. at 48. The Individual's girlfriend noted that the Individual's work with his sponsor, as well as hearing the testimonials from other AA members, have had an impact on the Individual. Tr. at 48-49. She noted that the Individual has changed for the better since he stopped drinking, and that their relationship has become more stable as a result. Tr. at 46-48. The Individual's girlfriend is confident that the

Individual will remain abstinent in the future because their family life has improved since he stopped drinking, and they both enjoy the stability of their life together. Tr. at 47, 50. Similarly, the Individual's father stated he sees the Individual regularly, and has not seen him drink alcohol since his July 2013 DWI arrest. Tr. at 32. According to the Individual's father, the Individual told him that he does not miss drinking alcohol. *Id.* Finally, the Individual's coworker, with whom the Individual also occasionally socializes, testified that the Individual has talked with him about his experience in AA. Tr. at 68. According to the coworker, the Individual has found the program "beneficial," and his involvement in AA is important to him. *Id.*

In addition to the Individual's personal witnesses, who each know the Individual well, the EAP counselor testified regarding his assessment of the Individual. The counselor noted that the Individual was "very cooperative" and "very insightful" during their sessions. Tr. at 18. The EAP counselor testified that the Individual spoke candidly with him about "the quality of life improvements" that he noticed in his abstinence, particularly, "in the relationship that it was affording him with his son." Tr. at 17. The EAP counselor noted as positive factors the Individual's seven-month period of abstinence, his regular attendance at AA meetings, his stable relationship with his girlfriend, and his stated motivation to remain abstinent. Tr. at 19-20. Based on these factors, the EAP counselor testified that he was "very optimistic" that the Individual will be successful in maintaining his abstinence from alcohol. Tr. at 19-20, 23.

After listening to the hearing testimony, the DOE psychologist stated that during his October 2013 evaluation of the Individual, he concluded that the Individual's most recent pattern of alcohol consumption "marginally" met the definition of problematic drinking. Tr. at 102. Specifically, the Individual used to drink to intoxication once or more per month, but when he did so, he did not "become seriously intoxicated. That is, his [BAC] was not high typically." *Id.* The DOE psychologist added that, in such cases, he would normally recommend one year of abstinence to establish adequate rehabilitation, but instead recommended nine months of abstinence for the Individual because he "believe[d] in [the Individual's] honesty, his integrity, and . . . in the lack of intensity of his drinking. . . ." *Id.*

While the DOE psychologist did not change his initial opinion at the hearing, he noted several factors regarding the Individual's rehabilitation that impressed him. Tr. at 97. Among these factors were the Individual's seven-month period of abstinence, his participation in AA and work with his AA sponsor, his stable relationship with his girlfriend, and his work with the EAP counselor. Tr. at 95-97. The DOE psychologist noted that the Individual demonstrated a "genuine thoughtfulness around his recovery process." Tr. at 95. Consequently, based on the hearing testimony, the DOE psychologist stated that the Individual's seven-month period of abstinence, together with the other positive factors that he enumerated in his testimony, was sufficient to persuade him that the Individual would not drink to intoxication in the future, and would likely remain completely abstinent from alcohol. Tr. at 97. In fact, the DOE psychologist expressly stated that he would not gain any more confidence in his opinion regarding the Individual's prognosis with the additional two months of abstinence that he had originally recommended, noting that "seven months is perfectly fine in this situation." Tr. at 97, 102. In sum, he determined that the Individual's future risk of drinking alcohol at all was "low," and that his risk of drinking alcohol to intoxication was "very low." Tr. at 107.

After considering the hearing testimony and evaluating the record as a whole, I find that the Individual has sufficiently mitigated the security concerns raised by his consumption of alcohol. The Individual has developed significant insight into the problems caused by his past use of alcohol. He has been abstinent from alcohol for seven months as of the date of the hearing and intends to remain abstinent indefinitely. His family and friends are aware and supportive of his sobriety, and he is well able to abstain from alcohol in social settings when necessary. In addition, the Individual has fully engaged in the AA program. He routinely attends meetings, has a sponsor with whom he feels comfortable, and is actively working the program's twelve steps. Moreover, both the EAP counselor and the DOE psychologist believe that the steps that the Individual has taken to address his alcohol problem are appropriate, and both professionals believe that the Individual will be successful in his efforts to maintain his sobriety. Given these factors, I find that the Individual no longer consumes alcohol, and has demonstrated adequate evidence of rehabilitation and reformation. Accordingly, I am persuaded by the testimony of the DOE psychologist that the risk that the Individual will drink to intoxication in the future is "very low," and that he has demonstrated adequate evidence of rehabilitation from his habitual consumption of alcohol to excess. *See, e.g.,* Tr. at 107. Therefore, I conclude that the Individual has presented sufficient evidence to fully resolve the Criteria H and J concerns cited in the Notification Letter.

B. Criterion L – Past Arrests and Citations

As noted above, it well-settled that criminal conduct, by its very nature, raises security concerns. *See* 10 C.F.R. § 710.8(l); Adjudicative Guidelines, Guideline J, ¶ 30. There are a number of factors which may serve to mitigate such concerns. Among those factors are that "so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment" and that "there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity" Adjudicative Guidelines, Guideline J, ¶¶ 32(a), 32(d); *see also* 10 C.F.R. § 710.7(c).

In this case, I find that the Individual has mitigated the security concerns raised by his DWI arrests in 2006 and 2013, as well as from his citations for moving violations in 2000 and 2001, and the related arrests pertaining to the non-payment of the associated fines. With respect to the DWI arrests, the Individual demonstrated his remorse for his conduct. His girlfriend, father, and supervisor each testified that the most recent DWI arrest deeply affected the Individual and that he fully accepted the consequences for his behavior. Tr. at 32, 43-44, 58. Moreover, those two arrests resulted from a behavior – consuming alcohol to excess – that the Individual has discontinued, and that, as noted above, I have concluded is unlikely to recur in the future.

As to the citations and arrests related to the Individual's moving violations, the Individual was eighteen years of age when he received the first citation and failed to pay the required fine, and nineteen years old when he committed the second set of violations. In addition, a substantial amount of time has passed since the incidents, with the most recent non-alcohol related arrest occurring over a decade ago as of the date of the hearing. The Individual attributed this previous behavior to immaturity. Tr. at 92. Moreover, the Individual's witnesses, whose testimony I found candid and credible, characterized the Individual as a responsible, rule-abiding young

man. Tr. at 35, 44, 59, 62, 69-70. Based on my own observations at the hearing, it is clear that the Individual has matured greatly in recent years and developed insight into his past behavior. All of these factors lead me to conclude that the Individual's past criminal behavior is unlikely to recur in the future, and does not cast doubt on his reliability, trustworthiness, or good judgment.

VI. CONCLUSION

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the Individual's eligibility for a security clearance under Criteria H, J and L of the Part 710 regulations. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has presented sufficient information to fully resolve those security concerns. Therefore, I conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and security is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should restore the Individual's suspended DOE 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
Administrative Judge
Office of Hearings and Appeals

Date: April 1, 2014