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

In the Matter of:	Personnel Security Hearing	)	
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Filing Date:	June 18, 2014	)	Case No. PSH-14-0064
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Issued: September 11, 2014

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**Administrative Judge Decision**

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Diane DeMoura, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (“the Individual”) to hold an access authorization under the Department of Energy (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.”<sup>1</sup> For the reasons detailed below, after carefully considering the record before me in light of the applicable regulations and the Adjudicative Guidelines, I find that the DOE should not grant the Individual access authorization.

**I. BACKGROUND**

The Individual is a DOE contractor employee and is an applicant for DOE access authorization. DOE Exhibit (Ex.) 3. During the application process, the Individual completed a Questionnaire for National Security Positions (QNSP) in October 2013, and participated in a February 2014 Personnel Security Interview (PSI). DOE Exs. 7, 8. After the PSI, the local security office (LSO) referred the Individual to a DOE consultant-psychologist (“the DOE psychologist”) for an evaluation. The DOE psychologist evaluated the Individual in March 2014, and issued a report. DOE Ex. 6. In a May 2014 Notification Letter, the LSO informed the Individual that there existed

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<sup>1</sup> Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

derogatory information that raised security concerns under 10 C.F.R. §§ 710.8 (f), (h), (j) and (l) (Criteria F, H, J and L, respectively).<sup>2</sup> *See* DOE Ex. 1 (Summary of Security Concerns).

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, testifying on his own behalf, did not present the testimony of any additional witnesses or tender any exhibits. *See* Transcript of Hearing, Case No. PSH-14-0064 (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 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.

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<sup>2</sup> Criterion F pertains to deliberate false statements or misrepresentations by an individual during the course of an official inquiry regarding the individual’s eligibility for access authorization, including responses given during personnel security interviews or on security questionnaires. 10 C.F.R. § 710.8(f). 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(l).

§ 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. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

As stated above, the LSO issued a Notification Letter informing the Individual that the DOE possessed derogatory information which raised doubts regarding his continued eligibility to hold a DOE access authorization. According to the Notification Letter, this information raises security concerns under Criteria F, H, J and L of the Part 710 regulations. See DOE Ex 1.

As a basis for its Criterion F concern, the LSO cited the Individual’s falsifications, misrepresentations or omissions of required information on the October 2013 QNSP. Specifically, the Notification Letter cites the following: (1) the Individual certified that he was never married, despite the fact that he has been married; (2) the Individual denied illegally using any drugs or controlled substances within the past seven years, and later admitted that he used marijuana and cocaine as recently as 2010 or 2011; (3) the Individual disclosed alcohol-related arrests or charges in July 1984, November 1989, and July 2002, but omitted his June 1983 and June 1992 alcohol-related arrests; (4) the Individual denied ever having drug-related arrests or charges, omitting his April 1989 drug-related charge of Unlawful Importation; and (5) the Individual admitted to the DOE psychologist during his March 2014 evaluation that he failed to disclose all required information on the QNSP because he did not take the form seriously. *Id.* According to the Adjudicative Guidelines, “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. *Of special interest in any failure to provide truthful and candid answers during the security clearance process . . . .*” Adjudicative Guidelines, Guideline E, ¶ 15 (emphasis added). The “deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire” is an example of conduct which may raise such security concerns. *Id.* at ¶ 16(b). In this case, given the Individual’s numerous falsifications, omissions, or misrepresentations on the October 2013 QNSP, the LSO had ample grounds for invoking Criterion F.

As a basis for its Criterion H and J concerns, the LSO cited the following information regarding the Individual’s alcohol use: (1) the opinion of the DOE psychologist that the Individual is a user of alcohol habitually to excess, which is a mental condition that causes, or may cause, a significant defect in his judgment or reliability; (2) the Individual’s documented history of five alcohol-related legal incidents between 1983 and 2002<sup>3</sup>; (3) the Individual’s self-reported pattern of alcohol consumption; (4) the Individual’s admission that he drives while intoxicated one to two

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<sup>3</sup> Specifically, the Individual was arrested for: (1) Driving Under the Influence (DUI) in June 1983; (2) DUI and a Moving Traffic Violation in July 1984; (3) Driving While Intoxicated in November 1989; (4) DUI and a Moving Traffic Violation in June 1992; and (5) DUI, BAC Greater than 0.08, Extreme DUI, BAC Greater than 0.150, Improper Right Turn, and Failure to Driving Vehicle in Single Lane in July 2002. DOE Ex. 1; see also DOE Ex. 9.

times per month; and (5) the Individual's admission that he has reported to work "hung over" on one occasion since beginning his employment with the DOE contractor in April 2013. DOE Ex. 1. It is well-settled that excessive use of alcohol raises security concerns because "excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guidelines, Guideline G, ¶ 21. Similarly, certain mental conditions "can impair judgment, reliability, or trustworthiness." *Id.*, Guideline I, ¶ 27. Therefore, there is no question that the diagnosis of such a condition by a duly qualified mental health professional may raise security concerns. In light of the Individual's own statements regarding his alcohol use, his past alcohol-related legal incidents, and the DOE psychologist's determination that the Individual was a user of alcohol habitually to excess, I find that the LSO properly invoked Criteria H and J with respect to the information cited regarding the Individual's alcohol consumption.

Finally, the LSO cited the Individual's five alcohol-related legal incidents between 1983 and 2002, as well as his 1989 drug-related charge, as information which raises security concerns under Criterion L. DOE Ex. 1. It is beyond dispute 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 history of criminal conduct, as cited in the Notification Letter, the LSO properly invoked Criterion L.

#### **IV. FINDINGS OF FACT AND 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 cannot conclude that granting the Individual a 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. Criterion F – The Individual's Falsifications, Misrepresentations or Omissions**

The Individual acknowledged that he was aware when he completed the October 2013 QNSP that he was required to be fully candid and truthful on the form, and that he intentionally submitted a form on which he falsified, misrepresented, or omitted required information. Tr. at 27. With respect to his omission of two alcohol-related incidents, the Individual averred that he forgot about the June 1983 and June 1992 DUI arrests. Tr. at 17-18. For the remainder of the information at issue, he varyingly attributed his conduct to not having enough time to complete the form, not wanting to discuss certain incidents because he was ashamed of them, or simply not taking the requirement to be truthful seriously. Tr. at 12-13, 15, 28.

According to the Adjudicative Guidelines, among the several examples of conditions which may serve to mitigate security concerns raised by an individual's deliberate dishonesty are that "the individual made *prompt, good-faith effort to correct the omission, concealment, or falsification* before being confronted with the facts" and "that the offense is so minor, or so much time has passed, or the behavior is so infrequent, 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[.]” Adjudicative Guidelines, Guideline E, ¶ 17 (emphasis added).

In this case, the Individual has brought forward no evidence of any efforts on his part to correct the omission on the QNSP, despite his knowledge that the forms were inaccurate when he submitted them. To the contrary, the Individual admitted at the hearing that he “thought he could get away with it.” Tr. at 28. He further admitted that he had been advised by colleagues who had also completed QNSPs that he should be truthful on the form and should provide all required information, and that he chose not to do so. Tr. at 20, 27-29. Such flagrant disregard for truthfulness and indifference to the applicable reporting requirements is, quite simply, unacceptable. Given the blatancy of the conduct, I have little confidence that such deliberate dishonesty would not recur in the future. Moreover, it is well-settled in previous cases of this office that where there exist security concerns attributable to irresponsible behavior, such as falsifications of security questionnaires or other forms of dishonesty, a subsequent pattern of responsible behavior is of critical importance in mitigating those concerns. In this case, as of the hearing, approximately ten months had elapsed since the Individual submitted the October 2013 QNSP, his last known deliberate act of dishonesty, and even less time since the DOE learned the full extent of his omissions.<sup>4</sup> Consequently, not enough time has passed for the Individual to establish a pattern of honest and responsible behavior sufficient to mitigate the concerns raised by his recent dishonest conduct.

#### **B. Criterion H and J – The Individual's Alcohol Consumption**

The Individual did not dispute any of the facts cited regarding his alcohol consumption. However, he vehemently disagreed with the DOE psychologist's opinion that he is a user of alcohol habitually to excess. Tr. at 21. Rather, the Individual asserted that his consumption of alcohol is not of concern. In that regard, the Individual testified that he does not drink “like [he] used to.” Tr. at 23. He stated that, currently, he only drinks “socially.” Tr. at 22. According to the Individual, he typically drinks six to seven beers over the course of a week, and the most that he drinks at one time is a six-pack of beer. Tr. at 22, 30. He further admitted, however, that he continues to drive after drinking, and stated that he last drove while intoxicated as recently as two to three weeks before the hearing. Tr. at 30. According to the Individual, his future intentions regarding his alcohol consumption are to stop “party drinking” and “drinking and driving.” Tr. at 23.

In his March 2014 evaluation report, the DOE psychologist concluded that the Individual “clearly demonstrate[d] a protracted history of alcohol abuse in the past replete with five documented DWI/DUI convictions. [The Individual's] frank admission of his current pattern of intoxication one or twice monthly and driving while in that condition indicates a significant continuation of the abuse of alcohol and evidences that he is a user of alcohol habitually to excess.” DOE Ex. 6. The DOE psychologist recommended that the Individual, *inter alia*, abstain from alcohol for twelve months and participate in Alcoholics Anonymous (AA) for twelve months by attending a minimum of three meetings per week and working with an AA sponsor. *Id.* After listening to the Individual's testimony, the DOE psychologist did not change his opinion or the recommendations that he offered in his March 2014 report. Tr. at 34-35.

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<sup>4</sup> The OPM Report indicates that the background investigation was completed in December 2013. DOE Ex. 9.

In this case, upon consideration of the evidence in the record, I find that the Individual has not presented sufficient evidence to mitigate the security concerns cited in the Notification Letter regarding his alcohol consumption. As an initial matter, the Individual elected not to offer any additional testimonial or documentary evidence during this proceeding. As a result, his testimony remains wholly uncorroborated in the record. This is especially of concern because the Individual's honesty and candor are themselves at issue in this proceeding. The Individual has demonstrated a willingness to say what he hopes will result in the least amount of trouble for him. This leaves me with serious doubts regarding the veracity of the Individual's testimony regarding his current alcohol consumption. Consequently, the absence of supporting evidence in this case is problematic, and I find it difficult to accord the Individual's testimony much weight.

However, even absent my doubts regarding the credibility of the Individual's testimony, and assuming, *arguendo*, that his assertions regarding his alcohol consumption are true, I would, nonetheless, conclude that the Individual has not mitigated the security concerns raised in this case under Criterion H and J.

Among the factors that may serve to mitigate security concerns raised by an individual's alcohol use are that "so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," that "the individual acknowledges his or her alcoholism or issues of alcohol abuse [and] provides evidence of actions taken to overcome this problem . . .," and that "the individual has successfully completed inpatient or outpatient counseling or rehabilitation . . ., has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations . . . and has received a favorable prognosis by a duly qualified medical professional . . ." Adjudicative Guidelines, Guideline G, ¶ 23. Similarly, with respect to evidence of certain mental conditions which cause, or may cause, significant defects in judgment or reliability, such as the Individual's use of alcohol habitually to excess in this case, the Adjudicative Guidelines identify the following possible mitigating factors: "demonstrated ongoing and consistent compliance" with a treatment plan; voluntary participation in counseling or treatment with a favorable prognosis by a duly qualified mental health professional; a recent opinion by a duly qualified mental health professional that the condition is under control "and has a low probability of recurrence or exacerbation;" and, "no indication of a current problem." Adjudicative Guidelines, Guideline I, ¶ 29.

In this case, the Individual has a decades-long history of excessive alcohol consumption, punctuated by five alcohol-related arrests. According to the Individual's self-reports, he has continued to drink not only drink to intoxication, but also to drive while impaired. He maintains that his drinking is not a problem, and as a result, he has not significantly altered his behavior or sought any treatment. In the absence of any expert testimony to the contrary, I am convinced by the DOE psychologist's testimony that the Individual continues to be a user of alcohol habitually to excess, which is a condition that causes or may cause significant defects in his judgment or reliability. Consequently, I find that the Individual has not mitigated the Criteria H and J concerns.

### **C. Criterion L – The Individual's History of Criminal Conduct**

It is uncontroverted in the record that the Individual has a history of criminal behavior that includes five alcohol-related arrests between 1983 and 2002 and the drug-related charge of Illegal Importation in 1989. Under most circumstances, the passage of time would be ample evidence of rehabilitation and the unlikelihood of recurrence, which are identified in the Adjudicative Guidelines as mitigating factors. *See* Adjudicative Guidelines, Guideline J, ¶ 32.

However, the Individual has admitted to continuing criminal conduct much more recently than 2002 – specifically, illegal drug use as recently as 2010 or 2011 and drinking while intoxicated as recently as two or three weeks prior to the hearing. While those incidents did not result in additional arrests or criminal charges, the Individual’s continued pattern of illegal behavior raises doubts specifically regarding his ability and willingness to comply with laws, rules, and regulations, as well as general concerns his judgment, reliability, and trustworthiness. *See Id.*, Guideline J, ¶ 31(c) (the “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted” may raise security concerns). There is simply insufficient reliable evidence in the record to resolve those doubts in favor of the Individual. Consequently, I unable to conclude at this time that the Individual’s past criminal behavior is unlikely to recur in the future, despite the length of time since his previous arrest. *See* 10 C.F.R. § 710.7(a) (“Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security.”). Accordingly, I find that the Criterion L concerns remain unresolved.

## V. 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 F, 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 not presented sufficient information to fully resolve the security concerns. Therefore, I cannot conclude that granting the Individual 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 not grant the Individual access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Diane DeMoura  
Administrative Judge  
Office of Hearings and Appeals

Date: September 11, 2014