

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 Criterion H and Criterion J).^{2/}

Upon her receipt of the Notification Letter, the Individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the LSO presented one witness, a DOE consulting psychologist (DOE psychologist); the Individual presented her own testimony and the testimony of three witnesses – her husband, her daughter, and an Employee Assistance Program counselor. The LSO submitted 10 exhibits into the record; the Individual submitted two exhibits into the record.

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.

^{2/} Criterion H concerns information that a person has “[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist 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 applies where an individual has been, or is, a user of alcohol habitually to excess or has been diagnosed by a psychologist as alcohol dependent or suffering from alcohol abuse. *Id.* § 710.8(j).

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.*

III. The Notification Letter and the Security Concerns at Issue

As support for its security concerns under Criteria H and J, the LSO relies on the opinion of the DOE psychologist, who diagnosed the Individual as alcohol dependent, which, in his opinion, causes or may cause significant defects in the Individual's judgment and reliability. In addition, the LSO cites the individual's statements regarding her pattern of alcohol consumption over the past approximately 18 years. DOE Ex. 1, at 1-2.

I find that there is ample information in the Notification Letter to support the LSO's reliance on Criteria H and J. Excessive consumption of alcohol 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* 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) at Guideline G.

IV. Factual Background

In late February 2014, the Individual reported to the LSO that she was admitted to a 10-week intensive outpatient alcohol treatment program. DOE Ex. 8. During the April 2014 PSI, the Individual admitted that she began using alcohol as a crutch in approximately 1999 or 2000. DOE Ex. 1; DOE Ex. 9 at 24-32, 37. She stated that as of 2013, she was consuming one to two boxes of wine a week. DOE Ex. 1; DOE Ex. 9 at 32-36, 38-41, 45-46. In 2013, the Individual began consuming vodka instead of wine to hide her consumption from her husband. DOE Ex. 1; DOE Ex. 9 at 34-36, 49-51. At the PSI, the Individual stated that she was consuming approximately a liter of vodka every two days, however at the hearing, she corrected that to say she was consuming a pint of vodka every two days.^{3/} DOE Ex. 1; DOE Ex. 9 at 34-36, 49-51; Tr. at 57-58. Finally, the Individual admitted that she had a confrontation with her daughter while they were on vacation, because the Individual had told her daughter she was not going to consume alcohol, but she became intoxicated. DOE Ex. 1; DOE Ex. 9 at 52-54, 56, 67, 75.

^{3/} The notes from her intensive outpatient treatment program indicate that she was consuming a pint of vodka every two to three days. Ind. Ex. B at 11. In reading the PSI, she initially stated she was purchasing a fifth of vodka, Ex. 9 at 36, then later makes a hand motion and states, "I think that's a liter." Ex. 9 at 51.

In May 2014, the Individual was evaluated by the DOE psychologist. DOE Ex. 7. After reviewing her personnel file and interviewing her, the DOE psychologist diagnosed the Individual as suffering from alcohol dependence, and he opined it was an illness or mental condition which causes or may cause a defect in judgment and reliability. DOE Ex. 7 at 4. The DOE psychologist opined that as of the hearing, the Individual was not rehabilitated or reformed. Tr. at 102. He stated that she needs to be abstinent for one year. Tr. at 102, 104.

V. Findings of Fact and 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)^{4/} 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.

The LSO has properly raised a security concern under Criterion H and Criterion J, regarding the Individual's alcohol use and alcohol dependence diagnosis by a licensed psychologist. In addition to the DOE psychologist's diagnosis, the Individual's intensive outpatient treatment program diagnosed her as suffering from alcohol dependence. Ind. Ex. B at 11.

The evidence before me indicates that the Individual had an escalating alcohol problem, which culminated in her seeking treatment in February 2014. She stated that she began consuming alcohol in approximately 1999 or 2000 as a way to thwart her feelings and emotions.^{5/} She was consuming wine until approximately early 2013, when she began consuming vodka, so that her husband would not smell alcohol on her breath. This is an extended, sustained period of alcohol consumption, demonstrating an increased tolerance, unsuccessful attempts to stop, and impaired interpersonal relationships. As of the date of the hearing, she was receiving treatment for alcohol dependence and had seven months of abstinence.

In considering the evidence before me, I must look to the Adjudicative Guidelines to determine if the Individual has mitigated the properly raised security concern. The relevant paragraph lists conditions that could mitigate this type of security concern, including:

^{4/} 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.

^{5/} The Individual's records from the intensive outpatient treatment program state that her alcohol consumption began in 1998. Ind. Ex. B at 11.

- (a) 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;
- (b) 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);
- (c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;
- (d) 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, ¶ 23(a)-(d). The general thrust of these guidelines is that a concern related to problematic alcohol use can be mitigated by circumstances indicating that the problematic use is no longer occurring and has a low risk of recurring in the future.

While the Individual may meet Adjudicative Guideline ¶ 23(c) as she is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress, she has not met any of the other mitigating factors nor otherwise demonstrated that she has a low risk of relapse to alcohol dependence.

The Individual does not meet Adjudicative Guideline ¶ 23(a) which requires that a significant amount of time has passed since the behavior, or that the behavior was infrequent or under such unusual circumstances that it is unlikely to recur. The Individual has only been abstinent for seven months, a period of which was preceded by daily excessive alcohol use.

The Individual also has not established a sufficient pattern of abstinence to satisfy Adjudicative Guideline ¶ 23(b). While both the counselor and the DOE psychologist opined that the Individual is very earnest in her quest for abstinence, Tr. at 26, 32, 102, the DOE psychologist stated that she needs to have 12 months of sobriety to show that she is rehabilitated or reformed, and the counselor agreed that one year is the time that defines success. Tr. at 35. The DOE psychologist testified that there is empirical evidence, including decades of experience and research that indicate that one year is what is required to show that a person is reformed or rehabilitated from a diagnosis of alcohol dependence. Tr. at 104-05. The DOE psychologist continued, "you have to go through every month and find out that this month I can't have alcohol either, now it's my child's birthday, now it's Thanksgiving, and I can't have alcohol, now everybody is drinking and I can't, now it's Christmas." Tr. at 105. Therefore, I cannot find that the Individual has satisfied Adjudicative Guideline ¶ 23 (b).

Finally, I cannot find that the Individual has satisfied Adjudicative Guideline ¶ 23(d). Although the Individual has successfully completed the intensive outpatient treatment program, along with any required aftercare, and has demonstrated seven months of abstinence, she needs to have 12 months of abstinence to meet the treatment recommendations. There is no dispute that the Individual is properly diagnosed with alcohol dependence, a serious alcohol disorder. Although the Individual has received a favorable endorsement from her counselor and the DOE psychologist regarding her current program, they disagreed concerning the risk of relapse as of the time of the hearing. Tr. at 33, 110. The DOE psychologist opined that the Individual's risk of relapse was moderate. Tr. at 33, 110. As described above, the DOE psychologist explained in detail his rationale for requiring 12 months of abstinence for a favorable prognosis. Although the counselor testified that the risk of relapse was low, she based this on the Individual's success in meeting all the elements of her one-year agreement with her employer, including bi-weekly drug testing, attendance at the intensive outpatient treatment program, and monthly counseling. The counselor repeatedly stated that the Individual is very earnest in her recovery and concluded that "one year seems to be a time that defines success." Tr. at 35. Even though the counselor testified that the Individual has a low risk of relapse, I find the fact that the agreement between the Individual and her employer is for one year and that the counselor testified that one year defines success in alcohol dependence cases, along with the DOE psychologist's opinions that the Individual be abstinent for one year and her risk of relapse is moderate, to be more persuasive. Moreover, the DOE psychologist's opinion is consistent with OHA precedent reflecting the general view of mental health professionals that, in cases of alcohol dependence, a minimum of 12 months of abstinence is necessary in order to conclude that that risk of relapse is low. See *Personnel Security Hearing*, Case No. PSH 12-0100 (2012) (seven months of sobriety of an individual who was diagnosed as alcohol dependent was insufficient for resolving concerns under Criterion J); *Personnel Security Hearing*, Case No. PSH-12-0077 (2012) (eight months insufficient to resolve concerns raised by alcohol dependence); *Personnel Security Hearing*, Case No. PSH-11-0013 (2012) (seven months insufficient to resolve concerns raised by alcohol dependence).⁶ Accordingly, I find that the Individual has not yet established a favorable prognosis, *i.e.*, a low risk of relapse.

The Individual appears serious in her dedication to abstinence. Her confrontation with her daughter in February 2014, after stating that she was not going to consume alcohol, was a warning that she fortunately heeded. Although sincere in her commitment to her sobriety, the Individual needs to establish 12 months of abstinence to establish a favorable prognosis, *i.e.*, a low risk of relapse.

Given the Individual's lack of 12 months of sobriety as of the hearing, I cannot find that she has sufficiently mitigated the security concerns associated with Criterion H and Criterion J.

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 Criterion H and Criterion J. After considering all the relevant information, both favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence

^{6/} Decisions issued by OHA are available on the OHA website located at <http://www.energy.gov/oha>.

presented at the hearing, I have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Criterion H and Criterion J. I therefore cannot find that restoring the Individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. 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.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals

Date: October 27, 2014