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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: February 25, 2015 ) Case No.: PSH-15-0011  
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Issued: June 19, 2015

**Administrative Judge Decision**

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxxxxxxx (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> 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. In August 2014, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address concerns about his alcohol use. In addition to the PSI, the LSO 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 November 2014 and memorialized his findings in a report (Psychological Report). According to the DOE psychologist, the individual suffers from Alcohol Abuse. The DOE psychologist

<sup>1</sup> 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.

further concluded that the individual has not yet demonstrated adequate evidence of rehabilitation or reformation.

In January 2015, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created substantial doubt regarding his 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 (j) and (l) (hereinafter referred to as Criteria J and L, respectively).<sup>2</sup>

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 his own testimony and that of four witnesses. The DOE Counsel called one witness, the DOE psychologist. Both the LSO 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 (9<sup>th</sup> 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 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 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.

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<sup>2</sup> 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). Criterion L relates, in relevant part, to information that a person has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend 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 interest of the national security. . . ." 10 C.F.R. § 710.8(l).

## **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 J and L. To support Criterion J, the LSO cites the DOE psychologist's opinion that the individual suffers from Alcohol Abuse<sup>3</sup>, as well as the individual's alcohol-related arrests and his history of 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 Criterion J. 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* Guideline G 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).

To support its reliance on Criterion L, the LSO cites the individual's criminal conduct, including two alcohol-related arrests, one in 1998 and the other in 2014. The LSO also cites the individual's association with an individual who is involved in criminal activity. Criminal activity creates a doubt about a person's judgment, reliability, and trustworthiness and by its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations. *See* Guideline J of the Adjudicative Guidelines.

## **IV. Findings of Fact**

On February 22, 1998, the individual was arrested and charged with Driving Under the Influence (DUI). His blood alcohol content registered at .10. DOE Exh. 1. On July 18, 2014, the individual was charged with felony Domestic Violence Corporal Injury Against Spouse or Cohabitant and felony Domestic Violence, Child Abuse. *Id.* Prior to the arrest, he consumed ¾ of a 750 ml bottle of vodka in 15 minutes and blacked out. The police report states that the individual struck his 13-year old son multiple times on the face and body during a fight. When

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<sup>3</sup> The DOE did not cite 10 C. F.R. § 710.8(h) as a security concern because the DOE psychologist did not opine that the individual's Alcohol Abuse raises or may raise a significant defect in his judgment and reliability. *See* DOE Exh. 4.

the individual's wife attempted to break up the fight, the individual struck her multiple times. The fight ended when the individual's son struck the individual with a mini baseball bat to protect himself and his mother. DOE Exh. 6. The individual spent six days in jail and was released on his own recognizance. DOE Exh. 3. He was required to wear a GPS ankle monitor and an ankle alcohol monitor as a condition of his release. *Id.* A three-year restraining order was filed against the individual, which expires on July 21, 2017. *Id.* On August 11, 2014, the restraining order was amended due to a mistake on the expiration date. *Id.* According to the individual, the case was put on hold with a Plea and Abeyance until November 2, 2015, his next court date.

During his August 2014 PSI, the individual admitted that every Friday and Saturday from June 2014 until his arrest in July 2014, he consumed four to five shots of vodka per hour, over four to five hours, becoming intoxicated each time. *Id.* He further admitted that he has abused alcohol. In addition to the individual's alcohol use, he admitted that beginning in March or April 2014, until his arrest in July 2014, his wife used marijuana in their home on a daily basis and he occasionally sat with her while she smoked marijuana. Furthermore, he admitted that his wife stored marijuana in his garage. *Id.*

Based on the information pertaining to the individual's alcohol use, the individual was referred to the DOE psychologist for an evaluation. On November 13, 2014, the DOE psychologist evaluated the individual. In his Report, he concluded that the individual met the Diagnostic and Statistical Manual of Mental Disorders, IVth Edition TR (DSM-IV-TR) criteria for Alcohol Abuse. DOE Exh. 4.

## **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)<sup>4</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored. Based on the facts in this record, 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.

### **A. Evidence of Rehabilitation and Reformation from Alcohol Abuse**

During the hearing, the individual did not dispute any of the security concerns outlined in the Notification Letter; nor did he disagree with the information set forth in the Psychological

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<sup>4</sup> 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.

Report. Rather, the individual readily acknowledged his alcohol problem and described factors in his life that led to his alcohol abuse. Transcript of Hearing (Tr.) at 57. He testified that having now seen the negative impact alcohol has had on his life, emotionally, spiritually and physically, he has no desire to drink alcohol again. *Id.* The individual stated that he does not associate with anyone who drinks and that he possesses a strong will to succeed in his abstinence. *Id.* at 58. He explained that he first began suppressing his emotions with alcohol when his father passed away in 1995. The individual further testified that he later endured more emotional and stressful situations in his life, most significantly his wife's infidelity which caused a number of problems throughout his marriage. *Id.* at 59. He stated that his marriage is over and that he sought help to address his alcohol problem.<sup>5</sup> *Id.* The individual testified and provided documentary evidence that he has completed a 30-day Intensive Outpatient Program (IOP) and is now participating in aftercare. *Id.* at 59; Indiv. Exh. C. He stated that he has learned a great deal from his alcohol treatment, including the effects of alcohol on his body. According to the individual, he has a new lifestyle, sleeps better and has no temptation to drink. The individual testified that he has abstained from alcohol since July 18, 2014. *Id.* at 75.

When questioned about his July 2014 arrest, the individual testified that he began drinking after becoming distressed about his wife's affair. He acknowledges that on July 18, 2014, he had an encounter with his wife when she returned home and recalls his son hitting him over the head with a baseball bat. The individual testified that due to his alcohol consumption, he had no recollection of the details of the incident. *Id.* at 99.

During the hearing, the individual also offered the testimony of his recovery meeting convener, his IOP health counselor, a co-worker and his girlfriend. The individual's recovery meeting convener is a meeting convener for a secular program designed to support alcohol recovery. *Id.* at 19. The convener stated that the individual is a regular participant in once a week sessions where he is fully engaged. *Id.* He believes the individual intends to remain abstinent and expressed his confidence in him. *Id.* at 20. The individual's IOP health counselor testified that the individual began IOP in July 2014, three times per week for 30 days, and is now in aftercare. *Id.* at 29. According to the counselor, the aftercare program consists of an educational component as well as process group meetings. *Id.* at 36. The counselor stated that he believes the individual's marital problems significantly contributed to the individual's alcohol problem. *Id.* at 30. He stated that the individual has developed into a happier, healthier individual, noting that the individual has lost weight and that his overall physical health has improved. The counselor testified that the individual's prognosis is good, and is confident that the individual will remain abstinent if he continues his recovery, i.e. aftercare program. *Id.* at 31. The individual's co-worker, who has known the individual for 13 years, testified that he has never seen the individual drunk and believes the individual has not consumed alcohol for about a year. *Id.* at 13. He further testified that the individual is trustworthy. Finally, the individual's girlfriend, who has known the individual for 18 years and dated him for four months, testified that she has never seen the individual drink alcohol during the course of their relationship, noting that the last time she observed him drinking was 17 years ago. *Id.* at 50-52. She further testified that she believes the individual will remain abstinent because he has seen the negative impact alcohol has made on his life. *Id.* at 52. The individual's girlfriend also stated that the individual is no longer undergoing the stress he endured during his marriage. *Id.* at 54.

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<sup>5</sup> The individual's divorce is not yet final. *Id.* at 76; Indiv. Exh. D

The DOE psychologist listened to all the testimony at the hearing before testifying himself. Based on the hearing testimony, he believes the individual has provided adequate evidence of rehabilitation and reformation from his alcohol abuse. *Id.* at 102. The DOE psychologist testified that although actuarial data would suggest that there is still a 50 percent chance of relapse to one degree or another, in this case there are mitigating circumstances including that the individual has demonstrated that he is highly motivated and has a number of good support mechanisms in place to remain abstinent. *Id.* at 104. He testified that, considering the individual's mitigating circumstances, his risk for relapse would be lower, a 10 to 15 percent chance of relapse. *Id.* at 105. The DOE psychologist added, however, that relapse is part of recovery and that it is sometimes necessary for an individual to "slip" a bit in order to have a fuller understanding of their vulnerabilities. *Id.* at 105. The DOE psychologist opined that the individual's prognosis is good for remaining alcohol free. *Id.* at 102. He would like for the individual to continue with his once a week support group and individual therapy. *Id.* at 103.

### **B. 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)*.<sup>6</sup> At the outset, I am persuaded by the testimony of the DOE psychologist that the individual has achieved adequate evidence of rehabilitation. Moreover, the Adjudicative Guidelines describe factors that could mitigate security concerns involving alcohol consumption. *See Adjudicative Guideline, Guidelines G*. In this case, the individual has satisfied the following mitigating factors: (1) the individual has acknowledged his alcohol problem, provided evidence of actions taken to address his problem and has established a pattern of responsible use; (2) the individual has successfully completed outpatient treatment, has demonstrated a clear and established pattern of abstinence in accordance with his treatment recommendations, i.e., his 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 relapse and that he has a good prognosis. *Id.* For these reasons, I find that the individual has adequately resolved the DOE's security concerns under Criterion J.

### **C. Criterion L**

The DOE's concerns under Criterion L relate to the individual's criminal conduct, including his February 1998 arrest and charge with DUI, as well as his July 2014 arrest and charge of felony Domestic Violence Corporal Injury Against Spouse or Cohabitant and felony Domestic Violence Corporal Injury Against a Child. In addition, the Criterion L security concerns relate to the individual's association with an individual involved in criminal activity.

Among the factors which could serve to mitigate the security concerns raised by the individual's criminal conduct are (1) so much time has elapsed since the criminal behavior happened, or it

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<sup>6</sup> 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>.

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; (2) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life; (3) evidence that the person did not commit the offense; and (4) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement. *Adjudicative Guideline J* at ¶ 32 (a)-(d). In this case, with respect to the 1998 arrest, a number of years have elapsed since the criminal behavior happened, the individual is remorseful for his conduct, has successfully completed an IOP to address his alcohol problem and has demonstrated adequate evidence of rehabilitation. With respect to the individual's admission that beginning in early April 2014 until his arrest in July 2014, his wife would use marijuana in their home, the individual testified that he no longer lives with nor associates with his wife, that he is in the process of finalizing his divorce and has been living with his current girlfriend. I find that, in light of the circumstances, these two incidents have been sufficiently resolved. The July 2014 arrest is, however, recent. In addition, the events leading up to that arrest resulted in the individual serving six days in jail and having a restraining order entered against him for three years. The criminal charges resulting from that incident are still pending and will not be adjudicated by a criminal court until at least November 2015. In the end, I cannot find that the individual has resolved the Criterion L concern relating to his 2014 arrest. I therefore find that the individual has not resolved the LSO's concerns under Criterion L.

## **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 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 find that the individual has brought forth convincing evidence to resolve the security concerns associated with Criterion J. However, I find that the individual has not brought forth convincing evidence to resolve the security concerns associated with Criterion L. I therefore cannot 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 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.

Kimberly Jenkins-Chapman  
Administrative Judge  
Officer of Hearings and Appeals

Date: June 19, 2015