



reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j) (hereinafter referred to as Criteria H and J, respectively).<sup>2</sup>

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. At the hearing, the individual presented his own testimony and that of four other witnesses, and the LSO presented the testimony of one witness, the DOE psychologist. In addition to the testimonial evidence, the LSO submitted nine numbered exhibits into the record and the individual submitted nine exhibits as well, identified as Exhibits A through I. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

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

## **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 determined that the individual suffers from Alcohol Abuse, a mental condition that, in her opinion, causes or may cause significant defects in the individual's judgment and reliability. In addition, the LSO cites the individual's January 31, 2015, arrest for Simple Assault, his September 13, 2003, arrest for Public Intoxication, and his admissions during his February 12, 2015, PSI that he had consumed two shots of liquor and 44 ounces of beer before his 2015 arrest and an unknown amount of alcohol before his 2003 arrest. Ex. 1.

I find that there is ample information in the Notification Letter to support the LSO's reliance on Criteria H and J. The 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. Findings of Fact**

The individual began drinking alcohol while in college. He estimates that he became intoxicated on weekends once or twice a month, generally after drinking beer, either five or fewer over a relatively short period, or more than five over a longer period. Ex. 7 at 4. His consumption decreased somewhat after he completed his studies in 2002, and decreased again around 2012 to three to five pints of craft beer over four to five hours; he estimated he was intoxicated roughly once a month. He has not driven while intoxicated since he was in his 20s, but has driven in recent years after consuming two or three beers. *Id.* at 5.

He was arrested in 2003 for Public Intoxication. He admitted he was intoxicated after a day of tailgating (and drinking), and by chance crossed paths with police officers who were searching an area in response to gunfire, near a bar from which he had just stepped outside. He pled guilty, paid a fine, and the charge was "dismissed on costs and time served." *Id.* at 4.

Other alcohol-related events revolved around a relationship with a former girlfriend that lasted roughly two years. In July 2014, the individual, his girlfriend, his brother, and others were at a bar, and the girlfriend was drinking heavily and became belligerent. The individual left the bar and called a friend to get a ride home. Later that evening, the girlfriend arrived at the individual's home and began yelling and beating on the door with her shoe. The police ultimately arrived and arrested her for Public Intoxication. The individual informed the girlfriend that he would break up with her if anything similar were to recur. Tr. at 43-46 (testimony of brother); Ex. 7 at 3. In November 2014, after a night of barhopping with a group that included the individual, the girlfriend, the brother, and two close friends, the girlfriend again became belligerent toward the individual, who was trying, unsuccessfully, to calm her down. Although no police were involved that evening, the girlfriend's behavior caused the group to check out of the hotel in which they were staying in the middle of the night and drive back home. Tr. at 26 (testimony of friend); 40 (testimony of brother).

Finally, in late January 2015, after an evening consuming alcohol at two bars, the individual and his girlfriend argued in the car on their way back to his home. On arrival, he would not let her inside, as he wanted her to go to her own home. She began once again pounding on his front door; he opened the door and attempted to stop her by holding her by the arms; she shouted that he had assaulted her; he let her inside to keep her from being arrested again, as the neighbors had called the police; she barricaded herself in his bedroom until the police arrived. Because the girlfriend had red marks on her arms, the police arrested the individual for domestic assault. Ex. 7 at 3. Ultimately, the matter was settled on the court date, at which time all the parties agreed that the individual had not in fact assaulted her, but rather had prevented her from entering his home against his wishes. *Id.* The case was "passed" for six months, at which time it would be dismissed provided the individual had no further incidents of this type. Ex. F. This incident did, however, end the relationship. Ex. 7 at 3.

Following the arrest, the individual immediately reported the event to his employer, which scheduled him for an interview with the on-site medical examiner. Ex. 6. The medical examiner produced a report in which she described the individual as "highly psychologically healthy" and lacking any personality disorder or "diagnosable alcohol disorder." Ex. A. He stopped drinking alcohol as of the night of his arrest, maintaining abstinence through his court date in late March. He then resumed drinking alcohol, but "was definitely watching it." Tr. at 77; 86-87.

The DOE psychologist evaluated the individual in April 2015. She determined that the individual met the criteria for Alcohol Abuse as set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association*, Fourth Edition Text Revised (DSM-IV-TR). Ex. 7 at 12. She based her opinion on the individual's report of his drinking behavior since 2012, including his report of intoxication roughly once a month, and his report of alcohol consumption at specific events, including the night of his arrest. *Id.* at 8-9. While she stated that the individual's Alcohol Abuse was a condition that could cause significant defects in judgment or reliability, she also stated that her evaluation did not uncover any data that suggested any other illness or mental condition. *Id.* at 10-11. She found it understandable that the individual had no alcohol education or treatments, because his alcohol use "has never seemed problematic to him," he functions at a high

level in most domains, and he is not in psychological distress. *Id.* at 11. She stated, however, that the individual would benefit from six months of counseling to address his alcohol use and a “tendency at times to tend to others’ vulnerabilities while underestimating his own.” *Id.* at 11. She recommended at least six months of abstinence and participation in at least six Alcoholics Anonymous (AA) meetings and at least six Al-Anon meetings. *Id.* at 12.

In late May, the individual’s access authorization was suspended, and he decided to abstain from alcohol permanently at that time. *Tr.* at 77. He testified that he has no plans to drink and intends to complete six months of abstinence, but realizes that, if at some time in the future, he decided to drink he would follow self-imposed rules, including not driving after drinking. *Id.* at 88. He has attended both AA and Al-Anon meetings, though as a non-drinker, he finds Al-Anon more helpful and intends to continue attending those meetings. *Id.* at 89, 92-94, 96.

Shortly after receiving the DOE psychologist’s report in mid-June, he sought a recommendation for a counselor from a friend, and began meeting with a faith-based counselor on June 26, 2015. *Id.* at 49, 77. The pastoral counselor testified that they have met in eight two-hour sessions so far, and intend to continue meeting. *Id.* at 49, 69. The counselor works with the individual primarily on relational issues, which he views as having been exacerbated in the past by the individual’s alcohol consumption. *Id.* at 50. He has assigned the individual readings about alcohol addiction and feels that he obtains good information from AA and Al-Anon meetings. *Id.* at 55, 61. He also stated that he would discontinue meeting with the individual if the individual resumed drinking; he would in that case refer him to alcohol treatment and continued AA and Al-Anon participation. *Id.* at 63, 68. The counselor is pleased with the individual’s self-reflection and motivation to change and avoid alcohol incidents in the future. He is confident that the individual will maintain his abstinence and, through continued counseling and education, adopt a new life-style. *Id.* at 55, 58.

A supervisor, a long-time friend, and one of the individual’s brothers also testified at the hearing. The supervisor attested to the individual’s excellent work ethic, attendance, character, and value to his organization. *Id.* at 15. The friend, who is one of a group that meets at bars to drink socially, confirmed that the individual continues to socialize with the group but simply stopped consuming alcohol with them and maintains that he enjoys not drinking. *Id.* at 24-25. The brother, the individual’s closest friend, testified that the individual has not consumed any alcohol since May, reports that he enjoys the counseling he is receiving, and has even convinced him to cut back on his own drinking. *Id.* at 32-35.

In her testimony at the hearing, the DOE psychologist expressed her opinion that the individual had met nearly all the recommendations that she had set forth in her evaluative report. She weighed a number of factors that contribute to rehabilitation and determined that most were in the individual’s favor, including the relatively mild severity of the Alcohol Abuse; the individual’s insight and motivation for change, as demonstrated by independent research he conducted to address his confusion over the effects of alcohol on the human body; his compliance with all recommendations; his good coping skills regarding life stresses; a good support system of family and friends; and his lack of

cravings, reactivity to triggers (such as when with others who are drinking alcohol), family history of alcohol disease, and presence of other neurological or psychological conditions. *Id.* at 115-121. She also praised the pastoral counseling the individual was receiving; though it is in some respects unorthodox with regard to its approach to substance abuse, she was satisfied that it met the individual's needs. *Id.* at 127. Her chief concern was that, as of the hearing, the individual had completed only about three and one-half months of abstinence. Considering all the factors she addressed, in particular the lack of severity and the high likelihood of compliance, she determined that an exception to the six-month duration of abstinence was appropriate in this case. *Id.* at 122-23. In her opinion, the individual's risk of relapse is low, particularly in light of his internal resolve and "how connected he is" to his counselor, his on-site medical director, and his support system. *Id.* at 124-26.

## **V. 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) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. I find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

I find that the individual was properly diagnosed as suffering from Alcohol Abuse. Nevertheless, the record, in particular, the testimony of the individual, his pastoral counselor, and the DOE psychologist, establishes a period of abstinence and an amount of alcohol education that satisfies the experts who testified at the hearing. The concurrence of the mental health experts regarding his current status demonstrates to me the confidence they have in the individual's progress through treatment and his motivation to remain sober at all times. Furthermore, I am convinced that the individual has learned a great deal as a result of his January 2015 arrest, both through alcohol education and through enduring the personal and financial consequences of his actions, and is highly motivated to avoid a similar situation in the future. I have taken into consideration a number of mitigating factors in his favor, specifically his abstinence, his voluntary participation and significant progress in a treatment program, and the DOE psychologist's favorable prognosis of the individual. Adjudicative Guidelines at Guideline G, ¶ 23. After considering all the testimony and written evidence in the record, I am convinced that the individual has resolved the LSO's security concerns that arise from his alcohol use.

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

presented at the hearing, I have found that the individual has brought forth sufficient evidence to resolve the security concerns associated with these criteria. I therefore 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 be restored.

William M. Schwartz  
Administrative Judge  
Office of Hearings and Appeals

Date: October 8, 2015