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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: March 7, 2016) Case No.: PSH-16-0011
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Issued: June 3, 2016

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization¹ 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 discussed below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I have determined that the DOE should not restore the Individual’s suspended access authorization at this time.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to maintain a DOE security clearance. The Individual was arrested in July 2015 for Driving Under the Influence (DUI). In August 2015, the local security office (LSO) conducted a personnel security interview with the Individual (8/2015 PSI). Exhibit (Ex.) 26. The Individual was then referred for a forensic psychological evaluation by a DOE-contractor psychologist (DOE Psychologist). In January 2016, the LSO informed the Individual that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance (Notification Letter) and that his security clearance was suspended. Ex. 1.

¹ 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.

The Notification Letter explained that the derogatory information fell within the purview of three potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (j), and (l) (Criteria H, J, and L respectively).²

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. The DOE submitted 31 Exhibits (Exs. 1-31) into the record for the hearing along with the testimony of the DOE Psychologist. At the hearing, the Individual presented three Exhibits (Exs. A-C) along with the testimony of his significant other (Significant Other), his uncle (Uncle), two immediate supervisors (Supervisors 1 and 2), his second-level supervisor (Higher Supervisor), his employment group's director (Director), as well as his own testimony. *See* Transcript of Hearing, Case No. PSH-16-0011 ("Tr.").

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 (1998) ("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

² Criterion H refers to information indicating that an individual has "[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 references information showing that an individual 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 describes information indicating that an individual "[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 interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility." 10 C.F.R. § 710.8 (l).

individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

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.* 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 Classified Information, The White House (December 19, 2005) (Adjudicative Guidelines).*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites Criteria J, H and L as the basis for suspending the Individual's security clearance. With regard to Criteria J and H, the Notification Letter references the Individual's arrests in July 2015, April 2000, and July 1989, for DUI. Additionally, the LSO cited an October 2015 report from the DOE Psychologist opining that the Individual was a user of alcohol habitually to excess and suffers from Alcohol Abuse (as diagnosed under the Diagnostic and Statistical Manual 4th Edition (DSM-IV)) and Alcohol Use Disorder (as diagnosed under the Diagnostic and Statistical Manual 5th Edition (DSM-5)) as Criteria H and J derogatory information. Ex. 1 (Notification Letter); *see* Ex. 12 (DOE Psychologist's report). 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, at ¶ 21.

In the Notification Letter, the LSO cited the Individual's three DUI arrests and three citations, in 1987 for Unsafe Lane Change and in 1990 and 2004 for Speeding, as constituting a pattern of criminal conduct derogatory information falling within Criterion L. The LSO also cited three instances where the Individual failed to demonstrate good judgment or trustworthiness as additional Criterion L derogatory information. In this regard, the Notification Letter specified the Individual's testimony in a 2001 Administrative Review Hearing before OHA where the Individual testified under oath that he would permanently abstain from consuming alcohol and the Individual's admission in the 8/2015 PSI that he did not use good judgment when he decided to drive while intoxicated prior to his July 2015 and April 2000 DUI arrests. Conduct involving questionable judgment, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Adjudicative Guidelines, Guideline E, at ¶ 15. From the available information contained in the record regarding the Individual's history of DUI arrests, the DOE Psychologist's report and the

Individual's other admissions, I find that the LSO had sufficient grounds to invoke Criteria H, J, and L to suspend the Individual's security clearance.

IV. Findings of Fact

The Individual testified that he has been at his present position since 2009. Tr. at 108. The Individual does not dispute the facts of his 1987 and 1990 traffic offenses. Tr. at 112. The Individual believes his problem with alcohol is "that it has caused me problems as far as with my clearance." Tr. at 112. However, the Individual believes that he does not have a problem with being able to abstain from consuming alcohol. Tr. at 112-13. He believes that in the past he had a problem with abusing alcohol. Tr. at 112. Over the past ten years, the Individual believes that he had driven after "drinking excessively" only on the three occasions where he was arrested for DUI. Tr. at 114. The Individual testified that on some other occasion he may have driven after having two or three drinks over the course of two or three hours. Tr. at 115.

With regard to his 2015 DUI arrest, the Individual asserted that he had consumed two beers and two "Crown Royals" and water mixes over a four-hour period while attending a barbeque at his Uncle's house.³ Tr. at 116-17. The Individual was uncertain about how much Crown Royal he had poured for his two drinks. Tr. at 117. At the time he got in his automobile to leave with his Significant Other, he did not feel intoxicated. Tr. at 117-18. The Individual, after being pulled over for failing to obey a lane restriction at an accident site marked with flares, was given field sobriety and breathalyzer tests. Tr. at 120-21. The breathalyzer test registered alcohol levels of 0.128 and 0.134. Tr. at 122.

The Individual confirmed that he had been arrested in 2000 for DUI.⁴ Tr. at 124. Before this arrest, he had consumed five or six drinks over two to three hours and "probably had a buzz." Tr. at 124-25. When arrested, a breathalyzer test indicated that the Individual had an alcohol level of 0.234. Tr. at 127. The Individual testified that before his DUI arrest in 1989, he had attended a wedding reception. Tr. at 128-29. During the reception, he had consumed a number of "rum and cokes" over four hours and had felt somewhat intoxicated earlier during the reception but not when he started to drive. Tr. at 129. Upon his arrest for the 1989 DUI, the Individual had a breathalyzer alcohol level of 0.107. Tr. at 130.

During the times he has consumed alcohol, the Individual's pattern is to have only two or three drinks on the weekends approximately one to three times a month. Tr. at 131-32, 134. After the 2000 DUI arrest, the Individual, after completing the required counseling and classes mandated by his conviction on the DUI charge, decided to adopt a different lifestyle and abstain from consuming alcohol. Tr. at 135.

³ Crown Royal is a Canadian whiskey.

⁴ At the time the Individual possessed a DOE access authorization. *See* Ex. 18.

The Individual's security clearance was revoked in 2000. During the 2000 OHA administrative review hearing (2000 AR Hearing), the Individual testified that he would permanently refrain from consuming alcohol. Tr. at 136. In 2008, when the Individual's employer again requested that he be granted an access authorization, the Individual submitted a letter from his mental health expert (2008 Expert) stating that the Individual was consuming alcohol "rarely and then only in a social context." Tr. at 136-37; Ex. C. Concerning his submission of this letter, the Individual testified that he did not deceive DOE regarding his alcohol use. Tr. at 137-38. The Individual stated that four years after the 2000 AR Hearing, he decided that he did not have a "drinking problem" but just needed to "drink more responsibly." Tr. at 138. When he resumed drinking, the Individual would not consume alcohol over a period of weeks but would occasionally consume two or three drinks. Tr. at 139. Occasionally, he would exceed this limit but would consume no more than four or five drinks. Tr. at 139. The Individual also testified that, while he occasionally consumed more alcohol than he intended, he never consumed "four, five, six, [or] seven drinks." Tr. at 142.

The Individual admitted that he does not know how many drinks he would have to consume to put himself over the limit for driving. Tr. at 141. He believed that if he consumed only two or three drinks he would be under the alcohol limit to legally operate an automobile. Tr. at 141. As support for his reasoning, the Individual submitted printout of two on-line blood alcohol calculators that, when he entered his weight, the number of drinks he consumed and the time that had elapsed, indicate that his blood alcohol level should have been under the limit to operate a motor vehicle. Tr. at 14; *see* Ex. A, B. The Individual asserted that these tools were used in the classes he attended pursuant to his other DUI arrests and that he reasonably believed that consuming two or three drinks over a period of time would not cause him to be alcohol-impaired while driving. Tr. at 14.

In his testimony, the Individual further stated that he stopped consuming alcohol immediately after his DUI arrest in July 2015 and that, since then, he has not had any urges or cravings to consume alcohol. Tr. at 143. None of the Individual's family has ever urged him to stop consuming alcohol. Tr. at 143. The Individual has no difficulties when others consume alcohol in his presence. Tr. at 144. The Individual testified that he does not plan to ever consume alcohol in the future. Tr. at 145. The Individual believes that DOE can rely on his intention not to ever consume alcohol because his lifestyle is different and he is seeking to work long enough to reach retirement and to be able to watch and enjoy his children and grandchildren. Tr. at 145. He is also motivated not to consume alcohol by the positive effect it will have on his health. Tr. at 147. He has been deeply affected by the loss of his clearance and the effect it has had on his career. Even if his clearance is not reinstated, the Individual plans not to consume alcohol ever again. Tr. at 146.

After his 2015 DUI arrest, the Individual attended an alcohol education class for five weeks. Tr. at 150. The class consisted of two counselors teaching about the effects of substance addiction. Tr. at 150-51. In February 2016, he began attending two church groups approximately once a week. Tr. at 148-49. One group focuses on maintaining sobriety (sobriety group) and the other, on spiritual issues. Tr. at 153-54, 156-57.

The Individual's Significant Other testified that she has lived with the Individual since June 2014. Tr. at 20. The Significant Other attended the barbeque with the Individual and was in the automobile when he was arrested for the 2015 DUI. Tr. at 21. She believed that the Individual had consumed two Royal Crowns and two beers during the time they were at the barbeque. Tr. at 22. She did not observe any indication that the Individual was intoxicated when they left. Tr. at 22. The Significant Other believes that the July 2015 DUI was a one-time incident and does not reflect the Individual's lifestyle. Tr. at 36-37.

The Significant Other confirmed that the Individual had stopped consuming alcohol immediately after the date of his July 2015 DUI arrest. Tr. at 24. Before this arrest, she testified that the Individual would consume alcohol intermittently but he would consume no more than two or three Crown Royals at any one occasion and never during his work week or the Sunday before since he would have to report to work the following Monday. Tr. at 26-27. The most alcohol she has observed the Individual to consume and drive afterwards is three drinks and the most alcohol she has observed the Individual to consume on any one occasion is three to four drinks. Tr. at 28. The Significant Other does continue to consume alcohol in the presence of the Individual and there is alcohol in their home. Tr. at 30. The Individual has told her that he has no problem with her consuming alcohol in his presence. Tr. at 31. The Significant Other confirmed the Individual's testimony regarding the groups he has attended. Tr. at 32-33. She also stated that the Individual is very conscientious regarding security and does not discuss anything pertaining to his position at home. Tr. at 34.

The Individual's Uncle confirmed the details of the Individual's attendance at the barbeque at his residence. Tr. 40-42. The Uncle stated that the Individual spent approximately six hours at the barbeque and he did not observe any sign of the Individual being intoxicated when he left. Tr. at 42. The Uncle also stated the Individual told him that he no longer wishes to consume alcohol so as not to put his security clearance or employment at risk. Tr. at 45. On several occasions where the Uncle has consumed alcohol in the Individual's presence, the Individual has not demonstrated any problems. Tr. at 47.

Supervisors 1 and 2, the Higher Supervisor and the Director all testified regarding the Individual's excellent work performance and that they have not observed the Individual demonstrate any effects of alcohol intoxication while on the job. *See, e.g.* Tr. at 56-57, 63,-64, 69, 72, 78, 81, 88, and 103. These witnesses believe that the Individual's judgment and reliability are excellent. *See, e.g.,* Tr. at 56-57, 70, 82, 93, 102-06. None of these witnesses has observed the Individual becoming intoxicated at various social occasions they have attended. *See, e.g.,* Tr. at 62, 78-79, 91.

At the hearing, the DOE Psychologist described his examination of the Individual and the written psychological tests he administered during his examination.⁵ Tr. at 162-63. The DOE Psychologist

⁵ The DOE Psychologist administered the Alcohol Use Disorders Identification Test (AUDIT), the Michigan Alcoholism Screening Test (MAST), the Substance Abuse Subtle Screening Inventory (SASSI-3), the Minnesota Multiphasic Personality Inventory-2 (MMPI) and the Personality Assessment Inventory (PAI) to the Individual during his examination. Ex. 12 at 9-12.

testified that using the DSM-IV he diagnosed the Individual as suffering from Alcohol Abuse. Tr. at 169. He also diagnosed the Individual as suffering from Alcohol Use Disorder under the DSM-5. In making his diagnosis of Alcohol Use Disorder, the DOE Psychologist determined that the Individual met three of the criteria described in the DSM-5. Tr. at 163-64. The DOE Psychologist believed that the Individual met criterion 1, that alcohol was taken in larger amounts or over a longer period than was intended, based upon the Individual's answer to a question in the SASSI-3. Tr. at 165; *see* Ex. 12 at 12, 15. The DOE Psychologist also believed that the Individual met criterion 8, recurrent alcohol use in situations where it is physically hazardous. Tr. at 165-66; *see* Ex. 12 at 15. As support for this finding, the DOE Psychologist cited the Individual's history of DUI arrests as well as his recollection that the Individual had told him he had driven after consuming two or three drinks approximately 10 percent of the time. Tr. at 164-65. The third criterion that the DOE Psychologist believed the Individual met was criterion 10, that the Individual had a high tolerance for alcohol. Tr. at 165. The DOE Psychologist noted that the Individual did not believe he was impaired during his last DUI arrest despite having a blood alcohol level over 0.10. Tr. at 165-66.

The DOE Psychologist further testified that, at the time of his examination of the Individual, he did not believe that he had been rehabilitated or reformed. After having listened to all of the witnesses, the DOE Psychologist again found that, as of the date of the hearing, the Individual had not demonstrated adequate evidence of rehabilitation or reformation. He noted that in his opinion the standard for rehabilitation required abstinence from alcohol for a period of two years. Tr. at 169. The DOE Psychologist stated that individuals are at a higher risk for relapse during the first year of abstinence. Tr. at 169. Additionally, he reconfirmed a recommendation in his report that the Individual should undergo a period of one year of intensive outpatient counseling. Tr. at 169-70. While the Individual has made significant progress in addressing his alcohol problem, the DOE Psychologist confirmed his opinion that, as of the date of the hearing, a longer period of treatment was needed for the Individual before the Individual could be considered reformed or rehabilitated. Tr. at 170.

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 DOE security clearance 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.

A. Criteria H and J

The Criteria H and J concerns center on the Individual's three DUI arrests and the DOE Psychologist's determination that the Individual suffers from an Alcohol Abuse or Alcohol Use Disorder.

The Individual disputes the DOE Psychologist's diagnoses on several grounds. Specifically, he disputes that he told the DOE Psychologist that he will drive after drinking two or three beers approximately 10 percent of the time. Tr. at 174-75. The Individual also challenges the correctness of the DOE Psychologist's diagnoses based upon the fact that three of the standardized tests for alcohol misuse, the MMPI-2, the PAI and the AUDIT, indicated that the Individual did not show significant indications of an alcohol problem. Tr. at 178-79; *see* Ex. 12 at 9-12. The Individual also challenges the validity of some of the standardized tests based upon the fact that some questions involve past events he cannot change and that positive answers to these questions would make it impossible for someone not to be diagnosed as having an alcohol disorder. Tr. at 181-82. The Individual also notes that 2008 Expert found that the Individual was not an alcoholic. Tr. at 11; *see* Ex. C.

As an additional mitigating factor regarding his 2015 DUI, the Individual notes that he was misled into thinking that it was safe to drive based upon the blood alcohol level calculation methodologies he was taught while attending various alcohol education classes. *See* Exs. A, B. The Individual asserts that any concerns raised by the 2015 DUI arrest are mitigated by his commitment to not consuming alcohol in the future and his participation in the sobriety group. The Individual believes he has never used alcohol habitually to excess and that he has corrected any faults, concerns or problems and thus he should be considered rehabilitated and reformed from alcohol misuse. Tr. at 9.

After considering the exhibits before me and the Individual's arguments, I find that he has not totally resolved the Criterion H and J concerns raised by the DOE Psychologist's diagnoses or his past history of DUI arrests. There is insufficient evidence to conclude that the DOE Psychologist's recollection of the Individual's statement regarding how often he drove after consuming two or three beers is incorrect. In this regard, I note that in the DOE Psychologist's report, he noted that one of the Individual's answers to the PAI indicated that the Individual denied ever driving after consuming alcohol. Ex. 12 at 10. This somewhat lessens my assessment of the Individual's credibility on this point given the Individual's three DUI arrests. Even if we were to accept the Individual's assertion on this point, the Individual testified, and his Significant Other confirmed in her testimony, that the Individual has driven an automobile after consuming alcohol. Tr. at 23, 115, 142. I find that any potential error made by the DOE Psychologist regarding the exact percentage of occasions when the Individual has driven after consuming alcohol does not justify my rejection of his opinion.

The Individual's challenges to the methodology and interpretation of the standardized tests administered to him are also unavailing. Absent expert testimony substantiating the Individual's

allegations regarding problems with these tests, I do not find sufficient evidence for me to question the DOE Psychologist's use of these tests. The DOE Psychologist testified that each test "measures the problem [the diagnosis of an alcohol disorder] in slightly different ways, and so it's kind of the standard in the community to give more than one test . . . especially where [the Individual's] security clearance is on the line" Tr. at 179-180. I found the DOE Psychologist's testimony persuasive on this issue.

The Individual's one-page letter from the 2008 Expert regarding the issue of whether the Individual has an alcohol problem is also unconvincing. This letter and opinion are approximately eight years old and the 2008 Expert did not have the benefit of reviewing his evaluation in light of the recent events regarding the 2015 DUI. Further, I note that this letter also opines that the Individual "has a tendency towards substance abuse." Ex. C.

I do not find any mitigation regarding the Individual's claim that he consumed alcohol in accordance with the blood alcohol calculation methodologies he was taught in alcohol education classes. Both methodologies contain warnings as to other factors that can affect a person's blood alcohol level and both are dependent on an accurate measurement of the alcohol content of the beverages consumed. Exs. A, B. With regard to the amount of Crown Royal (whiskey) the Individual consumed at the barbeque, the Individual poured the whiskey into an eight-ounce glass and measured the desired one-ounce amount by counting the number of seconds he poured. Tr. at 117. This methodology in itself seems to be only an approximation of the amount of alcohol he consumed and makes reliance on tables such as these questionable, especially given the facts of the Individual's 2015 DUI arrest.

I find the Individual's efforts in addressing his alcohol use problem encouraging given his participation in the two groups he attends. However, the Individual has not met the DOE Psychologist's recommendations for a determination of rehabilitation or reformation. As of the date of the hearing, the Individual has approximately 10 months (July 2015 to May 2016) of abstinence from alcohol and four months (February 2016 to May 2016) of participation in his sobriety group. I also note, with respect to the effectiveness of his rehabilitation, the Individual's ambivalence regarding whether he has an alcohol problem. *See* Tr. at 9 (disagreement with DOE Psychologist's opinion); Tr. at 112 ("the problem with me [the Individual] with alcohol is that it has caused me problems as far as with my clearance"). Given the evidence before me, I cannot conclude that the Individual's problem with alcohol misuse have been sufficiently resolved.

In reviewing the Adjudicative Guidelines, I do not find that any of the mitigating factors apply in this case. With regard to the one factor that might be applicable in this case, that the individual acknowledges his alcohol issues and provides evidence of actions to overcome the problem and has established a pattern of abstinence, I find that the Individual's period of abstinence and treatment is insufficient to mitigate the security concerns given the expert testimony of the DOE Psychologist. *See* Adjudicative Guideline G, ¶ 23(b).

In sum, I cannot at this time find that the Individual has resolved the Criteria H and J concerns raised by the DOE Psychologist's diagnosis and his history of DUI arrests.⁶

B. Criterion L

The Criterion L concerns arise from the Individual's history of criminal conduct and his alleged questionable judgment and lack of reliability or trustworthiness.

1. Criminal Conduct

The Individual's history of criminal conduct consists of his three DUI arrests and three citations – two for Speeding and one for Unsafe Lane Change. In reviewing the mitigating factors listed for criminal conduct in the Adjudicative Guidelines, I can find no mitigating factors that apply in this present case. Adjudicative Guidelines, Guideline J, ¶ 32(a)-(d). While a number of these offenses occurred in the distant past, the most recent criminal offense, the 2015 DUI, occurred less than one year from the date of the hearing. Most importantly, as discussed above, the underlying issue of the Individual's misuse of alcohol has not been fully resolved. Given this, I cannot find that the Criterion L security concerns raised by the Individual's criminal history, especially his history of DUI arrests, have been resolved.

2. Judgment, Lack of Reliability or Trustworthiness

The Criterion L concerns referenced in the Notification Letter regarding judgment and a lack of reliability and trustworthiness center on two incidents. The first is the Individual's testimony that he would permanently abstain from consuming alcohol during the 2000 AR Hearing. Ex. 18 at 5. The second is the Individual's admission during the 8/2015 PSI that he failed to use good judgment when he chose to drive intoxicated on the occasions resulting in his arrests for DUI in 2000 and 2015. Ex. 26 at 36.

In mitigation, the Individual has presented testimony from a number of his supervisors as well as his Significant Other and Uncle attesting to the Individual's trustworthiness and reliability. Further, the Individual asserts that at no time did he seek to deceive the LSO about his alcohol consumption habits, and points out that when he applied for a security clearance in 2008 he submitted the report of the 2008 Expert who stated that the Individual was consuming alcohol in a reasonable manner. Ex. C.

⁶ In making this finding, I am not making a determination regarding whether the Individual does, in fact, have an alcohol disorder. I only find that, given the evidence before me, I am not sufficiently assured that the possibility of the Individual having an alcohol disorder is low enough where I can conclude that the Criterion H and J concerns have been resolved.

With regard to the first incident, the Hearing Officer described the Individual's testimony during the 2000 AR Hearing as his then intention to permanently abstain from alcohol.⁷ Ex. 18 at 5. An intention is different from a promise or other binding commitment to perform a course of action in the future. Given this specific factual background, it does not appear that the Individual specifically violated a commitment to the LSO or DOE and as such is not a specific incidence of a lack of trustworthiness. However, the Individual's failure to carry through with his intention can be considered a lack of reliability. The fact that the Individual notified DOE in 2008 that he resumed consuming alcohol does not mitigate the fact that he failed to carry forward with his intention to permanently abstain from alcohol. As such, this incident raises concerns under Criterion L.

The Individual's admission in the 8/2015 PSI regarding his lack of judgment raises security concerns. The Individual's lack of judgment regarding alcohol-related incidents is not fully mitigated by the testimony regarding the Individual's excellent judgment and reliability at the workplace. The Individual's lack of judgment regarding alcohol is directly related to the Individual's history of alcohol misuse. In the absence of a resolution regarding the Individual's problems with alcohol use, I find that concerns raised by his lack of judgment regarding alcohol use have not been resolved.

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 not presented sufficient information to resolve the cited security concerns. Therefore, I cannot conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore the Individual's suspended DOE access authorization at this time.

Richard A. Cronin, Jr.
Administrative Judge
Official of Hearings and Appeals

Date: June 3, 2016

⁷ A transcript of the hearing was not provided in the record of this proceeding.