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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:	)	Case No.: PSH-16-0032
April 18, 2016	)	
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Issued: August 9, 2016

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**Administrative Judge Decision**

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Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (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 October 2015, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address concerns about the individual’s falsification and alcohol use. On April 6, 2016, 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

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<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.

three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (f), (h) and (j) (hereinafter referred to as Criteria F, H and J, 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: two of his managers, his brother and his sister. The DOE counsel presented the testimony a DOE consultant psychologist who examined the individual upon the request of the LSO. Both the DOE and the individual presented 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).

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<sup>2</sup> Criterion F pertains to information that a person has "[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personal security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.31." 10 C.F.R. § 710.8(f). Criterion H concerns information that a person has "an illness or mental condition of a nature, which, in the opinion of a board-certified psychiatrist, causes, or may cause, a significant defect in his judgment or reliability." 10 C.F.R. § 710.8(h). Finally, 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).

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

### **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 three potentially disqualifying criteria as bases for suspending the individual's security clearance, Criteria F, H and J. To support its reliance on Criterion F, the LSO alleges that the individual deliberately omitted significant information related to his alcohol-related offenses and alcohol treatment from his 2004, 2010 and 2015 Questionnaires for National Security Positions (QNSPs). In addition, the LSO alleges that the individual deliberately omitted significant financial information from his 2010 and 2015 QNSPs. *See Ex. 1.*

From a security standpoint, false statements made by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See* Guideline E 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 Criterion H, the LSO relies on the diagnosis of the DOE psychologist that the individual suffers from Alcohol-Related Disorder Not Otherwise Specified, and the expert's opinion that this condition is a mental illness that could cause a significant defect in the individual's judgment and reliability. The LSO also relies on the DOE psychologist's conclusion that the individual has a history of omitting critical and required information or providing misinformation when it is to his advantage to do so. As for Criterion J, the LSO cites the DOE psychologist's opinion that the individual is a user of alcohol habitually to excess and the individual's alcohol-related incidents.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under both Criteria H and J. First, a mental condition such as Alcohol-Related Disorder Not Otherwise Specified can impair a person's judgment and reliability and trustworthiness. *See* Guideline I of the *Adjudicative Guidelines*. Second, 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 id.* at Guideline G.

#### **IV. Findings of Fact**

The individual has a history of alcohol consumption and has been involved in a number of alcohol-related incidents. He began consuming alcohol at age 18 when he joined the military. Over time during his military career, the individual's alcohol use increased causing a number of legal problems for him, including a denial for re-enlistment. On July 12, 1981, the individual was charged with Driving Under the Influence (DUI). Following this DUI, the individual attended a military-directed detoxification and 30-day in-patient treatment program for alcohol abuse. On September 29, 1981, he was charged with Drunk and Disorderly Conduct. Later, in March 1984, the individual was charged with Drunk on Station and in April 1991, he was charged with Public Intoxication. Ex. 1. In 2004, the individual began drinking a six-pack of beer once or twice per week, and continued at that frequency and quantity until March 2013. Later in 2013, the individual reported that he consumed three to four beers over a two to four hours, every other day during the week, and six to eight beers over three to six hours on Friday and Saturday nights. During his October 2015 PSI, the individual admitted that he experienced an alcohol-induced blackout as recently as the month prior to his PSI. According to the individual, he was last intoxicated on December 31, 2015, New Year's Eve. *Id.*

The individual also has a history of omitting significant information from his QNSPs. On March 15, 2004, the individual signed a QNSP certifying that he had never been charged with an offense involving alcohol or drugs. However, during his October 2015 PSI, he admitted that he should have listed his 1981 alcohol offenses and his 1991 alcohol-related offense. Likewise, on January 29, 2010 and March 9, 2015, the individual signed QNSPs certifying that he had never been charged with an offense involving alcohol or drugs. However, again during his October 2015 PSI, he admitted that he should have listed all four of his alcohol-related offenses. On his 2015 QNSP, the individual also certified that he had never received counseling treatment as a result of his use of alcohol and has never been ordered, advised, or asked to seek counseling or treatment as a result of his use of alcohol. However, in his October 2015 PSI, the individual admitted that he attended a military-directed detoxification and 30-day in-patient treatment program for alcohol abuse in 1981. He further admitted that he should have listed this on his QNSP and that his answer was incorrect. *Id.*

In addition to omitting significant information related to his alcohol use, the individual also omitted significant information related to his finances. On his January 2010 QNSP, the individual certified that in the past seven years he had not had any accounts charged off. However, during his 2015 PSI, he admitted that he should have listed a 2010 charge-off account with a bank. Also, on his March 2015 QNSP, the individual signed and certified that in the past seven years he had not filed a petition under any chapter of the bankruptcy code. During a June 2010 PSI and his October 2015 PSI, the individual admitted that he deliberately failed to list a 2007 Chapter 13 Bankruptcy petition for fear of losing his job. He further admitted that his QNSP answers were incorrect and the 2007 bankruptcy should have been listed. *Id.*

On January 7, 2016, the DOE psychologist evaluated the individual. In her report, she concluded that the individual suffers from Alcohol-Related Disorder Not Otherwise Specified without adequate evidence of rehabilitation or reformation which is an illness or condition that may cause a significant defect in the individual's judgment or reliability. Ex. 5. The DOE psychologist further concluded that the individual is a user of alcohol habitually to excess without adequate evidence of rehabilitation or reformation. She also concluded that the individual's history of omitting critical and required information, and providing misinformation when it is to his advantage to do so, is a mental condition which causes, or may cause, a significant defect in judgment or reliability. *Id.*

## **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>3</sup> 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.

### **A. Criterion F**

The key issue under Criterion F is whether the individual has brought forward sufficient evidence to demonstrate that he can now be trusted to be consistently honest and truthful with the DOE. In considering this question, I found that the nature of the individual's omissions was serious. The

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<sup>3</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.

individual's lack of candor concerning his alcohol use, alcohol-related offenses and finances could increase his vulnerability to coercion or blackmail and raises important security concerns. The DOE must rely on individuals who are granted access authorization to be honest and truthful. This important principle underlies the criteria set forth in 10 C.F.R. § 710.8(f).

During the hearing, the individual was questioned about his omissions on his QNSPs. He readily admitted that he deliberately failed to list his 2007 Chapter 13 Bankruptcy from his 2010 QNSP. The individual testified that when he began working for DOE, he took a pay cut and that his finances "got out of hand." Transcript of Hearing (Tr.) at 114. His financial situation prompted him to file a Chapter 13 Bankruptcy in 2007. *Id.* The individual testified that he did not list this bankruptcy because he feared that he would lose his job. *Id.* He expressed remorse for not responding truthfully on his 2010 QNSP, and testified that after being warned about being honest about his bankruptcy in the future, he disclosed his bankruptcy on his 2015 QNSP. According to the individual, this information relating to his bankruptcy is the only significant information that he deliberately omitted from his QNSP. With respect to the omissions regarding his alcohol-related incidents in 1981, 1984 and 1991, his alcohol treatment in 1981 as well as his 2010 charge-off account, the individual testified that he did not intentionally omit this information from his QNSPs. Specifically, the individual testified that that he did not read the questionnaires carefully when completing them and mistakenly believed the questions asked him to report only alcohol-related incidents and treatments within a 7 to 10-year time frame. *Id.* at 119. The individual stated that his alcohol-related incidents and treatment occurred over 25 years ago and that he did not believe he had to list this information. He reiterated that he rushed when completing his QNSPs and did not intentionally seek to hide this information from DOE. *Id.* at 122. Likewise, with respect to his 2010 charge-off account that he omitted from 2015 QNSP, the individual testified that he believed this debt had been discharged during his Chapter 13 bankruptcy and that he had a zero balance on that account. *Id.* at 123 and 124. He again reiterated that he did not intentionally omit this information. *Id.*

Based on the foregoing, I find that the individual deliberately omitted his 2007 Chapter 13 Bankruptcy from his 2010 QNSP. However, to determine whether the individual has sufficiently mitigated Criterion F concerns related to all of the significant information he omitted from his QNSPs, I considered the relevant factors set forth in the Adjudicative Guideline E. Some of the conditions that could mitigate security concerns raised under Criterion F include the following: (1) the individual made prompt, good-faith efforts to correct the omission before being confronted with the facts; (2) the omission was caused by improper or inadequate advice of authorized personnel or legal counsel advising the individual of the security clearance process; (3) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; (4) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the

stressors, circumstances, or factors that caused the untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and (5) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress. *See* Guideline E at ¶ 17 (a), (b), (c), (d), and (e). I find that none of these relevant factors apply in this case.

First, the individual did not make a prompt, good-faith effort to correct his omissions before being confronted with the facts during his June 2010 and October 2015 PSIs. He acknowledges that during a 2010 PSI, the investigator warned him to be completely honest and include his 2007 bankruptcy in subsequent QNSPs. Second, although the individual asserts that he “rushed” and did not carefully read his QNSPs, he does not assert that his omissions were caused by improper or inadequate advice of authorized personnel. Third, the individual’s omissions are serious and, other than his omission about his bankruptcy which he omitted on a January 2010 QNSP, his other omissions occurred most recently when he completed his March 2015 QNSP. He omitted his alcohol-related offenses in both 2010 and more recently in 2015. Other than his assertion that he rushed on his QNSPs and that with respect to the alcohol-related incidents he believed the questions referred to a 7 to 10-year time frame, the individual has not demonstrated that his omissions happened under such unique circumstances that they are unlikely to recur. Fourth, although the individual has acknowledged his behavior regarding his omissions, I did not find the individual’s testimony credible that he simply misunderstood the time frames referred to in the questions. I am not convinced at this time that this behavior is unlikely to recur. For these reasons, I find that the individual has not sufficiently resolved the security concerns associated with Criterion F.

## **B. Criteria H and J**

The individual does not dispute the DOE psychologist’s diagnosis of Alcohol-Related Disorder Not Otherwise Specified. Therefore, the focus of the analysis will be on whether the individual has demonstrated adequate evidence of rehabilitation or reformation from Alcohol-Related Disorder Not Otherwise Specified as well as from issues related to his candor.

During the hearing, the individual testified that he has abstained from alcohol since February 29, 2016. He acknowledged that his drinking has been a problem in the past while in the military and for a period after his military service. *Id.* at 94. The individual further testified that he was surprised by the DOE psychologist’s report and stated that his drinking had decreased by the time he was evaluated by the DOE psychologist. *Id.* at 95. The individual testified that he did not believe he had a drinking problem because he did not drink to excess all the time, rather just on certain occasions such as special events or holidays. *Id.* at 95 and 99. He further testified that his daily drinking never caused him any issues, particularly at work. *Id.* at 99. According to the individual, after meeting with the DOE psychologist, talking to an investigator during his October PSI and losing his security clearance, he realized that he needed to stop drinking. *Id.* at 100. The

individual testified that he met with an Employee Assistance Program (EAP) counselor who referred him to an Intensive Outpatient Treatment Program (IOP) which he successfully completed in May 2016. He has received counseling in an aftercare program and regularly attends AA. In addition, all of the individual's random alcohol and drug tests have been negative. Finally, the individual testified that the IOP was an educational experience for him. He now accepts that he has a problem with alcohol and that his life has changed since participating in treatment. He testified that the IOP and his AA meetings have given him structure and that he has a number of family and friends to support him throughout his recovery process. *Id.* at 109.

During the hearing, the individual also offered the testimony of two managers, his brother and his sister. Both of the individual's managers testified that the individual is a reliable and trustworthy person who never showed any signs of alcohol consumption at work. *Id.* at 11 and 26. The individual's brother corroborated the individual's testimony that he stopped drinking on February 29, 2016, about a 150 days prior to the hearing. *Id.* at 27. Finally, his sister testified that although the individual drank while in the military, he is a different person now. She further stated that she would not consider the individual to be a habitual drinker. *Id.* at 49.

The DOE psychologist listened to the testimony at the hearing before testifying herself. She testified that she did not learn anything in the hearing testimony that would change her recommendations in her Report. *Id.* at 131. While she believes that the steps the individual is taking, including completion of an IOP, aftercare counseling meetings and AA, are the appropriate steps for the individual, she still has concerns about the individual's alcohol issues given his alcohol history, the period of time he has spent in treatment and the period of time he has been abstinent, about four months. *Id.* According to the DOE psychologist, the individual has not yet achieved adequate evidence of rehabilitation or reformation. In her report, she recommended that the individual remain abstinent for a period of one year. In addition to the individual's alcohol issues, the DOE psychologist testified that she still has concerns regarding the individual's candor. *Id.* at 132. She explained that she stated in her report that there were significant differences and discrepancies in the individual's reporting of his alcohol consumption. The DOE psychologist further testified that she believed the individual's omissions regarding his alcohol incidents were self-serving and despite his assertion that he was rushed when completing his QNSPs, the omissions were only on those questions that would be problematic for him. She reiterated that she still has a concern regarding the individual's intention when he responded to questions about alcohol on his QNSPs. *Id.* at 139. Finally, the DOE psychologist opined that the individual's issues related to his candor continue to cause a significant defect in his judgement and reliability. *Id.* at 137.

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>4</sup> At the outset, I am persuaded by the testimony of the DOE psychologist that the individual has not yet achieved adequate evidence of rehabilitation. Moreover, I find that none of the mitigating factors outlined in the Adjudicative Guidelines apply in this case. *See Adjudicative Guidelines*, Guidelines G and I, ¶ 23 and ¶ 29, respectively. For example, although the individual now acknowledges that he has an alcohol problem and has taken actions to overcome his problem, he has not yet established a pattern of abstinence in accordance with treatment recommendations. The individual admitted that he experienced an alcohol-induced blackout as recent as the month prior to his October 2015 PSI. In addition, the DOE psychologist has not yet given the individual a favorable prognosis. *See Adjudicative Guidelines* at Guideline G, ¶ 23(a)-(d). Moreover, with regard to Guideline I, the DOE psychologist's opinion that the individual still has a current alcohol problem as well as concerns related to his candor does not allow me to resolve the individual's psychological conditions. In short, the individual has not yet established adequate evidence of rehabilitation, and therefore I am unable to make a favorable predictive assessment of his future behavior with respect to his alcohol use and candor. For these reasons, I find that the individual has not yet resolved the DOE's security concerns under Criteria H and J.

## **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 Criterion F, 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 cannot find that the individual has not brought forth convincing evidence to resolve the security concerns associated with Criteria F, H and J. 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  
Office of Hearings and Appeals

Date: August 9, 2016

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<sup>4</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>.