



The day after his arrest, the individual self-reported the incident to the Local Security Office (LSO) as required. *See* Exhibit 8. The LSO subsequently conducted a personnel security interview (PSI) with the individual in December 2015 with respect to the incident, as well as his history of alcohol consumption. *See* Exhibit 9. Since the PSI did not resolve concerns about the individual's alcohol usage, the LSO referred the individual for evaluation by a DOE consulting psychologist, who conducted a psychological evaluation of the individual in March 2016. *See* Exhibit 5.

Since neither the PSI nor the psychological evaluation resolved the security concerns arising from the individual's alcohol usage, the LSO informed the individual in a letter dated May 19, 2015 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In 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 Criterion H and Criterion J, respectively).<sup>2</sup> *See* Exhibit 1.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. *See* Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO introduced nine numbered exhibits into the record and presented the testimony of one witness, the DOE consulting psychologist. The individual, represented by counsel, introduced four lettered exhibits (Exhibits A – D) into the record and presented the testimony of six witnesses, including that of himself and that of his mental health counselor. 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.<sup>3</sup>

## **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”);

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<sup>2</sup> See Section III below.

<sup>3</sup> OHA decisions are available on the OHA website at [www.oha.doe.gov](http://www.oha.doe.gov). A decision may be accessed by entering the case number in the search engine at [www.oha.doe.gov/search.htm](http://www.oha.doe.gov/search.htm).

*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 with evidence to convince the DOE that granting or restoring his or her 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 or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **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 previously noted, the LSO cited two criteria as the basis for suspending the individual’s security clearance: Criterion H and Criterion J. Criterion J refers to information indicating 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). Excessive alcohol consumption raises a security concern because it can lead to 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); *Personnel Security Hearing*, Case No. PSH-11-0035 (April 19, 2012). With respect to Criterion J, the LSO noted, *inter alia*, (1) the individual’s consumption of alcohol prior to, and immediately after, his September 2015 car accident and (2) the individual’s pattern of alcohol consumption which resulted in his experiencing intoxication three times each month from 2014 until the date of his car accident. *See* Ex. 1 at 3. Additionally, the LSO relied upon the written evaluation of the DOE consulting psychologist, dated March 29, 2016, which concluded that, based upon the individual’s frequency and quantity of alcohol consumption from 2008 until September 2015, the individual had been a user habitually to excess without adequate evidence of rehabilitation or reformation. *Id.*; Ex. 3 at 9.

Criterion H concerns information that a person has “an 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). It is well established that “certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” *See* Adjudicative Guidelines at Guideline I. Conduct influenced by such psychological conditions can raise questions about an individual’s ability to protect classified information. With respect to Criterion H, the LSO relied on the March 29, 2016, written evaluation of the DOE consulting psychologist which concluded that the individual’s use of alcohol habitually to excess is a mental condition which causes, or may cause, a significant defect in judgment and reliability. Ex. 1 at 3; Ex. 3 at 9.

In light of the information available to the LSO, the LSO properly invoked Criterion H and Criterion J.

#### **IV. Findings of Fact and Analysis**

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)<sup>4</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the individual’s access authorization should be restored. The specific findings that I make in support of this decision are discussed below.

As a preliminary matter, I note that at the hearing the individual did not contest the accuracy of the allegations set forth by the LSO in the Notification Letter, although he did note that his historic pattern of alcohol consumption varied and may not have been precisely described in the Notification Letter. Tr. at 47-48. I have fully considered this testimony in reaching the findings of fact set forth below.

During the period from 2014 until the date that the individual had a vehicular accident in September 2015, the individual consumed alcohol to intoxication on an average of three times each month. Ex. 9 at 92, 96. Although the individual consumed approximately two beers prior to the vehicular accident, he credibly testified that he had waited at least two hours following such consumption before driving home and did not believe he was intoxicated at the time of the accident. Tr. at 50, 61-62. He further testified that, after he realized that his car had been damaged and could not be driven after the accident, he was very upset and consumed additional alcohol as he walked home following the accident. *Id.*

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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.

at 52. Although the individual was charged and arrested as a result of the accident for reckless driving and failure to discharge obligations upon striking an unattended vehicle, he was not charged with any alcohol infractions. *See* Ex. 6 and Ex. 8.

The individual stopped consuming alcohol immediately after the accident, which was a court requirement pending the disposition of the criminal charges. Tr. at 65-66. Those charges have since been resolved and the court-required abstinence has terminated. *Id.* at 74.

The individual had been abstinent from alcohol for approximately six months at the time of his evaluation by the DOE consulting psychologist in March 2016. Ex. 4 at 3. Based upon her evaluation of the individual, the DOE psychologist concluded that the individual did not meet the criteria for any of the alcohol disorders set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association, Fourth Edition Text Revision (DSM-IV-TR)*. *Id.* at 9; Tr. at 104. Notwithstanding, she opined that, based upon the frequency and quantity of the individual's alcohol consumption from 2008 until the date of his vehicular accident in 2015, (1) the individual had been a user of alcohol habitually to excess, (2) the individual had not evidenced adequate rehabilitation or reformation with respect to such habitual use, and (3) such use of alcohol habitually to excess is a mental condition which causes, or may cause, a significant defect in his judgment or reliability. Ex. 4 at 9. She opined that in order for the individual to evidence adequate rehabilitation and reformation he would need to abstain from alcohol consumption for a period of 12 months (commencing from his reported abstinence following his car accident) and participate in six months of weekly psycho-educational sessions focused on alcohol consumption and its mental and physical impacts. *Id.*

Subsequently, the individual met with a counselor at his employer's Employee Assistance Program (EAP) and began a program of alcohol education and counseling. As of the date of the hearing, the individual had had 17 sessions with his EAP counselor over a five-month period of time. Tr. at 78-79. Both the individual and his EAP counselor testified at the hearing as to the extent and benefits of the individual's program through the EAP. *Id.* at 56-57, 67-74, 79-87, 90-93. The EAP counselor testified at the hearing that she concurred with the DOE consulting psychologist that the individual had alcohol usage problems which did not rise to the level of a *DSM* diagnosable disorder. *Id.* at 97-98. She also noted the individual's embrace of the alcohol education and stress management program he had undertaken with her and the difficult emotional work he had accomplished. *Id.* at 91-92. As of the date of the hearing, the individual had completed 12 months of alcohol abstinence and his EAP counselor noted that he had maintained his alcohol abstinence through his divorce and the tragic loss of an immediate family member. *Id.* at 82. She noted that, with respect to the resolution of the alcohol issues raised in the Notification Letter, the individual had a good prognosis and a low risk of relapse. *Id.* at 83, 88.

While the individual initially resisted the conclusions of the DOE consulting psychologist with respect to his alcohol consumption, he testified that as a result of the alcohol education and counseling program he had come to recognize the detrimental role that alcohol had had

in his life and he did not foresee using alcohol in the future. *Id.* at 56-57, 70. He credibly testified that he had been abstinent for 12 months as of the date of the hearing. *Id.* at 54.

The DOE consulting psychologist was present at the hearing and testified as the final witness, having heard the testimony of all of the other witnesses. She noted the individual's 12 months of alcohol abstinence, the quality of his psycho-education training with his EAP counselor, and the positive benefits that he had derived from the training and counseling. *Id.* at 101. Based on those factors, she concluded that the individual no longer met the criteria for habitual use of alcohol to excess and that he had evidenced adequate rehabilitation and reformation of the excessive habitual use noted in her earlier written evaluation. *Id.* at 101, 104. In light of such rehabilitation and reformation, she opined at the hearing that the individual no longer had an illness or mental condition which causes, or may cause, a significant defect in judgment or reliability. *Id.* at 103, 105.

In regards to security concerns raised under Criterion J and Criterion H, Administrative Judges traditionally accord deference to the opinions of mental health professionals. Noting the individual's treatment program and abstinence, both experts opined that, as of the hearing, the individual had evidenced adequate rehabilitation and reformation with respect to his use of alcohol habitually to excess. *Id.* at 83, 88, 99, 101, 104. *Cf.* Adjudicate Guidelines at Guideline G, ¶23(d) (mitigation of security concerns relating to alcohol is possible when an individual has completed outpatient counseling along with any required aftercare and has demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations). As previously noted, the DOE consulting psychologist also opined at the hearing that in light of the individual having demonstrated adequate rehabilitation and reformation with respect to his alcohol usage, he no longer had an illness or mental condition that could cause a significant defect in his judgment or reliability. *Tr.* at 103, 105. *Cf.* Adjudicative Guidelines at Guideline I ¶29(e) (mitigation of security concerns relating to psychological issue is possible when there is no current psychological problem).

Based upon the foregoing, I find that the individual has resolved the Criterion H and Criterion J security concerns.

## **V. 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 H and Criterion 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 Criterion H and Criterion J. Accordingly, I have determined that the individual's access authorization should 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.

A handwritten signature in blue ink, appearing to read "Wade M. Boswell". The signature is fluid and cursive, with a long horizontal stroke at the end.

Wade M. Boswell  
Administrative Judge  
Office of Hearings and Appeals

Date: October 26, 2016