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**United States Department of Energy  
Office of Hearings and Appeals**

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| In the Matter of Personnel Security | ) |                   |
| Filing Date: August 26, 2011        | ) |                   |
|                                     | ) | Case No. TSO-1102 |
|                                     | ) |                   |
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Issued: January 12, 2012

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**Decision and Order**  
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Kimberly Jenkins-Chapman, Hearing Officer:

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxxxx hereinafter referred to as “the individual”) to hold an access authorization 1/ 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, I have determined that the individual’s access authorization should not be granted.

**I. Background**

The individual is an applicant for a DOE security clearance. In March 2011, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address her alcohol use. In addition to the PSI, the LSO requested the individual’s medical records and recommended a psychiatric evaluation of the individual by a DOE consultant psychiatrist (DOE psychiatrist). The DOE psychiatrist examined the individual in April 2011 and memorialized his findings in a report (Psychiatric Report). According to the DOE psychiatrist, the individual suffers from Alcohol Dependence. The DOE psychiatrist further concluded that the

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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).

individual's Alcohol Dependence is a mental illness that causes or may cause a significant defect in his judgment and reliability.

In July 2011, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding her 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 three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, notably subsections (h), (j) and (l) (hereinafter referred to as Criteria H, J and L respectively). 2/

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 Hearing Officer in this case. At the hearing that I convened, the DOE Counsel called one witness, the DOE psychiatrist. The individual presented the testimony of three witnesses - her supervisor, a colleague and a friend. She also testified on her own behalf. The DOE and the individual submitted a number of written exhibits prior to and after 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 granting 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 her eligibility for an access authorization. The Part 710

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2/ Criterion H relates to information that a person 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 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). Finally, Criterion L relates, in relevant part, to information that a person has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security . . . ." 10 C.F.R. § 710.8(l).

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.

## **B. Basis for the Hearing Officer's Decision**

In personnel security cases arising under Part 710, it is my role as the Hearing Officer 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 stated above, the LSO cites three criteria as bases for denying the individual's security clearance: Criteria H, J and L. To support Criterion H, the LSO relies on the opinion of the DOE psychiatrist that the individual suffers from Alcohol Dependence.

As for Criterion J, the LSO cites the DOE psychiatrist's opinion and the following additional information: (1) the individual's admission during a March 2011 PSI and April 2011 Psychiatric Evaluation that she drinks to the point of blacking out with her most recent blackout occurring in early April 2011; (2) the individual's admission during her PSI that she plans to continue drinking to the point of intoxication in the future, and her admission during her Psychiatric Evaluation that she intentionally drinks to intoxication once a month; (3) the individual's admission that since the age of 21 in June 2009 to the present, she drinks two beers twice a week and a pint of whiskey three times a month; (4) the individual's admission that from 2004 to 2006, she drank twice a month, drinking to intoxication by consuming five mixed drinks within a four-hour period and increasing her consumption to weekly between 2006 and June 2009; and (5) the individual's admission that during periods of her heaviest consumption of alcohol, she recalled consuming as many as 10 beers on one occasion, at times drinking full bottles of wine, and on another occasion consuming 12 shots of liquor as well as wine. *See* DOE Exhs. 1 and 7.

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 Dependence can impair a person's judgment, reliability and trustworthiness. *See* Guideline I 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*). 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.

Finally, to support its reliance on Criterion L, the LSO cites the individual's admission during the March 2011 PSI and an April 2011 Psychiatric Evaluation that she engaged in underage drinking. This information also raises questions about the individual's judgment and reliability under Criterion L. DOE Exh. 1.

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

By her own account, the individual has been drinking alcohol since the age of 14. DOE Exhs. 1-7. From age 14 or 15 to age 17, the individual drank twice a month. *Id.* According to the individual, on these occasions, she drank to intoxication by consuming five mixed drinks, each drink containing one shot of vodka, within a four-hour period. *Id.* From age 17 to age 20, the individual claims that her consumption increased to weekly, drinking three to four 10 ounce beers. *Id.* She claims her longest period of sobriety from alcohol was two weeks during the course of college finals. *Id.* During her March 2011 PSI, the individual admitted that since the age of 21 to the present, she drinks two beers twice a week and a pint of whiskey three times a month. *Id.* According to the individual, she consumes whiskey by drinking seven or eight mixed drinks containing a shot and a half to two shots of whiskey per drink over a six-hour period. *Id.* In her PSI, she indicated that she has drunk to the point of "blacking out" on a number of occasions. *Id.* Despite being advised of the DOE's concerns regarding excessive alcohol consumption at her PSI, the individual continued to drink to the point of blacking out. 3/ She recalled that her most recent blackout occurred in early April 2011. *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). 4/ After due deliberation, I have determined that the individual's access authorization should not be granted. I cannot find that granting the individual's 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. The Diagnosis of Alcohol Dependence**

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3/ During the hearing, the individual asserted that she disagrees with a number of factual statements made during her March 2011 PSI. She asserted that the quantity of alcohol she consumed was taken out of context, and further that the amounts stated were not actual amounts, but were estimates of the amounts she drank. *Id.* at 68.

4/ 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.

The DOE psychiatrist explained in detail in the Psychiatric Report and at the hearing how the individual met the diagnostic criteria set forth in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> Edition, Text Revision (DSM-IV-TR) for Alcohol Dependence. DOE Exh. 6, Transcript of Hearing (Tr.) at 94-99. After the hearing, the individual submitted a psychological report prepared by her treating psychologist, who provides her with cognitive behavioral therapy, to challenge the DOE psychiatrist's diagnosis. According to her report, the treating psychologist diagnosed the individual with Alcohol Abuse. The treating psychologist has treated the individual for two periods of treatment, the first period from October 2003 through February 2005 and the second period from November 2011 through the present on a weekly basis. However, she was unavailable to testify at the hearing regarding her diagnosis of Alcohol Abuse.

## **B. Evidence of Rehabilitation and Reformation from Alcohol Dependence**

During the hearing, the individual disputed the DOE psychiatrist's diagnosis of Alcohol Dependence and testified that she is currently undergoing cognitive behavioral therapy once a week with her treating psychologist. Tr. at 55 and 65. She testified that she began seeing her psychologist as an adolescent to address social issues of dependency, peer pressure and poor judgment as well as issues related to her experimentation and/or use of alcohol and illegal substances. *Id.* at 56. The individual further testified that she had not received therapy for a period of about five years before resuming therapy in November 2011. *Id.* According to the individual, her psychologist is aware that she still drinks alcohol and has diagnosed her with Alcohol Abuse. *Id.*

The individual testified that she has changed her drinking habits in the last six months, decreasing the quantity. *Id.* at 58. She stated that she currently only drinks two beers two nights per week and stopped drinking whiskey about two months ago. *Id.* The individual further testified that she does not drink alone and no longer has a roommate to encourage her to drink. *Id.* at 60. She has also changed her friends and associates. *Id.* According to the individual, her "old group of friends" often bought her drinks at bars which contributed to her drinking. *Id.* The individual stated that she now has a heavy college course load and no longer has a great deal of time to socialize. She stated that she has not visited a bar in about two weeks and stated that the last time she was intoxicated was about two months ago. Later, during the hearing, the individual clarified that she last consumed alcohol, two beers, about three days prior to the hearing at a bar. *Id.* at 78. She testified that the last time she had a blackout was in April 2011, as she reported to the DOE psychiatrist. Her future intentions are to not drink in excess, abstain from "hard" liquor and to continue meeting with her treating psychologist. *Id.*

In her report, the treating psychologist noted that, in her November 2011 evaluation, the individual "presented with the same social dilemmas she exhibited in 2005." *Indiv. Exh. H.* She further noted that the individual "indicated that she drinks 2 shots and 2 beers weekly at a bar with some of the same friends with whom she socialized in high school" and "continues to rely on alcohol to enjoy interactions with friends." *Id.* These observations contradict the individual's testimony that she currently only drinks two beers two nights per week and socializes with a new group of friends. In her Report, the treating psychologist indicated that she had no further information regarding the individual's quantity of alcohol consumption and thus could not make any comments regarding the

status of her alcohol consumption. She reiterated that the individual currently abuses alcohol, but that “alcohol abuse is secondary to the underlying anxiety and dependence that she has on other people.” *Id.* The treating psychologist noted that long term psychotherapy is necessary for the individual to understand “the dynamics that are maintaining her need to drink in order to engage in social relationships” and suggested a one-year period of sobriety for the individual. *Id.*

During the hearing, the individual offered testimony by three witnesses, including her supervisor, a colleague and a friend. Both the supervisor and colleague testified that they have attended a number of conferences with the individual and that they have never observed her abusing alcohol or becoming intoxicated. *Id.* at 15 and 40. Both testified that the individual has a good worth ethic, is a good performer and has matured. *Id.* at 13, 37 and 41. The individual’s friend, who has attended high school with the individual and has known the individual for about four years, testified that he has observed a change in the individual’s behavior in the past six months and is aware that she is drinking less, has new associates and has matured. *Id.* at 23 and 24. He further testified that he socializes with the individual about two to three times a week, and stated that the individual last consumed alcohol about a week ago at her brother’s birthday. *Id.* at 27. He indicated that the individual had a couple of beers on this occasion. *Id.*

The DOE psychiatrist listened to all the testimony at the hearing before testifying himself. He commented that it is encouraging that the individual is beginning to have some appreciation for whether alcohol might be a problem in her life. *Id.* at 100. He also commented that it was positive that the individual is beginning to shift her relationships to curtail her drinking. *Id.* at 101. He reaffirmed his opinion that he provided in his Report that the individual meets the diagnosis of Alcohol Dependence and needs either a structured inpatient or outpatient treatment program. *Id.* The individual must, according to the DOE psychiatrist, remain abstinent from alcohol for one year in order to demonstrate adequate evidence of rehabilitation or reformation. *Id.* at 111.

### **C. Hearing Officer’s Evaluation of the Evidence**

In the administrative process, Hearing Officers accord deference to the expert opinions of psychiatrists, psychologists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing, Case No. TSO-0728 (2009).* <sup>5/</sup> Regarding rehabilitation, I gave considerable weight to the opinion of the DOE psychiatrist, who opined that the individual is just beginning to have the motivation and insight that she has a problem with alcohol and should achieve at least one year of abstinence to be considered adequately rehabilitated. Moreover, from a common-sense perspective, various factors militate against granting the individual’s access authorization. Although the individual has stated that she has greatly matured, has decreased her drinking and claims to have a new group of associates and friends, it is clear that the individual is only in the early stages of recognizing that she has a problem with alcohol and has not yet grasped the severity of her problem. She is still consuming alcohol, although reduced, on a

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<sup>5/</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>.

regular basis. Even the individual's treating psychologist, who diagnosed her with Alcohol Abuse, stated in her report the need to address the severity of the individual's alcohol problems as well as suggesting that the individual maintain at least one year of sobriety. As of the date of the hearing, the individual had not yet abstained from alcohol for longer than two weeks nor has she participated in any form of alcohol treatment. The individual has not yet demonstrated a commitment to treatment nor has she yet established a pattern of responsible use. *See Adjudicative Guidelines* at Guideline G ¶ 23(b). Based on the foregoing, I find that the individual has not demonstrated adequate evidence of rehabilitation or reformation at this time. For this reason, I find that she has not mitigated the security concerns under Criteria H and J.

#### **D. Criterion L**

With respect to the Criterion L security concerns which relate to the individual's underage drinking, I believe these concerns are inextricably intertwined with the judgment and reliability concerns found in Criteria H and J. After considering the "whole person," I am not convinced that the DOE can rely on the individual's ability to make sound judgment calls regarding the safeguarding of classified information. *See Adjudicative Guidelines* at ¶ (2)a. I therefore cannot find that the individual has sufficiently mitigated the LSO's concerns under Criterion L at this time.

#### **F. 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, J and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the individual has not brought forth convincing evidence to mitigate the security concerns associated with Criteria H, J and L. I therefore cannot find that granting 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 granted. 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  
Hearing Officer  
Office of Hearings and Appeals

Date: January 12, 2012