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

In the Matter of:	Personnel Security Hearing	)	
		)	
Filing Date:	October 28, 2011	)	
		)	Case No.: PSH-11-0013
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Issued : February 3, 2012

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**Hearing Officer Decision**

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William M. Schwartz, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the individual) to hold an access authorization (also called a security clearance) under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1</sup> For the reasons set forth below, I conclude that the individual's access authorization should not be restored.<sup>2</sup>

**I. BACKGROUND**

The individual works for a Department of Energy (DOE) contractor and holds a DOE access authorization, now in suspension. In June of 2011, the individual informed his contractor, which in turn informed the local DOE security office (LSO), that the individual had admitted himself into, and completed, an alcohol treatment program. Exhibit 8. The LSO summoned the individual for an

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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.

<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (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>.

interview with a personnel security specialist on July 18, 2011. Exhibit 10 (Transcript of Personnel Security Interview). After this Personnel Security Interview (PSI), the LSO referred the individual to a local psychiatrist (DOE psychiatrist) for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report, setting forth the results of that evaluation, and sent it to the LSO. Exhibit 7. Based on this report and the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. The LSO informed the individual of this determination in a Notification Letter that set forth the DOE's security concerns and the reasons for those concerns. Exhibit 1. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to OHA, and I was appointed the Hearing Officer. The DOE counsel introduced 10 exhibits into the record of this proceeding. At the hearing, the DOE counsel presented the testimony of the DOE psychiatrist and individual presented the testimony of seven witnesses, in addition to his own testimony.

## **II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS**

### **A. The Individual's Alcohol Use and Related Incidents**

The following information was obtained from the individual's PSI and the DOE psychiatrist's report, and is generally not disputed by the individual. The individual began drinking alcohol as a college student. Exhibit 7 at 3. At first he drank two to three beers on weekends, and later drank similar amounts on a daily basis. *Id.* After he was married with children, in December 1991, he was arrested for Driving Under the Influences of Alcohol (DUI), but the charges were dismissed after the blood alcohol tests were negative. *Id.* at 4; Exhibit 9. In 2000 or 2001, around age 50, the individual's alcohol consumption increased again. He was then drinking vodka primarily, and his intake increased to four to six mixed drinks every evening. Exhibit 10 at 34. In late 2009, his consumption increased again, to seven to eight drinks daily. *Id.* at 35. His custom was to drink after work while he smoked his pipe and read the paper in the garage. He did not hide the fact that he drank alcohol from his wife, but he did hide the amount he drank from her. *Id.* at 39-42. Routine blood work at about that time indicated that his liver enzymes were elevated, and his doctor suggested that he cut down on his drinking. *Id.* at 42-43. He stopped drinking from January to September 2010, voluntarily and without any medical or therapeutic assistance. *Id.* at 43-44. In September 2010, the individual believed he was in control of his alcohol, decided he could drink moderately again, but relapsed. *Id.* at 44. Within a few weeks of his first drink, he was consuming alcohol in the same amounts as he had before he stopped. *Id.* at 44-45. By the beginning of 2011, he was drinking 750 milliliters of vodka on most, if not all, weekends. *Id.* at 51. By April 2011, he was drinking that much on a daily basis. Exhibit 7 at 5.

On May 3, 2011, after consuming an unknown amount of alcohol, the individual fell down a few stairs in his home and hit his head. Exhibit 10 at 12. He stayed home from work on vacation leave and continued to drink alcohol. Exhibit 7 at 5 (last drink reported to be on May 11, 2011). Nine days later, he recognized he was drinking excessively and could not control his drinking on his own, and admitted himself voluntarily into the hospital for treatment of his alcohol problem and his head injury. Exhibit 10 at 10-11. After a week, he was released from the hospital and checked himself into a substance abuse treatment center for an additional 21 days of inpatient treatment. *Id.* at 13.

He began attending Alcoholics Anonymous (AA) meetings on a daily basis while at the treatment center and continues to do so. *Id.* at 14, 82.

On August 22, 2011, the DOE psychiatrist evaluated the individual. He concluded that the individual meets the criteria for alcohol dependence, in early full remission, as set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association*, 4<sup>th</sup> Edition, Text Revised (DSM-IV-TR), without adequate evidence of rehabilitation or reformation. He also stated that the individual's illness, alcohol dependence, causes or may cause a significant defect in judgment or reliability. Exhibit 10 at 14-16.

## **B. The Notification Letter**

Much of the information set forth in the preceding sections is cited in the Notification Letter, as it creates a substantial doubt as to the individual's eligibility to hold a clearance. The information regarding the individual's alcohol use pertains to paragraphs (h) and (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Under Criterion H, derogatory information that may raise a security concern is defined as “[a]n illness or mental condition which, in the opinion of a psychiatrist . . . causes or may cause a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Under Criterion J, information is derogatory if it indicates that the 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).

As support for the LSO's concerns under Criteria H and J, the letter cites the diagnosis of the DOE psychiatrist that the individual suffers from alcohol dependence. Exhibit 1. The letter further cites the individual's admissions during the PSI that he drank four to six vodka drinks daily from 2001 until May 11, 2011, and that he continued to drink alcohol despite his doctor's advice to cut back and his wife's expressions of concern about his consumption. Finally, the letter cites the individual's 1991 DUI arrest. *Id.*

## **C. The DOE's Security Concerns**

The derogatory information regarding the individual's alcohol consumption adequately justifies the DOE's invocation of Criteria H and J, and raises significant security concerns. Excessive alcohol consumption such as that exhibited by the individual often leads to the exercise of questionable judgment or the failure to control impulses, and can therefore raise questions about an individual's reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 19, 2005) (Adjudicative Guidelines), at Guidelines G and I.

## **III. REGULATORY STANDARDS**

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether granting the individual's security

clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring 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). *See Personnel Security Hearing*, Case No. VSO-0013 (1995) (*affirmed* by OSA, 1996). The regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

#### **IV. FINDINGS OF FACT AND ANALYSIS**

In the present case, the individual has taken important steps toward recovery from alcohol dependence. However, while these steps mitigate to some degree the concerns in this case, I conclude, for the reasons set forth below that, at this point in the individual's recovery, the risk of recurrence of the individual's excessive use of alcohol is not yet low enough to warrant restoring his security clearance.

In his evaluative report, the DOE psychiatrist found that, based on his interview with the individual, the results of tests he administered to the individual, and information contained in the individual's DOE personnel security file, the individual met the DSM-IV-TR criteria for alcohol dependence, in early full remission (successfully abstinent for less than one year). The DSM-IV-TR states that a diagnosis of alcohol dependence is indicated if three or more of seven specified circumstances have occurred within a 12-month period. DSM-IV-TR 303.90, Alcohol Dependence. The DOE psychiatrist found that the individual met all seven of those circumstances set forth in the DSM-IV-TR. Exhibit 7 at 10. He found the individual had a pattern of alcohol tolerance (Criterion 1), had suffered from withdrawal symptoms when he stopped drinking in January 2010 (Criterion 2), and had drunk alcohol in larger amounts or over longer periods than he intended (Criterion 3). *Id.* He reported ten to 20 unsuccessful efforts to control alcohol use, including the nine-month period of sobriety in 2010 (Criterion 4). *Id.* at 5. He also found that the individual had spent excessive time obtaining, using or recovering from alcohol use (Criterion 5) and that important social, occupational, or recreational activities were given up or reduced due to alcohol use (Criterion 6). *Id.* at 10. Finally, he stated that the individual had continued to drink to excess after his doctor advised him of the adverse effect of his drinking on his liver function and after he seriously injured his head while intoxicated (Criterion 7). *Id.* The DOE psychiatrist concluded that the individual was not yet rehabilitated or reformed from his alcohol dependence. Adequate evidence of rehabilitation, in his opinion, would require either (a) 150 hours of AA meetings, with a sponsor, for a minimum of one year, followed by an additional year of abstinence from alcohol or (b) 50 hours of a professionally led alcohol abuse treatment program for six months, followed by an additional 18 months of

abstinence. Adequate evidence of reformation in the absence of either or both rehabilitation requirements would be three years of absolute abstinence from alcohol. *Id.* at 11.

At the hearing, the individual and his witnesses provided facts and insights regarding his use of alcohol and its effect on his work and personal life. Six of the individual's witnesses were co-workers and supervisors, who have worked alongside the individual for between nine and 29 years. Some work with him on a daily basis. Transcript of Hearing (Tr.) at 66, 73. The others work with him intensively on special projects from time to time. *Id.* at 39, 47, 52, 59-60. Some of them eat lunch with him every day at work. *Id.* at 46, 52. One has also been his neighbor for the past 18 years. *Id.* at 38. Although two of the witnesses testified that each had seen the individual drink a beer in a social setting on one occasion, all six were surprised to learn that he had a problem with alcohol. *Id.* at 40, 49, 55, 62, 69, 75. On the contrary, all of these witnesses stated that they held no doubts or reservations about the individual's judgment or reliability, and uniformly praised his technical and interpersonal skills. *Id.* at 40, 47, 53, 62, 68, 75.

The individual's AA sponsor also testified at the hearing. He stated that he became the individual's sponsor while the individual was still an inpatient at the treatment center. *Id.* at 16. He verified that the individual attends an AA meeting every day, barring days when he is traveling or otherwise unavailable, and participates actively. *Id.* at 16, 22. They speak to each other on a daily basis. *Id.* at 16. He reported that the individual had suffered one relapse since he began AA, on October 15 and 16, 2011. The individual started drinking without calling his sponsor first. The individual's wife reported the relapse to the sponsor, but the individual reported it himself on October 17, by which time he had stopped drinking and had resolved to resume abstinence. *Id.* at 17-18. As a result of this relapse, AA now recognizes the individual's sobriety date as October 17, 2011. *Id.* at 23. The sponsor believes the individual is sincere in his desire to remain sober. *Id.* at 18. He also finds the individual to be honest, and feels that his acknowledgment of his relapse demonstrates this quality. *Id.* at 18, 29-30. Finally, he does not view the relapse as dangerous development, because the individual told him that it gave him no pleasure. *Id.* at 27.

At the hearing, the individual offered additional information and insight into his alcohol history. He agrees with the DOE psychiatrist's diagnosis of alcohol dependence. *Id.* at 93. He disagrees with some statements in the Notification Letter, in that he maintains that he did in fact take heed of both his doctor's advice and his wife's concerns about his drinking, and that they contributed to his decisions to be sober, both in 2010 and in 2011. *Id.* at 80-81.<sup>3</sup> He addressed in particular detail his involvement with AA and his two-day relapse in October 2011. He has learned through AA that alcohol dependence is a disease, that he will struggle with it for the rest of his life, but that he is committed to abstaining from alcohol with the support of the program. *Id.* at 83, 97. He stated that he has a good relationship with his mentor, and finds that the mentor's personality is a helpful counter to his own. *Id.* at 95. He testified that he has attended AA on a daily basis with the exception of about six days due to travel. *Id.* at 84. He appreciates the honesty of his AA group. *Id.* Aside from working the Twelve Steps, he is reaching out to others by returning to his local hospital to run an AA meeting with his group on Friday evenings at its detoxification program. *Id.* at 85. As

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<sup>3</sup> The individual also corrected erroneous information contained in Exhibit 3, a Case Evaluation Sheet of the LSO, alleging that he "[f]ailed to abstain from alcohol after treatment in May 2011. Within a month of release continued to drink seven to eight drinks nightly." The individual did in fact abstain after May 2011, notwithstanding his October 2011 relapse, as is supported by the evidence on record, including other LSO exhibits. *Id.* at 115-18.

for his relapse in October, he pointed out that he had been sober for 160 days before the relapse, and was now sober for 60 days since then. *Id.* at 86. He could not explain why he decided to purchase and drink alcohol, nor why he had not called his sponsor for help at the time, though he had done so at least once before. *Id.* at 86, 91-92, 96. Responding to questions from the DOE psychiatrist, the individual acknowledged that he may have relapsed because he had received the psychiatrist's evaluative report, which suggested that he would need to demonstrate two years of abstinence, a physical impossibility given the time limits imposed by the administrative review procedures. *Id.* at 101. He also admitted to the DOE psychiatrist that he may not have called his sponsor before the relapse because he "wanted that drink," and did not want to be talked out of drinking. *Id.* at 103. He testified that the relapse taught him that he no longer enjoyed drinking, that he "disliked every moment of the relapse," particularly because he now feels accountable to his wife, his sponsor, his AA group, and himself. *Id.* at 86, 104.

After hearing all the testimony at the hearing, the DOE psychiatrist reformulated his opinion of the individual's alcohol problem. He maintained that his earlier diagnosis remained correct: that the individual is alcohol dependent, still in early full remission because he has not yet achieved a full year of abstinence, regardless of the relapse in October 2011. *Id.* at 122. He clarified that, while alcohol dependence is an illness that causes or may cause a significant defect in judgment or reliability, in the individual's case, the concern for his judgment or reliability is restricted to those times when he is intoxicated. *Id.* at 125. He testified that the treatment and insight the individual was receiving through AA was very good, and could be improved only through more serious dialogue with his mentor, particularly concerning his two-day relapse in October 2011. *Id.* at 121, 123. That said, the DOE psychiatrist deemed the relapse disappointing but not unexpected. *Id.* at 120. While he expressed concern that the individual had not sought help from his mentor (or from a mental health professional if he was depressed over the futility of his situation), he also pointed out many positive factors of the relapse: it was short-lived, the amount of alcohol consumed was relatively little and, most important, the individual seemed to have learned a great deal from the experience. *Id.* at 121-22, 124, 128, 130. Overall, he did not consider the relapse a "deal breaker," but rather contended that the individual is now at lower risk of relapse than he was before the relapse. *Id.* at 124, 128. He expressed his opinion that the individual's risk of relapse is now low considering his embracing of AA and his negative response to his October 2010 relapse, particularly by comparison to his relapse in September 2010, when he thought he was in control of his alcohol consumption. *Id.* at 129. Given the individual's support system of job, family, sponsor and AA group, the DOE psychiatrist stated that he has "a good chance of remaining sober at this point," and that adequate evidence of rehabilitation "will be attained at the two-year mark." *Id.* at 125.

I note an internal inconsistency in the DOE psychiatrist's testimony. The bulk of the DOE psychiatrist's statements clearly indicate that he believes the individual will be successful in maintaining his sobriety into the future, despite his past relapses. On the other hand, he would not state that the individual had demonstrated adequate evidence of rehabilitation at the time of the hearing, but rather that the individual would satisfy that requirement after two years of sobriety. To the extent that this opinion indicates reservation on the part of the DOE psychiatrist, I would be hard pressed to conclude that the individual has successfully mitigated the LSO's concerns with respect to his alcohol dependence, as discussed in detail below, in light of the frequency and recency of his alcohol-dependent behavior, his short period of abstinence, and his relapses (particularly the most recent one). Adjudicative Guidelines at Guideline G, ¶ 23(a), (b), (c).

Even if I accept the DOE psychiatrist's prognosis as generally favorable to the individual, I am not convinced that the risk of a relapse by the individual is low enough at this time to warrant restoring his access authorization. I do not downplay the great strides the individual has made in recognizing his alcohol dependence, its consequences, and the benefit of treatment. He is clearly on a good path, and may well be able to maintain his sobriety into the foreseeable future. My concern, however, is that the individual has been abstinent with the assistance of AA for a relatively short period. Moreover, he suffered a relapse only two months before the hearing, even with the benefits of AA, and has an extensive history of abstinence and relapse.

First, while OHA hearing officers generally accord deference to the opinion of mental health professionals regarding the issue of rehabilitation and reformation, *see, e.g., Personnel Security Hearing*, Case No. TSO-1057 (2011), whether evidence of rehabilitation and reformation is adequate to warrant granting a security clearance is a determination "to be made by DOE officials, including the hearing officer, not by a consultant psychiatrist." *Personnel Security Hearing*, Case No. PSH-11-0003 (2012) (citing 10 C.F.R. 710.7(c) ("question concerning an individual's eligibility for access authorization" is to be decided by "DOE officials involved in the decision-making process. . . .")); *see also Personnel Security Hearing*, Case No. TSO-0803 (2010) (hearing officer "need not accord deference to [DOE consultant psychiatrist's] opinion as to what level of risk is acceptable in order to grant or restore a security clearance").

Second, I must view expert testimony in the context of all of the factors I am required, under the regulations and the Adjudicative Guidelines, to consider in reaching my decision. 10 C.F.R. § 710.7(c); *Adjudicative Guidelines* at ¶ 2(a). Consistent with the "whole-person" concept set forth in the Adjudicative Guidelines, both the Guidelines and the Part 710 regulations require me to consider "the nature, extent, and seriousness of the individual's conduct" and "the frequency and recency of the conduct," factors particularly relevant to the present case. *Id.* In this regard, I note that the individual's diagnosis is that of alcohol dependence, a serious and potentially lethal illness that is notoriously difficult to treat, as evidenced by his numerous attempts to stop drinking before he acknowledged his inability to control the disease and his recent relapse following detoxification and a five-month period of abstinence with the support of AA. As for the frequency and recency of his excessive alcohol use, the individual acknowledged consuming nearly a fifth of vodka on a daily basis as recently as seven months before the hearing. Exhibit 7 at 5.

Finally, while no one factor is by itself dispositive, the recency of the problematic behavior in this case gives, in my opinion, particular cause for concern as to the risk of relapse. Under the Adjudicative Guidelines, included among the conditions that could mitigate a security concern arising from excessive alcohol use are whether "so much time has passed" that the behavior "is unlikely to recur," and whether the individual "has established a pattern" of abstinence or responsible use. *Adjudicative Guidelines* at Guideline G, ¶ 23(a), (b). With this in mind, I commend the individual for the steps he has taken since his hospitalization in May 2011 and his relapse in October 2011. Nevertheless, I believe that it would defy common sense to find that, after a ten-year history of consuming at least four vodka drinks on a daily basis—even acknowledging periods of abstinence—two months constitutes an established pattern of abstinence. *See* 10 C.F.R. § 710.7(a) ("decision as to access authorization is a comprehensive, common-sense judgment"); *Personnel Security Hearing*, Case No. TSO-1079 (2011) (six months of abstinence found not to constitute adequate evidence of rehabilitation or reformation from alcohol dependence, despite favorable prognosis of DOE consultant psychologist).

Thus, based upon my review of the entire record, I am not convinced that there is adequate evidence of rehabilitation and reformation in this case, such that the security concern raised under Criterion J has been resolved. Furthermore, because the Criterion H security concern relating to the individual's judgment or reliability stems from his alcohol dependence, the concern raised under that criterion has also not been resolved.

## **V. CONCLUSION**

For the reasons set forth above, I conclude that the individual has not sufficiently resolved the DOE's security concerns under Criteria H and J, and therefore has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

William M. Schwartz  
Hearing Officer  
Office of Hearings and Appeals

Date: February 3, 2012