* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

United States Department of Energy
Office of Hearings and Appeals

In the Matter of:	Personnel Security Hearing	)
		)
Filing Date:	May 23, 2012	)
		) Case No.: PSH-12-0063
		)

Issued : October 26 , 2012

Hearing Officer Decision

William M. Schwartz, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 and the Adjudicative Guidelines, I have determined that the individual's access authorization should not be restored.

I. Background

The individual has worked for a DOE contractor for 22 years in a position that requires him to maintain a DOE security clearance. During the course of his employment, the Local Security Office (LSO) has conducted 19 personnel security interviews with the individual to discuss, among other things, the individual's excessive alcohol consumption, his alcohol-related treatment, his multiple arrests, and his finances. *See* Exhibits (Ex.) 5, 13, 18, 19, 21, 22, 28, 34, 35, 37, 39, 41, 46, 49, 51, 52, 53, 71, and 74.

In May 9, 2012, the LSO sent a letter (Notification Letter) to the individual advising him that it possessed reliable information that created a substantial doubt regarding his

[1] Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

eligibility to hold a security clearance. 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, subsections (h), (j), and (l) (hereinafter referred to as Criteria H, J, and L).[2]

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing, and I was appointed the Hearing Officer in the case. At the two-day hearing that I conducted, ten witnesses testified. The LSO called five witnesses and the individual presented his own testimony and that of four witnesses. In addition to the testimonial evidence, the LSO submitted 97 exhibits into the record; the individual tendered 15 exhibits, a few with multiple attachments. 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.

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"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward 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

[2] Criterion H concerns information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or a 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). Criterion L concerns 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. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, … or a violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility." 10 C.F.R. § 710.8 (l).

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 eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites three criteria as the bases for suspending the individual's security clearance, Criteria H, J and L. With regard to Criterion H, the LSO relies on the opinion of a DOE consultant psychiatrist (DOE psychiatrist) who determined that the individual (1) has a history of "Alcohol Abuse/Dependence," and that these are conditions which "cause problems with judgment and reliability;" (2) was treated in 1995 and in 2007 for alcohol-related concerns; (3) has not been truthful or forthcoming in the past with the DOE about his alcohol use, and has not honored commitments to the DOE with regard to alcohol, both of which call into question the individual's judgment and reliability; (4) was told in 1995 by a psychiatrist that even drinking to moderation would cause problems in his judgment and reliability, yet he chose to drink for a number of years after 1995; and (5) is at risk of drinking again because the DOE psychiatrist did not find him to be truthful or forthcoming in his 2012 evaluation with him.

As an initial matter, I find, based on the allegations contained in the Notification Letter or the documents cited to support the Criterion H concerns, that the LSO did not properly invoke Criterion H in this case. Instead, I find that the matters should more appropriately be considered under Criterion J.[3] As noted in footnote 2, *supra*, Criterion H requires an opinion from a psychiatrist or licensed clinical psychologist that a person has a mental illness or condition which causes or may cause a *significant* defect in judgment and reliability (emphasis added). Nowhere in the DOE psychiatrist's evaluative report (Ex. 3), which the LSO cites to support Criterion H, does the DOE psychiatrist state that the individual's past diagnoses of alcohol dependence and alcohol abuse rise to the level of a *significant* defect in judgment and reliability. He merely states that these past conditions may cause defects in judgment and reliability. The distinction here is an important one, not merely semantic. Moreover, LSO cites Guideline I: Psychological Conditions 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

[3] I find that the individual is not prejudiced by my analyzing these allegations at issue under Criterion J, and not Criterion H, as the Notification Letter provided him ample notice of its alcohol-related concerns in this case, including among them the DOE psychiatrist's evaluation.

Security Affairs, The White House (Adjudicative Guidelines), to support the allegation under Criterion H. That Guideline states in relevant part that a condition "could raise a security concern and may disqualify" a person if a "behavior casts doubt on an individual's judgment, reliability, or trustworthiness *that is not covered under any other guideline"* (emphasis added). Since there is another guideline that covers the individual's alcohol consumption, *i.e.*, Guideline G which corresponds to Criterion J, further support is lent to my decision to analyze the alcohol-related issues in this case only under Criterion J, and the corresponding Guideline G.

As for Criterion J, the LSO cites 16 paragraphs of information, the most pertinent of which are as follows: (1) in 1995, the individual received alcohol treatment requiring one week of hospitalization for detoxification, seven days of in-patient treatment, and four weeks of partial treatment six days a week, followed by some form of treatment that included his attendance at Alcoholics Anonymous (AA); (2) the individual admitted that he consumed alcohol in violation of the terms of his 1995 alcohol treatment program; (3) he continued drinking in 1996 after receiving a diagnosis of Alcohol Dependence or Abuse; (3) he consumed alcohol after completing a 2007 alcohol treatment program; (4) he was arrested for Driving Under the Influence (DUI) after his 1996 diagnosis of alcohol dependency or abuse[4]; and (5) a Substance Abuse Treatment Center diagnosed him as suffering from "Alcohol Dependence, inactive status" in January 2009.

I find that there is ample information in the Notification Letter to support the LSO's reliance on Criterion J, including the individual's past excessive alcohol use, the individual's past treatment for alcohol, the individual's past alcohol-related psychiatric diagnoses, and incidents demonstrating the negative impact that alcohol has had on the individual's judgment and reliability. The excessive consumption of alcohol 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* Adjudicative Guidelines at Guideline G.

Finally, the LSO cites information in three categories to support its Criterion L charges: criminal conduct, a history of delinquent debts dating back to 1994, and a lengthy history of failing to honor his commitments to the DOE. As explained below, I find that the LSO properly relied on Criterion L in this case.

First, with regard to the criminal charges, the LSO lists 12 arrests, incidents or charges, including four arrests for DUI. Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness and by its very nature calls into question a person's ability or willingness to comply with laws, rules and regulations. *See* Adjudicative Guidelines at Guideline J.

[4] The LSO incorrectly cites the individual's DUI arrests in 1993 and 1995 to support its allegation that the individual continued to drink after his 1996 alcohol diagnosis. Clearly, the DUI charges that pre-dated the individual's 1996 diagnosis cannot stand for the proposition for which they are cited in Paragraph II.P of the Notification Letter.

Second, to support its concern about the individual's finances, the LSO cites 14 credit reports between 1994 and 2011 showing that the individual had delinquent debts ranging from a low of $1,083 to a high of $5,187. The individual's failure to live within his means, to satisfy his debts and meet his financial obligations raises a security concern under Criterion L because his actions may indicate "poor self-control, lack of judgment, or unwillingness to abide by rules and regulations," all of which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information. *See* Adjudicative Guidelines at Guideline F. Moreover, a person who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.*

Third, the LSO cites 15 paragraphs in which it outlines broken promises that the individual made to the DOE, and other behavior that calls into question the individual's trustworthiness and reliability. The violation of multiple commitments made by the individual to the LSO raises concerns whether the individual can be trusted to protect classified information, or whether he will pick and choose which security rules to follow with respect to safeguarding classified information. *See* Adjudicative Guidelines at Guideline E.

IV. Findings of Fact

A. Criterion J

The individual has consumed alcohol in social settings and at home since at least 1988. He was arrested, and pled guilty, to Driving Under the Influence of Alcohol (DUI) in 1989, 1993, and 1995. Tr. at 277-79. Following the 1995 conviction, the individual recognized he had a problem with alcohol, and voluntarily enrolled in treatment. The treatment lasted for a year, starting with an inpatient stay in a hospital and transitioning to periodic outpatient sessions and AA attendance. *Id.* at 279-81. During that year, he abstained from all alcohol. *Id.* at 282. He then resumed drinking beer and wine, in smaller amounts than before his treatment. *Id.* at 284, 379-80.

After the 1995 DUI, the individual had no alcohol-related legal events until the evening of December 23, 2006, when he was again arrested for DUI. The individual admitted that he had consumed two 22-ounce beers that morning. *Id.* at 406. Believing that he was not intoxicated at the time of the arrest, he pled innocent and hired a lawyer, but changed his plea to guilty after his income was reduced due to a lay-off or termination in June 2007.[5] *Id.* at 306-08. A post-sentencing evaluation reduced his sentence to community service and a fine. *Id.* at 311.

Following the 2006 arrest, the individual's employer required him to enter into a rehabilitation agreement. He complied with the terms of the agreement until the lay-off, at which time he continued to attend AA, but could not attend the required classes as his insurance no longer covered them. *Id.* at 326, 330-31. After he was reinstated to his position in December 2008, a new, two-year rehabilitation agreement was drafted. *Id.* at 334; Ex. L. A treatment provider evaluated the individual in 2009, diagnosed him as

[5] Though the individual and his employer do not agree upon the nature of the individual's departure from the workplace, for the purposes of this decision, I will refer to the event as a lay-off.

alcohol dependent in inactive status, and found that he did not qualify for formal treatment. Ex. 11. Instead, his employer required him to undergo random testing, to meet with an Employee Assistance Program (EAP) specialist twice a month, and to meet with the site medical director once a month for the first year of the agreement and quarterly thereafter. *Id.* at 334. After about a year, the acting medical director determined that the individual had complied with the agreement and could be released from it. *Id.* at 153-54. The individual continued attending AA one to three times a month into 2010. *Id.* at 341-42.

The DOE psychiatrist evaluated the individual in January 2012. In his evaluative report, he wrote that the individual had received treatment after his two DUI arrests, in 1995 and 2006, and had told him that he had not consumed alcohol since 2007. He reported that a psychiatrist had given the individual a diagnosis of alcohol abuse in 1995, at which time he was told he should not resume drinking. A psychologist evaluated the individual in 2007 and felt that he should be treated for alcohol dependence. A third evaluation in 2008 yielded a diagnosis of alcohol abuse. Finally, in 2009, the director of a treatment facility diagnosed the individual with alcohol dependence, inactive status. The DOE psychiatrist also reported that the laboratory tests were negative for alcohol, and that psychological testing revealed no serious psychological problems. He stated that the individual has "a history of Alcohol Abuse/Dependence 305.00/303.90." Ex. 3 at 4. He noted that the individual has a history of not being truthful or forthcoming to the DOE about, among other things, his past alcohol use. This raised concerns for the DOE psychiatrist about the individual's judgment and reliability, despite the individual's current claim of abstinence. He concluded that the individual "is at risk of repeating drinking and not being truthful or forthcoming." *Id.*

At the hearing, the DOE psychiatrist focused on the individual's failure to provide consistent information to the DOE. He stated that the individual told him he was abstinent from 1995 to 2000, yet had told the DOE he had been drinking during part of that period. Tr. at 50. He believed the individual had been drinking while he was in an aftercare program in 1996, because he had told the DOE in November 1996 he had consumed some wine or champagne at functions; however, in May 1997 he told the DOE that he had been abstinent for two years. *Id.* at 52. He also found that the individual's reporting of what he had consumed before each of his DUIs had varied over the years. *Id.* He considered the individual's responses regarding whether he had completed his post-1995 treatment to be evasive. *Id.* at 53-54. In addition, he determined that the individual's past history of financial problems and a 2004 domestic incident at which he admitted lying demonstrated reliability issues. *Id.* at 94, 96. The individual's denial of past drug use was inconsistent with information the individual had given the LSO in the past, which the DOE psychiatrist saw as additional grounds for questioning the individual's truthfulness. *Id.* at 99-101.

The DOE psychiatrist explained his diagnosis more fully at the hearing. He stated that until about 1995, when the individual received his third DUI, the proper diagnosis was alcohol abuse. Thereafter, it was alcohol dependence. Learning his consumption amount and pattern, however, was difficult because he found the individual not to be truthful. *Id.* at 350-60. In his opinion, a security clearance holder with an alcohol problem should be abstinent. *Id.* at 62. Although the individual told him that he had

been abstinent since his 2006 DUI, the DOE psychiatrist stated at the hearing that he could not rely on the individual's claim, because he had not been truthful about his drinking between 1995 and 2000. *Id.* at 85-86. Consequently, the DOE psychiatrist concluded that the individual was at high risk of resuming alcohol consumption. *Id.* at 363.

B. Criterion L

1. Criminal Behavior

Although the Notification Letter listed 12 arrests spanning a 20-year period from 1986 to 2006, the LSO has addressed only five in this proceeding. The individual was arrested for, and pled guilty to, DUI in 1989, 1993, and 1995, as discussed in the above section. A record of seven other arrests, not discussed in this proceeding and not related to alcohol, demonstrate that all but two of the 12 arrests occurred before 1998.

In 2004, the individual was arrested for interfering with a 911 call. He and his ex-wife had a verbal dispute during which he threatened to leave the house and she threatened to call 911. *Id.* at 292. While he was packing his belongings, she handed him the phone and he hung up, not knowing that she had in fact called 911 and an operator had asked to speak to him. *Id.* When the phone rang, he answered and the voice asked to speak to his ex-wife, and he hung up again. *Id.* at 293. At some point, he spoke with 911 himself and explained that the children had been playing with the phone and must have hung up on 911. *Id.* at 297. Ultimately, the police arrived, and the officers spoke to him and his ex-wife separately. He admitted to the officers that it was he who had hung up on 911. *Id.* at 294.

On December 23, 2006, the individual was arrested at 11:45 p.m. for DUI and Failure to Maintain Lane. He has admitted on numerous occasions that he had consumed two 22-ounce beers during the morning of that day, but maintains that he drank no other alcohol on that day. *Id.* at 405-06. Nevertheless, an officer stopped him after observing erratic driving, had him take a field sobriety test, and brought him to the local jail for processing. *Id.* at 301-06. The charge was ultimately reduced to reckless driving, possibly due to the inferior quality of the video recording of the arrest, and his sentence included court-ordered substance abuse treatment. *Id.* at 211, 230.

2. Financial Irresponsibility

The Notification Letter lists 14 credit reports that the LSO obtained between 1994 and 2011. The LSO expressed to the individual its concern about his outstanding debts during its numerous PSIs with him, beginning in 1991, and he committed to satisfying his debts and living within his means. *See, e.g.*, Ex. 53 at 40; Tr. at 480. Nevertheless, each of the 14 credit reports shows delinquent debts ranging from more than $1000 to more than $5000. Exs. 6, 8, 14, 16, 23, 25, 26, 29, 32, 36, 38, 40, 44, 47.

Some delinquencies occurred while the individual was out of work due to injury or lay-off. For example, from November 2010 through June 2012, he was injured and not earning wages for periods totaling four months. He did, however, receive income during

those periods in the form of worker's compensation and short-term disability benefits. Tr. at 510-12. He was out of work due to the lay-off from June 2007 to December 2008, during which he received severance pay and unemployment benefits. *Id.* at 505-06, 515. The individual took a number of vacations with his ex-wife in 2000, 2002, 2003, and 2004. Ex. 83; Tr. at 486-88. Although the airfare and, in some cases, the accommodations were paid for by his ex-wife's employer, the individual and his ex-wife were responsible for the other costs of those trips, including food. *Id.* at 532-33. These trips occurred at times roughly contemporaneously with credit reports that indicated outstanding debts of between $1854 and $3298. Exs. 23, 25, 26, 29.

The individual does not have a budget, but testified that he knows what his monthly responsibilities are. Tr. at 545. He has relied "at times" on his full employment, including mandatory overtime hours, to meet those responsibilities. *Id.* at 546. He is not eligible to work those overtime hours, however, when he is injured or recuperating and performing administrative duties, nor when he does not have all the requisite certifications for his position. *Id.* at 549.

A recent credit report, dated August 21, 2012, indicates that the individual is currently meeting all his financial responsibilities, with one exception. He had formally disputed a $466 charge as not belonging to him. Ex. O. He satisfied all his existing debts in mid-2011 and has maintained that status, with this one exception since then. Tr. at 493.

3. Commitments

During several of the individual's numerous PSIs, he made verbal commitments to the interviewer, which were recorded and transcribed, and appear as portions of exhibits in the record. In a 1991 PSI, he committed to abiding by criminal laws, rules and regulations in the future. Ex. 53 at 24. On at least four occasions, at PSIs conducted in 1991, 1993, 1994, and 1995, he committed to controlling his alcohol usage and not abusing or misusing alcohol in the future. Ex. 18 at 25-26; Ex. 46 at 16-17 (committing to recognizing alcohol problem and seeking assistance); Ex. 49 at 23; Ex. 53 at 30. Finally, in 1993, 1996, and 1998, the individual committed to satisfying his financial obligations on time, living within his financial means, and generally being financially responsible. Ex. 35 at 15-16; *id.* at 55; Ex. 43 at 32-33; Ex. 49 at 18.

The LSO relied on the commitments the individual made to mitigate the security concerns that his arrests, alcohol use, and financial irresponsibility raised. As a result, the LSO continued his security clearance until 2012, despite the derogatory information about the individual. Tr. at 183 (testimony of personnel security specialist). The individual acknowledged, during a 1996 PSI, that he had given the LSO his word and that the LSO relies on his honesty, trustworthiness and reliability. Ex. 43 at 33. Moreover, during a 2001 PSI, he admitted that he had failed to keep many of his commitments. Ex. 5 at 67.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In

resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored. I cannot find that granting 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 J

A critical question regarding the individual's past history of alcohol consumption, abuse and dependence is whether the individual has abstained from all alcohol, as he claims, since December 2006. The individual is an unreliable reporter of his own history, whether by intention or by lack of ability. The LSO has demonstrated that the individual has provided inconsistent information regarding his history of alcohol consumption, as well as in other areas of questioning, in his many interviews. Concerning his use of alcohol since 2006, however, I find that the individual has consistently reported that he has not consumed any alcohol since December 2006. In its Notification Letter, the LSO contends that the individual provided inconsistent information on this matter: that he stated at his 2011 PSI that he had not consumed alcohol since completing his 2007 alcohol treatment program, yet during his 2007 PSI admitted he continued to drink after completing the treatment program. Ex. 1 at II.O. I have thoroughly reviewed the transcript of the 2007 PSI, and find it perfectly clear that the individual's admission in 2007 pertained to resuming alcohol consumption after his 1995 treatment program, not after his 2007 treatment program. Ex. 13 at 27. The record on which the LSO relied for this allegation of inconsistency simply does not support it.

In addition, the testimony of other witnesses supports a finding that the individual has not consumed alcohol since 2006. The site Employee Assistance Program counselor testified at the hearing. A licensed clinical social worker, she monitors compliance with rehabilitation agreements such as the individual's, seeing the participants frequently and receiving the results of random alcohol tests. Tr. at 107, 109, 115. The counselor testified that she saw the individual generally once every two weeks from December 2008 through at least September 2009, and had no reason to question his assertion of abstinence during that period. *Id.* at 125. In addition, the individual's wife testified. She does not drink alcohol, and she stated that the individual has never consumed alcohol in her presence. *Id.* at 164-65. They started dating in 2007, but did not see each other on a regular basis. They married, however, in June 2010, and do not keep alcohol in their home. *Id.* at 163-64. She further stated that she has never needed to discuss alcohol usage with her husband. *Id.* at 165.

After considering the entire record in this proceeding, including the testimony of the witnesses and the absence of any evidence to the contrary, I find that the individual has not consumed alcohol since December 2006. After hearing the relevant testimony, the DOE psychiatrist continued to maintain that the individual's inconsistent statements on other matters prevented him from discerning the individual's current involvement with alcohol. His opinion that the individual remains at risk for relapse is predicated on his stated inability to determine whether the individual continues to consume alcohol despite

his assertions of abstinence. I find that the record demonstrates otherwise. I therefore accord little weight to the DOE psychiatrist's opinion. While I agree that the individual is properly diagnosed as alcohol dependent, I nevertheless find that he has been abstinent for more than five years. From a common-sense viewpoint, five years of abstinence is a strong indicator that an individual is at low risk of resuming alcohol consumption. This conclusion also tracks the substance abuse treatment center director's impression in 2009, when he evaluated the individual as alcohol dependent in inactive status. *See* Ex. 11. Moreover, as the LSO has pointed out in its Notification Letter, the individual has acknowledged on several occasions that he has an alcohol problem, and though he resumed drinking alcohol a number of times after that realization, he eventually reached a point, in December 2006, when he decided to abstain. *See* Adjudicative Guidelines at Guideline G ¶ 23(a), (b). The individual has therefore mitigated the security concern that his former alcohol consumption raised.

B. Criterion L

Criterion L concerns unusual conduct that tends to show that the individual is not honest, reliable, or trustworthy. As stated above, the conduct that raised such concerns about the individual fell into three categories: criminal behavior, a pattern of financial irresponsibility, and violations of commitments upon which the DOE relied to favorably resolve issues about his eligibility for a security clearance. I address each category below.

1. Criminal Behavior

As discussed above, but for two arrests in 2004 and 2006, the individual's arrests all occurred before 1998, nearly 15 years ago. In addition, three of them were DUIs which, while serious, are unlikely to recur given the individual's five-year history of abstinence. *See* Adjudicative Guidelines at Guideline J ¶ 32(a). The 2004 and 2006 arrests, however, raise security concerns for reasons other than their comparative recency.

Following the 2004 incident, the individual admitted that he had lied to the 911 operator when he told her that his children had been playing with the phone and had hung up on 911. Though he ultimately admitted the truth, I find it disturbing that, in the heat of the situation, his instinct led him to fabricate when he felt his job might be in jeopardy. Ex. 66 (handwritten statement of individual); Tr. at 295-97.

Regarding the 2006 DUI arrest, I recognize that the security concerns it raises are somewhat mitigated by the unlikelihood of its recurrence, given the individual's five-year period of abstinence that began with the arrest. *See* Adjudicative Guidelines at Guideline J ¶ 32(a). What troubles me is that the individual's narration of the arrest and processing weaves a story of perceived deception by many of those involved, including the arresting officer, his lawyer, the prosecuting attorney, his employer, and an evaluating therapist. Tr. at 301, 305-06, 309, 318-19, 323-25. This rendition of the events, which the individual delivered at the hearing, paints him as a blameless victim of a scam, and taken together with his untruthful behavior in 2004, does not mitigate concerns about his current judgment, reliability and trustworthiness.

2. Financial Irresponsibility

The record demonstrates that the individual has carried debt consistently from 1991 to 2011. While the credit reports reveal that the amount of debt the individual carried at any given time was not excessive, they do reveal a pattern of not meeting his financial obligations. *See* Adjudicative Guidelines at Guideline F ¶ 19(c). And while some of these debts were carried during times when he was out of work, he received at least reduced income during those periods. Moreover, even during periods of full employment, he nevertheless did not resolve the debts, but rather continued to carry them. In addition, his decision to spend money on vacations in 2000 through 2004 while debtors remained unpaid reflects irresponsibility on his part. *See* Adjudicative Guidelines at Guideline F ¶ 19(b).

It is not clear to me whether the individual was unable to satisfy his debts or was unwilling to do so. In either event, his 20-year pattern of not satisfying his obligations raises a concern that he has not resolved. *See* Adjudicative Guidelines at Guideline F at ¶ 19(a). I recognize that he satisfied his outstanding debts in 2011, with the exception of one. I also recognize that he disputes the legitimacy of that one debt and I find that the challenged status of that debt mitigates any security concern arising from that debt. *See* Adjudicative Guidelines at Guideline F ¶ 20(e). Even accepting the individual's recent pattern of meeting his financial obligations, I must compare that pattern of roughly one year to the previous pattern of 20 years of financial irresponsibility he maintained despite his awareness of the LSO's expressed concerns. In prior cases involving financial irresponsibility, Hearing Officers have held that "[o]nce an individual has demonstrated a pattern of financial irresponsibility, he or she must demonstrate a new, sustained patter of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely." *See Personnel Security Hearing*, Case No. PSH-12-0058 (2012); *Personnel Security Hearing*, Case No. PSH-11-0015 (2011); *Personnel Security Hearing*, Case No. TSO-1078 (2011); *Personnel Security Hearing*, Case No. TSO-1048 (2011); *Personnel Security Hearing*, Case No. TSO-0878 (2010); *Personnel Security Hearing*, Case No. TSO-0746 (2009). At this point, it is simply too early for me to find that the individual has demonstrated a sustained pattern of financial responsibility for a significant period of time relative to his lengthy past period of financial irresponsibility. Consequently, the individual has not resolved my doubts regarding his reliability, trustworthiness, or good judgment raised by these concerns.

3. Commitments

Criterion L includes, as one example of derogatory behavior that may raise a security concern, the "violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility." In the present case, the individual has made repeated commitments to satisfy the LSO's concerns regarding his criminal behavior, alcohol use, and financial irresponsibility. The individual admitted in 2011 that he had failed to keep many of those commitments, and the record supports that admission. He was arrested several times after committing to abide by criminal laws in 1991. Despite his repeated commitments in 1991 through 1995, the individual abused alcohol in 1995, and possibly as recently as December 2006.

Finally, although he committed to managing his finances responsibly beginning in 1993, he continued to carry thousands of dollars of debt as recently as 2011.

At the hearing, the LSO personnel security specialist testified that the individual's failure to honor his commitments demonstrated a lack of honesty and candor toward that office. Tr. at 185. I do not agree with that assertion. If the person never intends to honor his commitment, then it is reasonable to find that he has been dishonest. However, a person may well intend to keep his promise at the time he makes it, yet ultimately fail to do so. One example is the individual's commitment in 1998 to resolve his debts through a consumer credit counseling program. Ex. 37 at 35-36. In 1997, the individual admitted that he had not followed through with his plan. Ex. 35 at 15-16. Nothing in the record indicates that the individual made that commitment dishonestly, that is, with the intent of not to keep it. Nevertheless, this failed commitment and the individual's several other failed commitments, whether dishonest in intent or not, demonstrate a lack of reliability and trustworthiness in the individual. The LSO relied on the individual's statements of commitment when continuing his access authorization on numerous occasions, and the individual was aware that the LSO was relying on them. His failure to live up to his promises therefore raised significant security concerns that have not been satisfactorily mitigated in this proceeding.

VI. 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 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 have found that the individual has brought forth sufficient evidence to mitigate the security concerns associated with Criterion J, but has not done so with respect to the security concerns associated with Criterion L. I therefore cannot find that granting the individual an access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined 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.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: October 26, 2012