*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: April 8, 2013	)	
	)	Case No.: PSH-13-0043
	)	

Issued: July 9, 2013

Hearing Officer Decision

William M. Schwartz, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXX (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 be restored.

I. Background

The individual works for a DOE contractor in a position that requires him to maintain a DOE security clearance. A history of occasional drinking to intoxication, including a recent event that involved abuse of both prescribed drugs and alcohol, and diagnoses of Major Depression and Alcohol-Related Disorder raised security concerns in the opinion of the Local Security Office (LSO), and the LSO suspended the individual's security clearance. On March 5, 2013, the LSO sent a letter (Notification Letter) to the individual advising him that it had reliable information that created a substantial doubt regarding his 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 two potentially

[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.

disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j) (hereinafter referred to as Criteria H and J).[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 hearing that I conducted, the individual presented his own testimony and that of his wife and his treating clinical psychologist, and the LSO presented the testimony of one witness, a DOE consultant psychologist. In addition to the testimonial evidence, the LSO submitted 12 numbered exhibits into the record and the individual tendered four exhibits, which I have identified as Exhibits A through D. The hearing transcript in the case will be cited as "Tr."

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 appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). An individual is thereby 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

[2] Criterion H concerns information that a person suffers from "[a]n illness of 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).

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 two criteria as the bases for suspending the individual's security clearance, Criteria H and J. With regard to Criterion H, the LSO relies on the opinion of a DOE consultant psychologist (DOE psychologist) who determined that the individual meets the criteria for Major Depressive Disorder, Recurrent, Most Recent Episode Severe, set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association,* Fourth Edition Text Revised (DSM-IV-TR). She further determined that the individual's depression is an illness or mental condition that causes or may cause a significant defect in judgment or reliability.

I find that there is ample information in the Notification Letter to support the LSO's reliance on Criterion H. Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. *See 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) at Guideline I. The DOE psychologist's conclusion that the individual's depressive disorder is severe enough to cause a significant defect in judgment, such as the poor judgment he displayed when, in October 2012, he took prescribed sleeping pills and drank several beers and then proceeded to drive his vehicle, supports my finding in this regard.

As for Criterion J, the LSO relies on the same DOE psychiatrist's opinion that the individual meets the criteria for Alcohol-Related Disorder, Not Otherwise Specified, as set forth in the DSM-IV-TR, and that he has been a user of alcohol habitually to excess. In addition, the LSO cites the individual's admission, during an evaluation conducted by the DOE psychologist, that his wife expressed concern about his alcohol consumption two or three times a year; the October 2012 episode described above, and an arrest in 1998 for Driving Under the Influence of alcohol. 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. Consequently, I find that the LSO properly relied on Criterion J in this case.

IV. Findings of Fact

A. Criterion H

At age 20, the individual was diagnosed for the first time with depression. Young and lacking health insurance, he rejected advice to take medication to treat the condition. Later, in his late 20s, his primary care physician prescribed Paxil for him, which he began and has continued taking to the present. Tr. at 67-69. His wife recognized, even before

they were married in their early 20s, that the individual suffered from depression and got angry easily, particularly in reaction to stress. His mood improved greatly after their son was born in 2005. *Id.* at 38.

In 2012, however, his depression became markedly more severe, according to his wife. They had purchased a new home; the house needed renovation and the acreage needed attention as well. At the same time, the individual's parents, elderly and in declining health, were demanding increasing help from him to care for their home. He complied unquestioningly with all their demands, and suffered their wrath when he did not satisfy them. *Id.* at 39. He grew frustrated but did not talk about his frustration with anyone—not his wife or his brother, and certainly not his parents. *Id.* at 70.

On October 6, 2012, the individual's father berated him for not having the time to do chores for him. The individual grew upset and frustrated, and self-medicated his emotions with alcohol. He testified that using alcohol was the only response to stress with which he was familiar, having seen his father respond the same way. *Id.* at 71. He left his parents' house, took two Ambien pills that had been prescribed to treat his sleeping difficulties, and bought a 12-pack of beer, drank six or seven of them, and drove around the back roads near his home. Exhibit 11 (Transcript of December 10, 2012, Personnel Security Interview) at 57-58. The local police stopped him, did not charge him with any violations, and released him to his wife, instructing her to take him home. *Id.* at 59-60.

The following morning, both he and his wife recognized that his behavior of the preceding day had been a call for help, and he admitted himself voluntarily into an inpatient recovery center at a local hospital. *Id.* at 60-61. Although he attended group sessions devoted to alcohol and other addictions during his four-day inpatient stay and four weeks of intensive outpatient treatment, the hospital staff focused on his depression as the primary concern. Tr. at 74, 100. During his inpatient stay, he realized that his reaction to stress was not appropriate. He realized that he did not have to handle it as his father had, by keeping to himself, becoming frustrated and angry, and turning to alcohol, but rather he could ask for and accept help from others. *Id.* at 70-72. After graduating from the intensive outpatient program in mid-November 2012, he began attending aftercare once a week and seeing a counselor. After a few sessions with the counselor, he learned that she would be unavailable for medical reasons. He sought help from his physician, who recommended another counselor, his current treating psychologist. *Id.* at 75.

The individual's treating psychologist testified at the hearing. He stated that he and the individual have been meeting weekly since early February 2013. *Id.* at 10. He observed that the individual's hospital stay and outpatient treatment overcame the individual's prior resistance to treatment for his depression, and left him more open and willing to work on his issues. *Id.* at 11. Over the course of four months, they have talked about how he related to his parents, wife, and son; how he would in the past absorb stresses internally and then relieve them with alcohol; and how to employ new strategies to respond to stresses. *Id.* at 12, 14, 17-19. These strategies include talking over frustrations with others, redirecting thoughts and actions rather than continuing to mull over stressful situations, and prioritizing obligations that compete for his time. *Id.* at 17-

19. The psychologist now finds the individual to be stable, self-reflective, and possessing a vastly improved mood and insight. *Id.* at 11, 14. He stated that the October 2012 episode was an "irresponsible stunt" but not a demonstration of poor judgment, because the individual saw no other option, and judgment applies only when choosing from among options. *Id.* at 24. In any event, he did not question the individual's judgment or impulse control at the time of the hearing. *Id.* at 24-25. Finally, the psychologist expressed his opinion that the individual is unlikely to "spin[] off into another depressive spell" as he faces future stress, particularly with his parents, because he has now learned, and successfully employed, more effective approaches to resolving stress. *Id.* at 32-33.

The individual and his wife testified to his current frame of mind. The wife stated that he now has a totally changed attitude and that their communication is much better than it has ever been. She can now be open and honest with him without worrying about his reaction. *Id.* at 40-41. He reports that he sees things differently now: before he felt his problems were huge and only he could solve them; now, he sees them as not so overwhelming, and surmountable with the help of others. *Id.* at 78. He has learned how to decompress from feelings of stress by not dwelling on the problem and by refocusing his activity. *Id.* at 85. He now recognizes the early signs of impending depression, including reiterative thinking and irritability, and has successfully controlled his depression and anger since October 2012. *Id.* at 87-88. He no longer feels guilty about not responding immediately to his parents' demands; instead, he finds it "liberating" to be able to set his own boundaries. *Id.* at 90. Both he and his wife stated that he has handled the stress of the present proceeding, and the eight months during which his security clearance has been in suspension, far more successfully than he would have in the past. *Id.* at 40, 113.

The DOE psychologist testified after hearing and observing the other witnesses at the hearing. As the opinion she expressed at the hearing relied heavily on the co-existence, or co-morbidity, of the individual's two diagnoses, I will defer discussion of her testimony to the next section.

B. Criterion J

The individual's wife, who has known him since high school, testified that the individual has never consumed alcohol on a regular basis. *Id.* at 43. She stated that for a while in the 1990s, he drank to intoxication once every few weeks. From then on, he drank to intoxication once or twice a year. *Id.* at 57. She explained that, as a lifelong teetotaler, she could not condone his drinking alcohol at all, and that was the nature of her complaints about alcohol in his life. *Id.* at 37-38. The individual himself explained that his once- or twice-yearly binges were with co-workers at a former job, where it was a fashion to go drinking after work and he would join them infrequently. *Id.* at 84. According to his wife, he also drank alcohol in lesser amounts when he was depressed. *Id.* at 43. The wife stated that neither of them considered alcohol a problem for the individual until the October 2012 incident, and then it was he who convinced her that it was. *Id.* at 55.

The treating psychologist reported that the individual has expressed no cravings or temptation to resume alcohol since he began treatment in February 2013. *Id.* at 21. From

his observation of the individual's straightforward manner and the absence of symptoms of alcohol consumption, and the individual's wife's affirmations, he believes the individual had been abstinent throughout his treatment. *Id.* at 22. The individual has complied with his suggestions for alcohol education, including Alcoholics Anonymous (AA) meetings, reading, and online classes. *Id.* at 31-32. He is confident that the individual will no longer turn to alcohol to "fix[] his mood" as he did in the past, as he has discovered better tools to cope with stresses and losses. *Id.* at 23, 32-33.

After all testimony, the DOE psychologist testified that, in her opinion, the individual no longer had any depressive symptoms, and that he is abstinent from alcohol and intends to remain so. She further stated that she now feels comfortable about the individual's judgment and reliability. *Id.* at 124. This positive opinion contrasts with those she formed during her evaluation of the individual in January 2013. At that time, he had only recently acknowledged his alcohol problem and had met only twice with a counselor after completing his intensive outpatient program. At that time, finding that he did not meet the DSM criteria for alcohol dependence or alcohol abuse, she diagnosed him with Alcohol-Related Disorder, Not Otherwise Specified. Exhibit 7 at 11-12; Tr. at 115-17. In her evaluative report, the DOE psychologist set out her recommendations for "restoration of good judgment and reliability": documented evidence of no less than six months, starting with his first counseling session on November 28, 2012, of (1) monitored compliance with all medications, (2) counseling at least once every other week, and (3) compliance with all recommendations of his health care providers. Exhibit 7 at 13; Tr. at 118-20.

At the hearing, the DOE psychologist based her revised opinion on the testimony of the individual, his wife, and his treating psychologist. First, she concluded that the individual had met all the recommendations she had made in her January report.[3] Second, she discussed in detail and then resolved her two remaining concerns regarding the individual's alcohol problems. One of these concerns is the individual's current support system, which includes his treating psychologist, his wife, his brother, and his mother, who had in the past been very critical of him. Although the DOE psychologist was pleased that the individual's support system was as large as it is, she hoped that it would be larger. She was satisfied with the current status, however, because he understands the need to broaden his support and, moreover, his treating psychologist testified that this is a focus of his remaining treatment. Tr. at 29-20, 117-18. Her other concern was the statistically increased risk of relapse to alcohol overuse due to the co-morbidity of the individual's depression and alcohol disorder. *Id.* at 124. She reviewed in detail 13 research-based risk factors for alcohol disorders, and eight such factors for depression. Many of these factors overlapped, such as insight, treatment and treatment compliance, current symptoms, and co-morbidity of the other condition. *Id.* at 130-41.

[3] The DOE psychologist acknowledged a gap in treatment early in the six-month period, when his first counselor stopped seeing patients, and the individual actively sought a new counselor. She found that the gap was not the individual's doing, and so no negative inference should be drawn against the individual. Tr. at 121. In addition, though she found his alcohol education efforts to be "less than ideal," as he had tried and decided against AA meetings, she also found that he had complied with the education requirements that his treating psychologist had devised, and therefore had followed all treatment recommendations. *Id.* at 122-23.

She determined that the individual had positively addressed all of the depression risk factors, such that she could conclude that a relapse of Major Depressive Disorder, while still statistically a risk, was no longer a concern. *Id.* at 137. With regard to the risk factors for alcohol relapse, she noted that a few of the factors were not in his favor, such as the severity of his alcohol use, particularly in October 2012, and his family history, but that the preponderance of the risk factors, including co-morbidity, had been successfully addressed. *Id.* at 137-41. Consequently, she concluded that his risk of relapse is manageable, and stated, "I do not feel that judgment and reliability at this time are compromised or would be compromised or that the risk of relapse or concurrence is a matter of concern." *Id.* at 141.[4]

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 be restored. I find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Criterion H

After considering the entire record in this proceeding, I find that the individual was properly diagnosed as suffering from Major Depressive Disorder. I also find, however, that the individual's hospitalization in October 2012, subsequent intensive outpatient program, and ongoing treatment have mitigated the LSO's security concerns based on this illness, evidenced primarily in his poor judgment to take sleeping pills and alcohol and then drive in October 2012. Through his therapy, he has explored the triggers, such as family demands and other stresses, that lead to episodes of depression. He has learned effective methods, not the least of which is sharing his emotions with others, to employ face impending depression, rather than keeping his feelings to himself and ultimately turning to alcohol, as he has in the past. While both his treating psychologist and the DOE psychologist acknowledge the individual's need to continue expanding his support system, each testified that he has responded well to treatment, has greatly improved his mood and insight, and is at low risk for relapse of depressive episodes or displays of poor judgment that they might cause. I have taken into consideration a number of mitigating

---

[4] I asked the DOE psychologist to explain how she determined that the individual had consumed alcohol "habitually to excess," as she expressed in her evaluative report. Exhibit 7 at 13. After acknowledging that she was not sure how the DOE defined the term, she stated that the individual's consumption of six to eight beers once or twice a year was a habit, as it had continued at that level for many years. *Id.* at 143. She then stated that the LSO had asked her to determine whether the individual was a user of alcohol habitually to excess, or alcohol dependent or suffering from alcohol abuse. She had no doubt that the individual had an alcohol use disorder, but she did not find he met the criteria for a diagnosis of alcohol abuse or dependence. In order to answer the LSO's question affirmatively, she "wound up trying to justify . . . habitual to excess." *Id.* at 143-45.

factors in his favor, specifically, that his condition is readily controllable through treatment and that he is compliant with the treatment plan, that he voluntarily entered his treatment plan, that there is no indication of a current problem, and that the DOE psychologist rendered an opinion at the hearing that the individual's depression is under control and unlikely to affect his judgment and reliability. Adjudicative Guidelines at Guideline I, ¶ 29. I am convinced that the individual has resolved the LSO's security concerns that arise from his depression.

B. Criterion J

I find that the individual was also properly diagnosed as suffering from Alcohol-Related Disorder, Not Otherwise Specified. Nevertheless, the record, in particular, the testimony of the individual, his wife, and his treating psychologist, establishes eight months of abstinence and appropriate treatment. The concurrence of the mental health experts regarding his current status demonstrates to me the confidence they have in the individual's progress through treatment and his motivation to remain sober. Furthermore, I am convinced that the individual used alcohol to treat his depression and has learned, and now successfully employs, far more effective means to that end, including therapy and open communication with his family. I have taken into consideration a number of mitigating factors in his favor, specifically, his acknowledgment of his alcohol problem, his abstinence, his voluntary participation in a treatment program, and the mental health professionals' favorable prognosis of the individual and their assessments that he is at low risk of relapse. Adjudicative Guidelines at Guideline G, ¶ 23. After considering all the testimony and written evidence in the record, I am convinced that the individual has resolved the LSO's security concerns that arise from his alcohol use.

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 H and J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth sufficient evidence to mitigate the security concerns associated with these criteria. I therefore find that restoring the individual's 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 be restored.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: July 9, 2013