

* 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: December 19, 2012)
)
)

)
Case No.: PSH-12-0143

Issued: April 17, 2013

Hearing Officer Decision

William M. Schwartz, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization¹ 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 works for a DOE contractor in a position that requires him to maintain a DOE security clearance. A number of alcohol-related arrests, unsuccessful alcohol treatment, and diagnoses of alcohol and depression problems raised security concerns in the opinion of the Local Security Office (LSO), and the LSO suspended the individual's security clearance. On November 1, 2012, 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 three potentially disqualifying criteria set forth in the security regulations at

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.

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 hearing that I conducted, the individual presented his own testimony and that of two other witnesses, and the LSO presented the testimony of one witness, a DOE consultant psychologist. In addition to the testimonial evidence, the LSO submitted 14 exhibits into the record and the individual tendered 10 exhibits. 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 appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an

² Criterion H concerns information that a person suffers from “[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Criterion J relates to information that a person has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j). 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, ... 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).

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 psychologist (DOE psychologist) who determined that the individual meets the criteria for Major Depression and Alcohol Abuse set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association*, Fourth Edition Text Revised (DSM-IV-TR), both of which, in his opinion, cause significant defects in the individual's judgment and reliability. In addition, the LSO cites similar diagnoses of the individual by his treating psychiatrist and licensed therapist. Concerning Criterion J, the LSO cites the DOE psychologist's 2010 and 2012 diagnoses of Alcohol Dependence and Alcohol Abuse, respectively; his alcohol-related arrests in 1968, 2004, and 2011; his mental health treatment for alcohol use in 2008, 2010, and 2011 to the present; and his history of periodic binge drinking from 2008 through 2011.

I find that there is ample information in the Notification Letter to support the LSO's reliance on Criteria H and J. 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 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 G. Moreover, certain emotional, mental, and personality conditions, such as the two identified here, can impair judgment, reliability, or trustworthiness. *Id.* at Guideline I.

As for Criterion L, the LSO cites as support two incidents of criminal conduct, an arrest in 1968 for Public Drunkenness or a similar charge, and an arrest in 2004 for Driving Under the Influence (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. While I note that the two incidents occurred nearly 40 years apart, I find that the LSO properly relied on Criterion L in this case.

IV. Findings of Fact and Analysis

A. Criteria H and J

Although the individual has consumed alcohol throughout his adult life, his consumption appears not to have seriously affected his life until 2008. He was arrested for DUI in 2004, but while he admits that he had had a few drinks before he began driving, he claims that his blood alcohol level was .01 when he was tested, well below the .08 threshold for legal intoxication. Transcript of Hearing (Tr.) at 19, 44. He reported, however, that for four or five years preceding his voluntary admission into an alcohol treatment center in December 2008, his binge drinking of alcohol grew progressively worse. Ex. 9 (Transcript of September 15, 2009, Personnel Security Interview) at 2; Tr. at 40. Confronted by his family, he agreed to enter an inpatient program. *Id.* at 21. After completing an eight-day course of detoxification and education, he was released with suggestions to attend Alcoholics Anonymous (AA) and to secure counseling. *Id.* at 23. He attended five counseling sessions, as they were covered by his employee assistance program, but then stopped. *Id.* He attended AA for a significantly longer period, but ultimately stopped participating in AA as well. He believed that he did not need AA, as his binges were periodic and did not represent a daily craving for alcohol. *Id.* at 24.

The DOE psychologist evaluated the individual in April 2010. He determined that the individual had been abstinent from alcohol since his December 2008 treatment and had “multiple points of accountability in place at work and at home to help him with his abstinence.” He diagnosed the individual with Alcohol Dependence in full remission. Ex. 11 (April 14, 2010, Psychological Evaluation Report at 4). The individual testified that the DOE psychologist told him during the evaluation that he believed the individual was depressed, but the individual stated that he did not accept that opinion at the time. Tr. at 24-25.

From January through August 2011, the individual attended Recovery Unlimited, a nationally recognized, faith-based recovery program. *Id.* at 28, 52-53. His group, in contrast to others in the program, was very small, and after the first meeting consisted only of the group leader, who is a minister, and the individual himself. *Id.* at 47-48.

Over Labor Day weekend 2011, only a few weeks after he left the Recovery Unlimited program, the individual relapsed. After binging on alcohol, the individual went out walking to try to recover. He blacked out, woke up in the back of a police car, and was ultimately charged with Public Intoxication. *Id.* at 28-29. At that point, he realized that he truly was depressed and sought help from a psychiatrist, who prescribed two medications which he continues to take consistently: Revia to reduce alcohol cravings and Nefazodone for depression. *Id.* at 33. Shortly after the relapse, he also returned to treatment with the same counselor he saw in late 2008 and early 2009. *Id.* at 29-30. At the counselor’s recommendation, the individual resumed attending AA, but not until October 2012. *Id.* at 31.

The DOE psychologist evaluated the individual for a second time in March 2012. He observed that the individual had been unable to maintain his sobriety over the past three years, cycling between multi-month periods of abstinence and two- to three-day binges.

Ex. 11 (March 28, 2012, Psychological Evaluation Report at 3). He further observed that the individual appeared to be quite depressed, and that results of psychological testing were consistent with both depression and alcohol abuse. *Id.* at 4. He diagnosed the individual with Major Depression, Severe Recurrent, and Alcohol Abuse. *Id.* at 5.

The individual's counselor testified at the hearing, as did a former supervisor. The counselor stated that after the September 2011 relapse, the individual first saw him on a weekly basis. Over time, the visits were spaced farther apart, and since the fall of 2012, they meet once every four or five weeks. Tr. at 86. He views the individual's alcohol problem as a symptom of his depression. *Id.* at 88. He has identified psychological triggers for binge drinking to be situations in which he senses a lack of connection to others, such as the oncoming of winter, when he stops golfing, and thus stops interacting with other golfers. *Id.* at 89. While he has always immersed himself in charitable, volunteer activities that help others, those activities keep him occupied but do not forge relationships with others. *Id.* at 89-91. On the other hand, programs such as AA and Recovery Unlimited do build interpersonal connections. When the individual stopped attending Recovery Unlimited, which was his sole support for sobriety at the time, he had nothing to stop him from returning to alcohol and no one to hold him accountable. *Id.* at 93, 102-03. He has now greatly improved his relationship with his wife, which had deteriorated over the years, and is making positive steps at AA. *Id.* at 101-02.

At the hearing, the DOE psychologist maintained his opinion that the individual suffers from Alcohol Abuse and Major Depression. He stated that his testing of the individual at the 2012 evaluation revealed that he was suicidal, estranged from his wife, and faced several emotional barriers, including denial. *Id.* at 117. He did not believe that ameliorating the individual's depression would "remove his vulnerability to relapse and alcohol abuse disorder." *Id.* at 119. He was concerned that the individual did not appreciate the urgency of his situation. *Id.* at 120. In his opinion, the individual was "drinking in an enormously self-destructive way" at the time of the 2012 evaluation and needed the assistance of an impaired professional program. *Id.* at 123. After hearing the testimony of the individual, his supervisor, and his counselor, the DOE psychologist offered his opinion that the treatment the individual currently receives from his counselor and his psychiatrist is necessary but not sufficient. *Id.* at 124. He challenged their approach to treatment in that, in his opinion, his treatment is not intensive enough to address his serious disorders, including suicidal affect. *Id.* at 126-27. He further stated that he finds the individual to be a man of deep integrity, but he is not being challenged enough in his treatment to make the progress he needs. *Id.* at 129-33. Finally, he testified that, in his opinion, the individual's risk of relapse to alcohol binging is neither high, as he has systems in place to prevent it, including a mended marriage, nor low, due to the lack of intensity of his treatment and his relatively short period of participation in AA. Rather, he finds the risk to be moderate for relapse, both to depression and to alcohol abuse. *Id.* at 145-46.

B. Criterion L

The Notification Letter listed two alcohol-related arrests as evidence of the individual's criminal behavior. Details about the 1968 arrest for Public Drunkenness were not developed at the hearing. As for the 2004 DUI arrest, the individual testified that,

although his blood alcohol level was below the statutory intoxication level, he nevertheless pleaded guilty to a lesser charge, Reckless Driving, to avoid having to make additional court appearances. *Id.* at 19-20.

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. Criteria H and J

After considering the entire record in this proceeding, I find that the individual is properly diagnosed as suffering from Alcohol Abuse and Major Depression. I am convinced that the individual has not consumed alcohol since his relapse in September 2011. He has been taking prescribed medications to control his alcohol cravings and his depression since the fall of 2011. He has also been seeing a counselor since that time, and followed the counselor's advice to participate in AA, though not until October 2012. While I applaud the individual's efforts to obtain treatment and his very credible commitment and positive attitude toward the treatment, I must also consider the differing opinions of the mental health specialists who testified at the hearing. The treating counselor stated that he was addressing the individual's needs through a cognitive approach: replacing maladaptive thoughts and behavior with better solutions to the problems the individual faces. Tr. at 111. Acknowledging that he was not treating the individual, the DOE psychologist nevertheless persuasively argued that the gravity of the individual's serious conditions and, in particular, their interaction, calls for a more intensive level of treatment than he is currently receiving. *Id.* at 125, 127, 130. I am therefore convinced that, despite the treatment he is receiving, it is too soon to conclude that the individual has resolved his alcohol and depression problems and that the likelihood of relapse is, while not high, not low either. I have taken into consideration a number of mitigation factors in his favor, specifically, his acknowledgment of his alcohol problem, his abstinence, and his voluntary treatment program, Adjudicative Guidelines at Guideline G, ¶ 23, and his compliance with the treatment of his depression, the voluntary nature of his treatment program, *id.* at Guideline I, ¶ 29. Despite these favorable factors, and after considering all the testimony and written evidence in the record, I am not convinced that the individual has resolved the LSO's security concerns that arise from his alcohol use and depression.

B. Criterion L

The individual has acknowledged that he was arrested on two occasions. At a 1991 Office of Personnel Management interview, he admitted that he was arrested in 1968 for

Public Drunkenness, though no public records confirm this arrest. Ex. 14 (OPM Records) at 66. While this arrest does not raise a concern in itself, due to its minor nature and the passage of significant time, it still must be considered in the context of criminal behavior. Administrative Guidelines at Guideline J, ¶ 31(c). The second arrest, for DUI in 2004, raises a more significant security concern, as it directly relates to the individual's ongoing difficulties with alcohol. While he testified that he was not binging at the time of this arrest, it coincides with the onset of his pattern of binging, which he placed at four to five years before his 2008 inpatient treatment. Therefore, although some time has passed since the arrest occurred, it is premature to conclude that another similar alcohol-related arrest is unlikely to recur, at least until the individual has progressed in the treatment of his alcohol abuse.³ Adjudicative Guidelines at Guideline J, ¶ 32(a). Nor do I find that any of the other three conditions that could mitigate security concerns raised by criminal behavior apply here. *See id.*, ¶ 32(b), (c), (d) (the person was pressured or coerced into committing a criminal act; evidence that the person did not commit the offense; evidence of successful rehabilitation).

The individual's limited arrest record does not indicate a pattern of criminal conduct. Nevertheless, in light of the alcohol-related nature of the arrests, particularly that of 2004, and his current incomplete rehabilitation from alcohol abuse, I am not convinced that the individual has resolved the Criterion L concerns in this case.

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, 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 not brought forth sufficient evidence to mitigate the security concerns associated with these criteria. I therefore cannot 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 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: April 17, 2013

³ I noted above that the individual was arrested for Public Intoxication after his Labor Day 2011 binge. Although this arrest was not listed in the Notification Letter as a basis for the LSO's Criterion L concerns, it does provide additional support for my conclusion that the individual has not sufficiently mitigated those concerns.