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

In the Matter of Personnel Security Hearing)

Filing Date: January 10, 2013)

Case No.: PSH-13-0006)

Issued: April 19, 2013

Hearing Officer Decision

Steven J. Goering, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the individual”) for access authorization 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.”¹ For the reasons set forth below, I conclude that the DOE should not grant the individual access authorization at this time.

I. BACKGROUND

The individual is an employee of a DOE contractor and is an applicant for access authorization. On July 5, 2012, the individual was arrested and charged with Aggravated Driving While Intoxicated (DWI). Exhibit 8. Because of the concern this arrest raised, a Local Security Office (LSO) summoned the individual for an interview (PSI) with a personnel security specialist on July 10, 2012. Exhibit 12 (PSI Transcript). After the PSI, the LSO referred the individual to a local psychologist (hereinafter referred to as “the DOE Psychologist”) for an agency-sponsored evaluation. The DOE Psychologist prepared a written report, setting forth the results of that evaluation, and sent it to the LSO. Exhibit 6 (Psychological Assessment). Based on this report and the rest of the individual’s personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual’s eligibility for access authorization. Exhibit 3 (Case Evaluation Sheet). The LSO informed the individual of this determination in a letter that set forth the

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

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 in this matter. The LSO forwarded this request to OHA, and I was appointed the Hearing Officer. The DOE introduced 18 exhibits into the record of this proceeding and presented the testimony of the DOE Psychologist. The individual introduced ten exhibits and presented the testimony of three witnesses, in addition to his own testimony.

II. 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 a 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). 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).

III. FINDINGS OF FACT AND ASSOCIATED SECURITY CONCERNS

The Notification Letter cited derogatory information 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, respectively). Exhibit 1.² Under Criterion H, the LSO cited the report of the DOE Psychologist, in which he identified in the individual a "lack of effective thoughtful control over his spending and use of alcohol," and concluded that this was "a

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

mental condition that results in a high likelihood that he will continue to have significant defects in his judgment and reliability.” Exhibit 6 at 11. Under Criterion J, the Notification Letter cited the same conclusion of the DOE psychologist, as well as the psychologist’s statement that the individual “participated in a three-day binge drinking spree in July 2012, after six years of abstinence from alcohol, which warrants concern for [the individual] acting without reflection for ramifications.” Exhibit 1 (citing Exhibit 6 at 3-6, 10-11). Also under Criterion J, the LSO cited the individual involved with five alcohol-related incidents with law enforcement, and listed the following:

- a July 5, 2012, arrest and charge of Aggravated Driving While Intoxicated (DWI), Careless Driving, and No Driver’s License, at which time the individual’s breath alcohol content was measured at .20 and .19;
- a January 7, 1995, arrest and charge of Driving Under the Influence and Driving Without Privileges, at which time the individual’s breath alcohol content was measured at .13 and .12;
- an October 14, 1994, arrest and charge of Illegal Liquor Consumption and Malicious Injury to Public Property, and the individual’s admission in his PSI that he was intoxicated at the time of this arrest;
- an August 19, 1993, arrest and charge of Minor in Consumption; and
- a February 17, 1993, arrest and charge of Illegal Consumption.

Exhibit 1.³

Under Criterion L, the Notification Letter cited the five alcohol-related arrests listed above, and also listed the following:

- a February 24, 2006, charge of Injury to Child;
- an April 14, 2000, citation for Speeding;
- a February 10, 1999, citation for Failure to Obey Traffic Device; and
- a September 19, 1992 citation for Failure to Stop/Yield.⁴

³ The Notification Letter contains allegations under Criterion J, citing the DOE psychologist’s report, regarding the quantity of alcohol the individual consumed during three days in July 2012, prior to his DWI arrest. However, there are discrepancies in this regard between the information in the Notification Letter and that in the DOE psychologist’s report. Based upon the record, and the individual’s hearing testimony on this point, I find it most likely that the individual consumed six beer on July 3rd, 10 beers and half of a fifth of vodka on July 4th, and at least several beers and a fifth of vodka on July 5th. *See* Tr. at 50.

⁴ A typographical error in the Notification Letter listed the year of this charge as 1999. *See* Hearing Transcript (Tr.) at 37.

Also under Criterion L, the LSO cited the individual's filing of a Chapter 7 bankruptcy petition on September 12, 2003, prior to which he had accumulated debts of approximately \$50,000 to \$80,000; his accumulation of new debt since his 2003 bankruptcy, including approximately 121 unpaid collection accounts totaling \$20,000 to \$30,000 past due, \$75,000 in student loans, and \$50,000 loaned to him by his parents; his 2011 consultation with a bankruptcy attorney, though not having taken action to file for bankruptcy since that time; and statements by the individual that he has not made any attempt to repay his debts, does not know how he would repay them, and has no intent to do so.

The individual submitted, as an exhibit, documentation showing total student loan debt of \$59,140.39. Other than this, the individual has not disputed any of the allegations set forth in the Notification Letter, Tr. at 14-15, and, with the exception of the amount of student loan debt and the other clarifications to the allegations discussed above, *see supra* notes 3 and 4, I find that the allegations are supported by the evidence in the record, and are therefore valid. *See* 10 C.F.R. § 710.27(c) (requiring that Hearing Officer "make specific findings based upon the record as to the validity of each of the allegations" in the Notification Letter).

I further find that the allegations in the Notification Letter adequately justify the DOE's invocation of Criteria H, J, and L, and raise significant security concerns. First, regarding the concern under Criterion J, the excessive use of alcohol often leads to the exercise of questionable judgment or the failure to control impulses, and calls into question the individual's future reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Adjudicative Guidelines)*, The White House (December 19, 2005) at ¶ 21.⁵

Under Criterion L, the undisputed criminal charges against the individual cited in the Notification Letter create doubt about his judgment, reliability and trustworthiness, as they call into question his ability or willingness to comply with laws, rules and regulations. *Id.* at ¶ 30. Also of concern under Criterion L, the failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Moreover, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *Id.* at ¶ 18.

As for Criterion H, certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. *Id.* at ¶ 27. In the present case, unlike in most prior cases of this office applying Criterion H, *see, e.g., Personnel Security Hearing*, Case No. PSH-12-0077 (2012), the DOE Psychologist has not concluded that the individual meets the criteria for a specific disorder set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, 4th edition, Text Revision (DSM).

⁵ In addition to the specific allegations cited in the Notification Letter, I note that the DOE psychologist found in his report that the individual "has been diagnosed with Alcohol Abuse (305.00) for the years from 1993 through 2005 (ages 17 through 30)." Exhibit 6 at 11. Further, in his PSI, the individual acknowledged that, from age 17 to 21, he consumed alcohol two to three times per week, each time drinking six to twelve beers, and admitted that this was enough alcohol to render him intoxicated on each occasion. Exhibit 12 at 247-49; *see* 10 C.F.R. § 710.8(j) (including as derogatory information that an individual *has been* a user of alcohol habitually to excess or *has been* diagnosed as suffering from alcohol abuse).

However, the text of Criterion H does not require a formal diagnosis of a disorder under the DSM, but rather a finding by a psychiatrist or licensed clinical psychologist of a “mental condition” that “causes or may cause a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h); *see also Adjudicative Guidelines* at ¶ 27 (formal diagnosis of a disorder is not required for there to be a concern under this guideline). The DOE Psychologist, whose expertise is not in dispute, *see* Tr. at 150, has made such a finding in this case. Exhibit 6 at 11.

In his hearing testimony, the DOE Psychologist described his understanding of the phrase “mental condition” as an “enduring mental tendency, that is a subcomponent of one of the other mental conditions.” Tr. at 141. He stated that there is a consensus regarding the meaning of that term

more commonly seen among forensic psychologists and psychiatrists; that is, those of us that have to produce diagnoses within a legal framework.

It is commonly seen among psychologists or psychiatrists when you have a diagnostic conference and you're talking about the diagnostic understanding of a particular person, you will say that this resembles an impulse disorder except for these reasons, but this is the way it does resemble -- his behavior does resemble an impulse disorder, and so we use the diagnostic phrase of mental condition in that situation, and that's common.

Id. at 142-43.

Taking into account this testimony, and prior OHA decisions where Criterion H concerns have been found justified by expert findings of mental conditions in the absence of a current diagnosis of a disorder under the DSM, I conclude that the opinion of the DOE Psychologist in this case raises valid security concerns under Criterion H. *See, e.g., Personnel Security Hearing*, Case No. PSH-12-0136 (2013) (enduring tendencies of poor judgment and reliability); *Personnel Security Hearing*, Case No. TSO-0626 (2008) (psychological trauma associated with two sexual assaults); *Personnel Security Hearing*, Case No. TSO-0301 (2006) (significant lapses in judgment, possibly caused by head injury); *Personnel Security Hearing*, Case No. TSO-0191 (2006) (“Occupational Problem,” described as “not a mental illness or psychiatric disorder *per se*,” but “a condition that is a focus of clinical attention”).

IV. ANALYSIS

A. Criterion J

The Adjudicative Guidelines list the following four conditions that could mitigate concerns raised by excessive alcohol consumption.

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a

pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Adjudicative Guidelines at ¶ 23.

Two of these conditions refer to either participation or successful completion of treatment. *Id.* at ¶ 23(c), 23 (d). In the present case, the individual has not participated in an alcohol treatment program Tr. at 28, 34, 75. Thus, neither of these conditions would apply in this case.

Regarding the second condition listed, *Adjudicative Guidelines* at ¶ 23(b), I cannot find that the individual has clearly acknowledged his issues related to alcohol use. On the one hand, the individual testified that he had “kind of realized that I’m possibly one of those drinkers that should not go anywhere near it.” *Id.* at 15. On the other hand, he also stated that he does not “feel that I have a problem with alcohol. I know I’ve had some -- I’ve had some issues in the past, you know, it’s obvious, it’s in the -- it’s in the record, but -- but since the July incident, I have not touched a drop of alcohol, . . .” *Id.* However, aside from his abstinence since July 2012, the individual has provided no evidence of actions taken to overcome any problem he has with alcohol.

Further, it would be difficult to find here that the individual has established a sufficient pattern of abstinence or responsible use. Given that the individual stopped drinking for approximately six years before his three-day binge in July 2012, eight months of sobriety unaccompanied by a treatment program is insufficient, in my opinion, to find unlikely a recurrence of his problematic behavior, and such behavior certainly casts doubt on the individual’s current reliability, trustworthiness, or good judgment. *Adjudicative Guidelines* at 23(a).⁶ Considering all of the relevant factors in the Part 708 regulations, 10 C.F.R. § 710.7(c), and the *Adjudicative Guidelines*, I cannot find that the concerns raised by the individual’s past use of alcohol have been sufficiently resolved in the present case.

B. Criterion L

Regarding the criminal charges cited in the Notification Letter under Criterion L, I note that the majority of these charges are related to the individual’s use of alcohol. While four of the five

⁶ Also relevant to the risk of relapse is the fact that the individual is currently serving a one-year probation, beginning on December 13, 2012, as a result of his conviction on the July 2012 DWI charge, during which time he is prohibited from consuming alcohol. Exhibit 7 at 13. Thus, until the individual is no longer under threat of punishment, it will be more difficult to determine whether he will be able to maintain his sobriety.

alcohol-related criminal charges occurred from 1993 to 1995, and would logically be mitigated significantly by the passage of time, I consider these incidents to be a product of the individual's problematic and still unresolved relationship with alcohol. In this sense, for the reasons discussed in the previous section of this decision, there remains a concern related to these criminal charges.

As for the four other criminal charges, occurring in 1992, 1999, 2000, and 2006, I find the concerns raised by the first three to be sufficiently mitigated by time, taking into account, as well, the relatively minor nature of the offenses (speeding, failure to obey traffic device, failure to stop/yield).

Regarding the 2006 charge of Injury to Child, the record indicates that this charge stemmed from an occasion when his child, then seven years old, had been left unattended at home. Tr. at 89; Exhibit 13 at 95-96 (Office of Personnel Management report of contemporaneous records reviewed during a background investigation of the individual). The record indicates that the individual told a police officer that he intended for the child to be alone a little over 20 minutes, after he left for work, based on his understanding of when his wife was to get off of work that day. While leaving a child of seven unsupervised for even 20 minutes suggests a serious lapse of judgment, I note that there is no evidence of any other such incident in the record. Under these circumstances, I find that the concern raised by this event is sufficiently mitigated by its isolated nature and by the passage of seven years since it took place. See *Adjudicative Guidelines* at ¶ 32(a).

In contrast to the criminal charges cited in the Notification Letter, the individual's handling of finances presents a chronic pattern of questionable judgment and reliability over many years. The individual has essentially taken no action to resolve his indebtedness, with the exception of filing for bankruptcy in 2003, after which he simply accumulated more debt, which he has to date made no significant attempt to repay. See, e.g., Tr. at 67 ("Q. Do you plan to repay them? Do you think you ever will? A. I will definitely make an attempt to try, but I'm not sure if I will be able to."). As such, none of the possible mitigating factors listed in the *Adjudicative Guidelines* are applicable in this case. See *Adjudicative Guidelines* at ¶ 20.⁷

Finally, 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 pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely." See e.g., *Personnel Security Hearing*, Case No. PSH-12-0134 (2013); *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). It is clearly too early for me to make such a finding in the present case.

For all of the reasons set forth above, I cannot find that the individual has resolved the concerns in this case under Criterion L, including those related to his criminal charges stemming from his use of alcohol and the concerns raised by his longstanding pattern of financial irresponsibility.

⁷ Some of the debt accumulated by the individual appears to have resulted from medical expenses incurred due to complications from a surgical procedure undergone by his wife. See *Adjudicative Guidelines* at ¶ 20(b) (concerning financial circumstances largely beyond the individual's control, such as an unexpected medical emergency). However, the record is clear that the individual's pattern of financial issues significantly predates the surgery, which took place in 2008. Tr. at 54, 70. Moreover, though complications from surgery cannot necessarily be anticipated, the surgery itself, a "tummy tuck," was a wholly elective procedure. *Id.* at 42-43. Given the individual's financial indebtedness at the time, the choice to have this surgery is emblematic of the individual's history of poor judgment with regard to finances. *Id.*

C. Criterion H

I address Criterion H last in this case, as the relevant finding of the DOE psychologist, the individual's "lack of effective thoughtful control over his spending and use of alcohol," Exhibit 6 at 11, essentially reemphasizes the most problematic behaviors of the individual already discussed above. Given a psychologist's expertise in understanding human behavior, it is particularly significant that the DOE psychologist found, at the time of his report, a "high likelihood" that the individual "will continue to have significant defects in his judgment and reliability." *Id.*

Furthermore, it is clear from the record, including the hearing testimony of the DOE psychologist, that none of the mitigating conditions in the *Adjudicative Guidelines* relevant to psychological conditions would apply in the present case. *Adjudicative Guidelines* at ¶ 29; Tr. at 144-47. Most notably lacking is the opinion of a "duly qualified mental health professional" that the individual's previous condition "has a low probability of recurrence or exacerbation." *Adjudicative Guidelines* at ¶ 29(c). Here, the DOE psychologist testified that the probability of relapse in the present case is "moderate to high." Under these circumstances, I cannot find that the concern in this case under Criterion H has been resolved.

V. CONCLUSION

For the reasons set forth above, I conclude that the individual has not resolved the DOE's security concerns under Criteria H, J, and L. Therefore, the individual has not demonstrated that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not grant the individual a security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: April 19, 2013