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

In the Matter of: Personnel Security Hearing )  
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Filing Date: February 12, 2013 )  
 ) Case No.: PSH-13-0018  
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Issued: May 23, 2013

**Hearing Officer Decision**

Steven L. Fine, Hearing Officer:

This Decision concerns the eligibility of XXX X. XXX (hereinafter referred to as “the Individual”) to hold a security clearance 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, I conclude that the Individual’s security clearance should not be granted.

**I. BACKGROUND**

The administrative review proceeding began when a Local Security Office (LSO) issued a Notification Letter to the Individual. *See* 10 C.F.R. § 710.21. The letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. Specifically, the LSO stated that the Individual had: (1) been diagnosed by a psychologist with Alcohol Dependence, (2) used marijuana, and (3) engaged in a pattern of criminal behavior which brought into question his honesty, reliability, and trustworthiness.<sup>1</sup>

<sup>1</sup> The Notification Letter alleges 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); (2) “Trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law.” 10 C.F.R. §710.8(k); and (3) “[e]ngaged in any unusual conduct or is subject to any

The Notification Letter further informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for a security clearance. The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on February 12, 2013.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his mother, his EAP counselor (the Counselor), and a DOE consultant psychologist (the Psychologist). See Transcript of Hearing, Case No. PSH-13-0018 (hereinafter cited as "Tr."). The LSO submitted 10 exhibits, marked as Exhibits 1 through 10, while the Individual submitted eight exhibits, marked as Exhibits A through H.

## II. FINDINGS OF FACT

The Individual has a history of six arrests and citations. Five of these arrests were alcohol-related and two of these arrests were marijuana-related. On August 26, 2006, he was arrested for "Operating a Motor Vehicle While Under the Influence of Alcohol/Drugs with .08 Aggravator." On September 29, 2002, the Individual was charged with Alcohol Intoxication in a Public Place. On May 1, 2000, the Individual was charged with Leaving the Scene of an Accident; Hit and Run; and Possession of Marijuana. On April 21, 2000, the Individual was charged with Operating a Motor Vehicle Under the Influence of Alcohol; Possession of Marijuana; and Use/Possession of Drug Paraphernalia. On July 24, 1998, the Individual was charged with Alcohol Intoxication in a Public Place. On May 16, 1998, the Individual was charged with Alcohol Intoxication in a Public Place.

At the request of the LSO, the Psychologist evaluated the Individual on March 27, 2012. The Psychologist reviewed selected portions of the Individual's personnel security file, administered a standardized psychological screening test to the Individual, and interviewed the Individual. After completing his evaluation of the Individual, the Psychologist issued a report, in which he diagnosed the Individual with Alcohol Dependence."<sup>2</sup> Exhibit 10 at 4-5. The Psychologist also found that the Individual had a history of Cannabis Abuse. *Id.* at 5.

The Individual has met with an EAP Counselor on five occasions starting on February 27, 2013, and continuing through March 27, 2013. Exhibit A at 1. On March 6, 2013, the EAP Counselor issued a report in which diagnosed the Individual with Alcohol Abuse. Exhibit B at 5.

## III. STANDARD OF REVIEW

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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).

<sup>2</sup> A copy of this Report appears in the record as Exhibit 10.

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). In rendering this opinion, I have considered the following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

#### **IV. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS**

The Individual has been arrested on five occasions for alcohol-related offenses and diagnosed with Alcohol Dependence by the Psychologist.<sup>3</sup> This information raises security concerns about the Individual under Criterion J. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. *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 ¶ 21. In the present case, an association exists between the Individual's consumption of alcohol and his subsequent failure to exercise good judgment and to control his impulses, as evidenced by the five occasions in which law enforcement was required to respond to the Individual's behavior.

The Individual also had two marijuana-related arrests, and the DOE Psychologist found that the Individual had formerly suffered from Cannabis Abuse. “Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guideline H at ¶ 21.

The Individual's six arrests constitute criminal conduct that raises security concerns under Criterion L. “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.” Adjudicative Guidelines at ¶ 15. “Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.” *Id.* at ¶ 30.

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<sup>3</sup> The Record also indicates that the Individual received a written warning from a former employer in January 2009, for consuming alcohol on company property. Exhibit 9 at 9-10.

## V. ANALYSIS

### A. Criterion J.

I find that the Individual has not mitigated the security concerns raised under Criterion J by his Alcohol Dependence and five alcohol-related arrests. The Individual does not dispute the DOE Psychologist's conclusion that he suffers from Alcohol Dependence. However, he does not fully grasp the seriousness of his alcohol problem and he does not exhibit a full understanding of its implications.

The Counselor testified on the Individual's behalf at the hearing. The Counselor testified that he has seen the Individual for five sessions (the last meeting occurred 12 days prior to the hearing) and then referred the Individual to another counselor. Tr. at 90-92. The Counselor testified that the Individual told him that he had abstained from alcohol use since their first meeting on February 27, 2013. *Id.* at 93. The Counselor testified that he diagnosed the Individual with Alcohol Abuse. *Id.* at 96. The Counselor testified that the Individual needs to continue attending Alcoholics Anonymous (AA) meetings, begin to actively work the 12-Step AA program, obtain an AA sponsor and continue receiving outpatient substance abuse counseling. *Id.* at 96-99. He noted that the Individual has not yet obtained a sponsor and does not really understand his alcohol problem. *Id.* at 97-98, 100-101. The Counselor testified that while he believes that the Individual can abstain from using alcohol in the short term, the Individual needs to engage in the AA 12-Step Program in order to avoid returning to alcohol use in the long term. *Id.* at 99-100.

The Individual testified at the hearing that he had abstained from alcohol use for over a month and has begun attending AA meetings. Tr. at 23, 74. He has had five sessions with the Counselor, and at the Counselor's recommendation, has scheduled an appointment with a substance abuse counselor. *Id.* at 35. However, when he was asked if he has a problem with alcohol, he stated: "possibly." *Id.* at 35. The Individual was also unsure of whether he would be using alcohol in the future. *Id.* He did admit that alcohol had been a problem for him "in the past." *Id.* at 42.

The Psychologist testified at the hearing that the Individual is is Alcohol Dependent. Tr. at 56, 61, 78. He further testified that the Individual has exhibited a "stunning lack of insight" into his alcohol problem. *Id.* at 52. He testified that the Individual does not realize the extent of his alcohol problem, and has not made the kind of lifestyle changes he needed to in order to address his alcohol issue. *Id.* at 54-56. The Psychologist testified that if the Individual does not recognize his problem, he will return to problematic drinking. *Id.* at 58-59. The Psychologist testified that the Individual has a "high likelihood of relapse and recidivism." *Id.* at 61-62.

The testimony of both the Counselor and the Psychologist have convinced me that the Individual is still in the earliest stage of his recovery and has not developed the insight and understanding necessary for reformation or rehabilitation from his alcohol disorder. Furthermore, it is telling that the Individual has not embraced his own counselor's recommendations that he begin to actively work the AA 12-Step Program and obtain a sponsor. Based upon the foregoing, I find that the Individual has not sufficiently mitigated the security concerns raised under Criterion H.

### **C. Criterion K**

The Individual's two marijuana-related arrests, his admitted use of marijuana from 1998 through 2000, and the Psychologist's finding that he suffered from Cannabis Abuse in the past raise security concerns under Criterion K.

The Individual has convincingly testified that he has not used marijuana since 2000. Tr. at 33. I found the Individual's testimony on this issue to be credible. I therefore find that the Individual has "shown an appropriate period of abstinence," a condition that could mitigate security concerns arising from illegal drug involvement. Administrative Guideline H at ¶ 26(b). Moreover, the Individual has moved away from the college environment and the town in which his marijuana use occurred and no longer associates with the people who he used to use marijuana with. Tr. at 18-21, 33-38; Administrative Guideline H at ¶ 26(b)(2) and (3). Accordingly, I find that the Individual has mitigated the security concerns arising under Criterion K from his illegal drug involvement.

### **B. Criterion L**

The Individual's six arrests constitute criminal conduct that raises security concerns under Criterion L. While the Individual has not been arrested since 2006, a significant amount of the criminal conduct cited in the Notification Letter (five of six arrests) is clearly a symptom of his alcohol disorder. Given the role that alcohol has played in the Individual's past conduct, I find that until the concerns raised by his alcohol disorder are sufficiently resolved, those concerns about the Individual's judgment, reliability and trustworthiness raised by his criminal conduct will also remain unresolved. *See Personnel Security Hearing, Case No. PSH-12-0129* (2013) (security concerns arising from alcohol-related criminal conduct are not resolved until the underlying alcohol issues are sufficiently addressed). Accordingly, I find that the security concerns raised under Criterion L by the Individual's six arrests have not been resolved.

## **VI. CONCLUSION**

For the reasons set forth above, I conclude that the LSO properly invoked Criteria J, K, and L. I find that unmitigated security concerns remain under criteria J and L. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be granted at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Hearing Officer  
Office of Hearings and Appeals

Date: May 23, 2013

