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

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| In the Matter of Personnel Security Hearing |) | |
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| Filing Date: January 10, 2013 |) | Case No.: PSH-13-0004 |
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Issued: July 1, 2013

Hearing Officer Decision

Kimberly Jenkins-Chapman, Hearing Officer:

This Decision concerns the eligibility of xxxxxxxxxxxxxx (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 fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should not be restored.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. In February and April 2012, as part of a background investigation, the Local Security Office (LSO) conducted Personnel Security Interview (PSIs) of the individual to address concerns about his alcohol, drug use and falsifications. In addition to the PSIs, the LSO requested the individual’s medical records and recommended a psychiatric evaluation of the individual by a DOE consultant psychiatrist (DOE psychiatrist). The DOE psychiatrist examined the individual in May 2012 and memorialized his findings in a report (Psychiatric Report). According to the DOE psychiatrist, the individual suffers from Alcohol Dependence.

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.

On December 17, 2012, after reviewing the DOE psychiatrist's report, the transcript of the PSI, and the rest of the individual's personnel security file, the LSO sent the individual a letter (Notification Letter) advising him that the DOE possessed reliable information that created substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of four potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (j), (k) and (f) (Criteria H, J, K and F, respectively).

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing, the individual testified on his own behalf. The DOE counsel presented the testimony of the DOE psychiatrist. Both the DOE Counsel and the individual submitted a number of written exhibits prior and after the hearing.

II. The Notification Letter and the Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual's continued eligibility for access authorization. The information noted in the letter specifically cites to Criteria H, J, K and F.

Criterion (H) defines as derogatory information indicating that an individual has an illness or mental condition which, in the opinion of a psychiatrist, or licensed clinical psychologist, causes or may cause a significant defect in his judgment or reliability. In this case, the Notification Letter cites that, in November 2011, a psychiatrist diagnosed the individual with Bipolar II Disorder and Attention Deficit Hyperactivity Disorder and reported the individual's prognosis as "guarded." The Notification Letter also refers to the diagnosis of the DOE psychiatrist that the individual suffers from Alcohol Dependence, as well as the DOE psychiatrist's opinion that the individual's consumption of an over-the-counter cold medication to get a "buzz" supports a Substance Use Disorder.

Criterion (J) defines as derogatory information indicating that the individual has been, 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. Under this Criterion, the Notification Letter refers to the diagnosis of the DOE psychiatrist that the individual suffers from Alcohol Dependence.

Criterion (K) pertains to information indicating that the individual has transferred, possessed or used a drug listed in the Schedule of Controlled Substances established pursuant to Section 202 of the Controlled Substances Act of 1970, except as prescribed or administered by a physician or otherwise authorized by federal law. In support of this Criterion, the Notification Letter cites the individual's admission that in 2011, that he purchased K2 (synthetic cannabis) on the internet and used it on three occasions, his admission to using Robitussin DM on five or six occasions between 2010 and 2011, for the purpose of achieving a "buzz," and the DOE psychiatrist's opinion that this use supports a Substance Use Disorder. The Notification Letter also cites

information reported from a protected source that the individual smoked K2 in the fall of 2010 and purchased large quantities of cold medicine in the form of pills. Lastly, the Notification Letter cites the individual's admission to using marijuana in high school on a couple of occasions, with his last use occurring in 1981.

Under Criterion (F), information is derogatory if it indicates that the individual deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for National Security Positions, a personnel Qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.31. Under this Criterion, the Notification Letter cites the fact that the individual failed to list on a 2011 QNSP that he did not file and pay 2010 Federal taxes. The Notification Letter also cites several inconsistent statements made by the individual during an April 2012 PSI regarding his actual alcohol consumption, his use of the substance K2 and his abuse of over-the-counter drugs.

This derogatory information adequately justifies the DOE's invocation of Criteria (H), (J), (K) and (F), and raises significant security concerns. Conduct involving questionable judgment, unreliability, untrustworthiness, or unwillingness to abide by rules and regulations could indicate that a person may not properly safeguard classified information. Improper or illegal involvement in drugs may also indicate that a person may be unable to safeguard such information. Emotional and mental disorders are security concerns because they may indicate a defect in judgment, reliability, or stability. Also, excessive consumption of alcohol is a security concern because this behavior can lead to the exercise of questionable judgment and the failure to control impulses. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines E, G, H, and I (Adjudicative Guidelines).*

III. 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 or unfavorable, that has a bearing on the question of whether granting or restoring a security clearance would compromise the national security. 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 material factors. 10 C.F.R. § 710.9(c).

The purpose of a DOE administrative proceeding under 10 C.F.R. Part 710 is to provide the individual an opportunity to submit information in support of her 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).

IV. Findings of Fact and Analysis

At the hearing, the individual did not dispute the allegations in the Notification Letter. Instead, he attempted to demonstrate, through his testimony, that he does not suffer from a significant defect in judgment and reliability and that he is a trustworthy individual.

A. Criteria (H) and (J)

The Adjudicative Guidelines describe factors that could mitigate security concerns involving psychological conditions. Those factors include information indicating that: (i) the condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment program; (ii) the individual has voluntarily entered into, and is participating in, a counseling or treatment program for a condition that is amenable to treatment, and has received a favorable prognosis by a duly qualified mental health professional; (iii) there is a recent opinion by a duly qualified mental health professional retained by, or acceptable to, the U.S. Government that the individual’s condition is under control, or in remission, and has a low probability of recurrence; (iv) the individual’s condition is temporary and has been resolved, with the individual showing no current signs of emotional instability; and (v) there is no indication of a current problem. *See Adjudicative Guidelines, Guideline I, ¶ 29.*

At the outset, I note that the favorable testimony of the DOE psychiatrist establishes the existence of mitigating factors (iii) and (v), and, along with the testimony of the individual, convinces me that he has adequately addressed the DOE’s security concerns under Criteria (H) with respect to his diagnosis of Bipolar II Disorder and ADHD. In 2007, the individual met with a psychiatrist to help him cope with the death of a close family member. After meeting with the psychiatrist, the individual was diagnosed with Bipolar II and ADHD. His treating psychiatrist prescribed Strattera (for the treatment of ADHD), Lamictal (for the treatment of Seizures), and Seroquel (for the treatment of Bipolar II). However, according to the individual, the medications did not help him, noting that the medications made him feel either very hyper or “zombie-like,” and he stopped taking them in September 2011. Transcript of Hearing (Tr.) at 48. During the hearing, the individual testified that he only met with the psychiatrist so that she could check on the effectiveness of his medication. *Id.* at 50. He testified that the dosages of his medications were too strong, and that the psychiatrist told him he could break the pills in half to decrease the dosage. The individual stated that, after his last meeting with his psychiatrist, he stopped taking the medication. *Id.* According to the individual, the last time he met with the psychiatrist was in June 2011 as a follow-up after attending a substance abuse treatment. In a June 2011 letter addressed to his employer, the psychiatrist indicated that the individual “is psychiatrically stable and is free of active psychiatric symptoms.” *See* DOE Exhibit 6. The individual stated during the hearing that since seeing the psychiatrist in 2011, he has not sought additional treatment for

his conditions. Tr. at 51. He testified that other than having problems sleeping, he does not now have any symptoms of Bipolar II, noting that he does not get angry or have mood swings. *Id.* With respect to the individual's diagnoses of Bipolar II and ADHD, the DOE psychiatrist testified that, after evaluating the individual, he did not see evidence of ADHD. Although he noted that the individual has some hyperactivity, he does have the ability to concentrate. *Id.* at 111. He further noted that a Bipolar II diagnosis is marked by periods of depressions, and that in evaluating the individual, he did not hear any evidence of the individual experiencing periods of depression. *Id.* at 113. He opined that the individual does not need to seek treatment for either of these two conditions. *Id.* at 114. After reviewing the DOE psychiatrist's testimony, I am persuaded that, with respect to the individual's diagnoses of Bipolar II and ADHD, there is no indication of a current problem. For this reason, I find that the individual has successfully addressed the DOE's security concern under Criteria H, specifically with respect to the diagnoses of Bipolar II and ADHD.

Likewise, with respect to the individual's diagnosis of Alcohol Dependence, the favorable testimony of the DOE psychiatrist establishes the existence of mitigating factor (iii), and, along with the testimony of the individual, convinces me that he has adequately addressed the DOE's remaining security concerns under Criteria (H) and (J). The individual has a past history of alcohol use. DOE Exh. 3. According to the individual, he first began consuming alcohol at approximately 20 years old, stating that he would drink one or two beers in a social setting. However, after he got married at the age of 23, the individual stated that he would rarely drink for the next 18 years. *Id.* The individual and his wife divorced in 2008. From 2009 to 2010, the individual was engaged to be married and living with his fiancée, but his fiancée terminated the relationship, and he moved out of their home in September 2010. *Id.* According to the individual, this was "emotionally upsetting," and his drinking began to escalate. He reported that he would consume two mixed drinks at bedtime, with each drink consisting of "two fingers" of whiskey in a 12-ounce cup with Coca-Cola. He further reported that he would drink to help him fall asleep. DOE Exh. 1.

In November 2010, the individual was charged with two counts of Driving under the Influence (DUI), one count of Driving While Impaired (DWI), and failure to remain at the scene of an accident. *Id.* He reported that prior to his arrest, he was celebrating his friend's birthday and consumed three large glasses of sweet tea flavored vodka. *Id.* After falling asleep for a while, he left his friend's house to go to a McDonald's restaurant. While in the drive-thru, he took his foot off his brake and bumped the car in front of him. *Id.* He was subsequently pulled over by a police officer in the parking lot. *Id.* After appearing in court, the individual was convicted of two counts of DUI, received two years of probation before judgment and was required to complete 80 hours of community service. *Id.* As a condition of his probation, he was required to totally abstain from alcohol and the use of illegal substances. *Id.* The individual completed 13 weeks of Substance Abuse treatment as well as a 26-week individual substance abuse treatment program. *Id.* However, during a February 2012 Personnel Security Interview (PSI), the individual admitted to consuming alcohol in moderation during the time between his arrest in November 2010 and his court date on June 6, 2011, during his probation and during his alcohol treatment. *Id.*

During the hearing, the individual acknowledged his past alcohol use and testified that he used alcohol to fall asleep. He further testified that he stopped drinking alcohol “cold turkey,” stating that his last drink was in December 2012. *Id.* at 69. The individual testified that he now takes Unisom (a sleeping aid) to help him fall asleep. *Id.* at 74. He stated that he does not struggle with abstaining from alcohol and has never had cravings, adding that he drank because he chose to drink. *Id.* at 73. The individual also testified that he stopped drinking for health reasons. Finally, the individual acknowledged that he violated his probation. *Id.* at 75.

After listening to the individual’s testimony, the DOE psychiatrist testified that while he recommends that the individual participate in a setting that reinforces and maintains his commitment not to drink over the long term, *ie.* Alcoholics Anonymous (AA), he believes the individual’s prognosis is good and that he is in early remission. *Id.* at 117, 122 and 123. He noted that although the individual has a vulnerability or predisposition to drinking, the individual’s drinking took place in stressful circumstances. The DOE psychiatrist testified that as long as the individual is not drinking, there is no significant defect in his judgment and reliability. *Id.* at 125.

After reviewing all of the testimony, I am persuaded by the DOE psychiatrist’s opinion that the individual is in remission, albeit early remission, and that he individual’s condition does not cause a significant defect in his judgment and reliability. As an initial matter, the individual credibly testified that he no longer uses alcohol as a sleep aid and has substantially reduced the stressors in his life that led him to drink. He further testified that does not have the urge to drink and is committed to abstaining from alcohol and participating in an alcohol program as the DOE psychiatrist recommends. I am convinced that the individual’s past alcohol consumption was linked to stressful events in his life at the time and his inability to sleep which is now managed. For these reasons, I find that the individual has successfully addressed the DOE’s security concerns under Criteria (H) and (J).

B. Criterion (K)

I reach a similar conclusion with regard to Criterion (K). The *Adjudicative Guidelines* that pertain to the individual’s improper usage of illegal substances, including marijuana and K2 (synthetic cannabis), as well as over-the-counter medications all provide that the isolated nature of the conduct, unusual circumstances leading up to the conduct, and the likelihood that the conduct will not be repeated, can act as mitigating factors. *See Adjudicative Guidelines E, H and J.*

In a February 2012 email received by DOE from a protected source, the protected source reported that the individual smoked a substance known as K2 (synthetic cannabis) in the fall of 2010 and purchased large quantities of cold medicine in the form of pills. DOE Exh. 1. During an April 2012 PSI, the individual admitted to purchasing K2 (synthetic cannabis) on the internet on approximately three occasions for personal use and using it on three occasions in 2010. *Id.* He also admitted that he used Robitussin DM on five or six occasions between 2010 and 2011, for the purpose of achieving a “buzz,” either by taking pills or consuming up to a half of a bottle. Finally, the individual admitted that he used marijuana while in high school on a couple of occasions, with his last use occurring in 1981. *Id.* During the hearing, the individual

acknowledged his use of all of these substances, although he disagreed as to whether or not K2 is considered illegal. The individual testified that his minimal marijuana use occurred in high school. He further testified that his use of K2 and Robitussin DM occurred during a stressful time in his life in 2010 and 2011. He admitted to his use being “stupid” and stated that he was embarrassed by his behavior in light of his age and professional background. *Id.* at 46. He reiterated that he was in a “really, emotionally . . . place and admitted that he could have used better outlets at that time. The individual testified that he has not used K2 or Robitussin DM since the limited occasions in 2010 and 2011, and further that he has no intention to ever use K2 or misuse over-the-counter medication in the future. *Id.* at 46 and 47. Considering these facts, I conclude that the individual’s use of K2 and misuse of cold medication happened under unusual circumstances that are unlikely to recur in the future; and to the extent that the behavior raised security concerns under Criterion K, I conclude that such concerns have been successfully mitigated. I further conclude that the individual’s use of marijuana in high school has been mitigated by the passage of time.

C. Criterion F

The Criterion F concerns are based on allegations of very recent behavior, an intentional omission from a 2011 QNSP, a false statement in a January 2012 Office of Personnel Management interview as well as a number of false statements made during an April 2012 PSI. These allegations bear directly on the trustworthiness and reliability of the individual in his dealings with the DOE. Under Criterion F, however, a false statement is considered derogatory only if made “[d]eliberately.” 10 C.F.R. § 708.8(f).

First, on a 2011 QNSP, the individual failed to list that he did not file and pay his 2010 Federal taxes. During the hearing, the individual testified that he did not list his 2010 Federal taxes because he believed the taxes would be paid before his investigation. However, when questioned, he acknowledged that he intentionally misrepresented this information. *Tr.* at 92. Based on this evidence, and my assessment of the individual’s credibility of his hearing testimony, I find that the individual deliberately misrepresented this information on his QNSP.

With respect to the individual’s alcohol consumption and drug use, the record reflects a number of inconsistencies. During a 2010 OPM interview, the individual stated that he had not consumed alcohol since his November 2010 DUI arrest. However, during his April 2012 PSI, the individual admitted to currently consuming at least six beers a week and further admitted that he was in violation of his probation. At the hearing, the individual readily acknowledged that this statement was an intentional misrepresentation. *Id.* Similarly, during his April 2012 PSI, the individual was questioned regarding information received from a protected source in February 2012 that he “would go to the liquor store and purchase alcohol which included at least a 5th of liquor and beer every day and drink all of it.” After initially denying this information, he later admitted that he consumed one or two shots of liquor a day. The individual stated that he did not report this information because “it did not look good.” Again, during the hearing, the individual admitted that he was embarrassed by this information and intentionally misrepresented his alcohol consumption. *Id.* at 93. In addition, during his April PSI, after being questioned about his use of synthetic, designer and chemically enhanced drugs, the individual initially denied that he had ever used or purchased K2. However, when confronted with the

information, he admitted his involvement with K2. Likewise, when questioned about his use of over-the-counter drugs as a means to get “high,” the individual initially denied abusing Robitussin cold medicine, but later in his PSI admitted to abusing it to obtain a “buzz.” *Id.* at 94. The individual acknowledged, during the hearing, that these instances were intentional misrepresentations as well. *Id.* Based on the evidence, I find that all of these statements were deliberate misrepresentations.

As to whether the concerns raised by the individual’s deliberate false statements remain unresolved, I have considered the relevant factors set forth in Adjudicative Guideline E.² I find that none of the relevant factors apply in this case. Specifically, the individual did not meet ¶ 17(a) because the individual did not make prompt, good-faith efforts to correct his falsifications before being confronted with facts during his April 2012 PSI. He did not meet ¶ 17(c) because the individual’s verified falsifications were serious and relatively recent. The individual’s behavior at the time of his PSI did not occur under such unique circumstances that it is unlikely to recur. In addition, the individual did not meet ¶ 17(e). Although he acknowledged during the hearing that his misrepresentations were a result of bad judgment, Tr. at 95, he has not demonstrated that he has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress. Finally, the individual did not meet ¶ 17(f) because I was not convinced that the information regarding the individual that the DOE received from a protected source was from a source of questionable reliability. *See Adjudicative Guidelines* at Guideline E. Considering this, and the entirety of the record, I must conclude that the very serious concerns raised under Criterion F have not yet been resolved.

V. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Criteria H, J, K and F. After considering all of 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 find that the individual has brought forth convincing evidence to mitigate the security concerns associated with Criteria H, J and K. However, I cannot find that the individual has brought forth convincing evidence to mitigate security concerns associated with Criterion F. I therefore cannot find that restoring the individual’s access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I

² Guideline E Paragraph 17 outlines the conditions that could mitigate security concerns raised under Criterion F. Paragraph 17(a) states that “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” Paragraph 17(c) states that “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.” Paragraph 17(e) states that “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.” Finally, Paragraph 17(f) states that the information was unsubstantiated or from a source of questionable reliability. The *Adjudicative Guidelines* at Guideline E.

find 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.

Kimberly Jenkins-Chapman
Hearing Officer
Officer of Hearings and Appeals

Date: July 1, 2013