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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:	May 17, 2013)	Case No. PSH-13-0062
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)	

Issued: August 16, 2013

Hearing Officer Decision

Diane DeMoura, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (“the Individual”) to hold a Department of Energy (DOE) access authorization.¹ This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual’s suspended DOE access authorization should be restored. For the reasons detailed below, I find that the DOE should not restore the Individual’s access authorization at this time.

I. BACKGROUND

The Individual is employed by a DOE contractor and currently holds a suspended DOE access authorization. DOE Exhibit (“Ex.”) 3. In late November 2012, the Individual was arrested for Driving While Intoxicated (DWI), which he timely reported to the Local Security Office (LSO). DOE Ex. 7 (December 3, 2012, Incident Report); *see also* DOE Ex. 8 at 18. This information prompted the LSO to request that the Individual participate in a Personnel Security Interview (PSI) in January 2013. DOE Ex. 8. After the PSI, the Local Security Office (LSO) referred the Individual to a DOE consultant-psychologist (“the DOE psychologist”) for an evaluation. The DOE psychologist evaluated the Individual in February 2013, and issued a report. DOE Ex. 4. In April 2013, the LSO informed the Individual that there existed derogatory information that raised security concerns under 10 C.F.R. §§ 710.8 (h), (j) and (l) (Criteria H, J and L,

¹ Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

respectively).² *See* DOE Ex. 1 (Notification Letter, April 18, 2013). The Notification Letter also informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the security concerns. *Id.*

The Individual requested a hearing on this matter. DOE Ex. 2. The LSO forwarded his request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. At the hearing, the DOE counsel introduced ten exhibits into the record (DOE Exs. 1-10) and presented the testimony of one witness, the DOE psychologist. The Individual submitted four exhibits and presented his own testimony, as well as the testimony of five witnesses: a long-time friend; a co-worker; his Alcoholics Anonymous (AA) sponsor; a colleague from AA; and the substance abuse counselor from the Individual's intensive outpatient program (IOP). *See* Individ. Exs. A-D; Transcript of Hearing, Case No. PSH-13-0062 (hereinafter cited as "Tr.").

II. REGULATORY STANDARD

The regulations governing the Individual's eligibility for access authorization are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The regulations identify certain types of derogatory information that may raise a question concerning an individual's access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Hearing Officer considers relevant factors, including "the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of 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," and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors and considerations. *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).

Ultimately, the decision concerning eligibility is "a comprehensive, common-sense judgment made after consideration of all relevant information, favorable and unfavorable" 10 C.F.R. § 710.7(a). In order to reach a decision favorable to the individual, the Hearing Officer must find

² Criterion H concerns information that a person has "an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a 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 conduct 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." 10 C.F.R. § 710.8(j). Criterion L concerns conduct tending to show that the Individual was "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).

that “the grant or restoration of access authorization to the individual will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* See generally *Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

III. FINDINGS OF FACT

The Individual began consuming alcohol at age eighteen, drinking beer occasionally with friends. DOE Ex. 4 at 2. Over the years, the frequency and quantity of the Individual’s alcohol consumption increased. *Id.* at 3-4. Much of the Individual’s drinking occurred in social situations. *Id.* In May 1998, the Individual was pulled over while driving from one bar to another. *Id.* at 3. After failing a breathalyzer test, the Individual was arrested and charged with DWI and Negligent Use of a Deadly Weapon, because he had a loaded gun in his vehicle while he was intoxicated, in violation of local laws. The weapon charge was ultimately dismissed. *Id.* The Individual paid a fine and was placed on probation. As part of his probation, the Individual’s license was suspended for one year and he was required to refrain from consuming alcohol or frequenting establishments that served it. *Id.* at 4. The Individual ultimately violated each of those terms. *Id.*

The Individual continued to consume alcohol after his 1998 DWI arrest, and over time his consumption increased to daily drinking. *Id.* at 4-5. The Individual socialized with a group of friends who went out drinking together, and they often frequented several bars in an evening. *Id.* at 5. The Individual often drove on these occasions, to travel between bars and then home at the end of the evening. *Id.* In addition to this dangerous behavior, the Individual’s drinking also impacted him professionally. In 2012, the Individual’s supervisor counseled him several times regarding performance and attendance issues, and recommended that the Individual visit the site’s Employee Assistance Program (EAP) for help. The Individual’s attendance and performance improved for a time, but he ultimately reverted to poor behavior. *Id.* In late November 2012, the Individual drove home after an evening of drinking and socializing. He was pulled over by a police officer and, after failing field sobriety and breathalyzer tests, was arrested and charged with DWI. *Id.* at 6.

In February 2013, the DOE psychologist diagnosed the Individual with Alcohol Dependence, with physiological dependence, in early full remission. *Id.* at 10. He noted that this is an illness or condition that “can cause and has caused significant defects in [the Individual’s] judgment and reliability.” *Id.* In that regard, the DOE psychologist noted that the Individual’s “failure to consistently use self-discipline has led to poor job performance and absences. He has made efforts to correct this and apparently wants to correct this, but even with conscious thought, [he] has not been able to overcome the impulse to drink with friends to his detriment.” *Id.* at 10-11. With respect to how the Individual could demonstrate adequate evidence of rehabilitation or reformation, the DOE psychologist recommended a minimum of twelve months of abstinence from alcohol. In addition, the DOE psychologist recommended completion of an IOP followed by continued aftercare with that group as long as the treatment professionals find it necessary. His final recommendation was that the Individual undertake sustained involvement in the AA

program for at least one year, to include attendance at a minimum of four meetings per week and work with an AA sponsor. *Id.* at 10.

IV. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

As stated above, upon review of the Individual's complete personnel security file, including the DOE psychologist's report, the LSO issued a Notification Letter identifying security concerns under Criterion H, J, and L of the Part 710 regulations. DOE Ex. 1.

To support the Criteria H and J security concerns, the LSO cites the Individual's pattern of alcohol consumption, his past DWI arrests, his alcohol-related attendance and performance issues at work and the subsequent reprimands, and the DOE psychologist's diagnosis. *Id.* It is well-established that excessive use of alcohol raises security concerns because "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." Adjudicative Guidelines, Guideline G, ¶ 21. Based on the facts in this case regarding the Individual's history of excessive alcohol consumption, I find that the LSO properly invoked Criteria H and J.

Criterion L concerns conduct tending to show that the Individual was "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). As a basis for invoking Criterion L, the LSO cited the Individual's two previous DWI arrests and related charges, as well as his admission that he drove while his license was revoked. DOE Ex. 1. It is well-established that criminal conduct raises security concerns under Criterion L. Such conduct "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." *See* Adjudicative Guidelines, Guideline J, ¶ 30. In light of the Individual's two criminal arrests, as well as his violation of terms imposed on him by a court, the LSO had sufficient grounds to invoke Criterion L.

V. ANALYSIS

The Individual did not dispute any of the facts giving rise to the security concerns in this case. The only question remaining is whether the Individual has brought forward sufficient evidence to mitigate the security concerns.

A. The Individual's Mitigating Evidence

The Individual acknowledged that he is "an alcoholic." Tr. at 132. He stated that after his 1998 DWI arrest, he did accept responsibility for his behavior, but instead was full of self-pity and anger. Tr. at 166. The Individual has since accepted the role that alcohol has played in his life and the problems that it has caused for him. He stated that, while he knew he needed help in late 2012, he experienced a change in his attitude after his evaluation with the DOE psychologist in January 2013. Tr., at 138. He felt "very emotional," having finally been honest with himself

about the extent of his problem and having discussed it openly with someone else. Tr. at 138-40. Since that time, the Individual has made substantial progress in treating his condition. He last consumed alcohol in January 2013, six months prior to the hearing. Tr. at 133. He has learned that he cannot resume drinking in the future, even in moderation, and he intends to remain abstinent from alcohol indefinitely. Tr. at 160-61. To support his abstinence, he enrolled in a ten-week IOP, which he completed in March 2013. *Id.*; see also *Indiv. Ex. A*; *DOE Ex. 2*. The Individual testified in the various ways in which he has found the IOP helpful in understanding his alcohol dependence. Tr. at 134-38. Because he has also found the IOP's aftercare group beneficial to his recovery, he continues attending those meetings at significant personal expense since the cost is not covered by his health insurance. Tr. at 135. In addition to his continued attendance at IOP aftercare sessions, the Individual has fully embraced his participation in the AA program – developing a strong relationship with his sponsor and other members, actively working the program's twelve steps, and even chairing meetings. Tr. at 139-41 161-63. Finally, the Individual disposed of the alcohol in his home in early January 2013, and no longer frequents establishments that he would visit solely to consume alcohol. Tr. at 153-54.

Since his abstinence and treatment, the Individual has noticed many positive changes in his life. Tr. at 151-52. He lost weight, sleeps better, and generally feels more “rested and relaxed.” *Id.* He added that he has also devoted more time to hobbies and other interests to which he had not given enough attention over the years due to his drinking. *Id.* His social interactions have generally improved. The time he spends with close friends is more meaningful, and he no longer socializes with people who he primarily spent time with only when out drinking. Tr. at 158-60.

The Individual did not attempt to justify his May 1998 DWI arrest and the firearm charge that was ultimately dropped, his subsequent driving on a revoked license in 1998, and his November 2012 DWI arrest. He noted, however, that these incidents occurred before he “got sober,” and he believes they “tie into the illness of alcoholism.” Tr. at 127. The Individual stated, “the only time[s] I’ve really been in trouble with the law has been due to alcohol, so you would think I would have learned, but it took me an awful long time to learn” Tr. at 166.

The Individual's testimony regarding his abstinence was corroborated by his long-time friend, who spoke of the Individual's commitment to maintaining his sobriety, as well as the changes the Individual has made in his life since becoming abstinent. Tr. at 34-37, 45-48. In addition, the Individual's co-worker testified that she had personal experience with issues of alcoholism, and had suspected that – based on his performance and attendance issues – something was wrong with the Individual in 2012 leading up to his DWI arrest. Tr. at 94-95. She also testified that she had noticed significant improvement in the Individual since January 2013, and added that they often discuss issues related to alcoholism and she is supportive of his recovery. Tr. at 96-97. The Individual's sponsor and AA colleague spoke in great detail about the Individual's participation in AA meetings, as well the level of commitment to his recovery that he has demonstrated over the last several months. Tr. at 13-28, 112-25. Finally, the Individual's substance abuse counselor corroborated the Individual's testimony regarding his attendance in the IOP and aftercare sessions. Tr. at 76-77. The counselor indicated that the Individual is a “powerful member of the group,” consistently participating and sharing with others. Tr. at 79-80. The counselor considers the Individual a “success story” thus far. Tr. at 82. However, he noted that, as of the hearing date, the Individual was only six months into his recovery, which

was still early. Therefore, while he believed the Individual was doing everything he should be doing to treat his condition, his prognosis at that point was “fair.” Tr. at 79.

After listening to the testimony of the other witnesses at the hearing, the DOE psychologist stated that he “was impressed” with the testimony of the witnesses who testified on the Individual’s behalf. Tr. at 169. The psychologist had no doubts regarding the Individual’s “authenticity” or “intent,” and he was “very pleased” by the Individual’s honesty. Tr. at 169-70. The DOE psychologist stated that the Individual was doing everything that has been asked of him in order to treat his condition, and has a good support system in place. Tr. at 171. The psychologist indicated that he is “pretty optimistic” about the Individual’s prognosis. Tr. at 170. However, due to seriousness and duration of the Individual’s condition, the DOE psychologist opined that, with only six months of abstinence and treatment, it was still too early in the Individual’s recovery to conclude that he was adequately rehabilitated. Tr. at 170. In that regard, the psychologist continued to recommend that the Individual demonstrate one year of abstinence and involvement in AA, meaning the Individual needed at least another six months from the date of the hearing. Tr. at 171, 174. He concluded, however, that he believed the Individual’s chances of relapsing “are very small.” Tr. at 173.

B. Hearing Officer Evaluation of Evidence

Among the factors that may serve to mitigate security concerns raised by an individual’s alcohol use are that “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,” that “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),” and that “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, Guideline G, ¶ 23.

The Individual presented significant mitigating evidence which demonstrates the steps he has taken in the last six months to treat his alcohol dependence. He has acknowledged his alcohol problem, voluntarily enrolled in, and completed, an intensive outpatient substance abuse treatment program, regularly attends aftercare group sessions, actively participates in AA meetings, and has developed close relationships with his AA sponsor and other AA members. However, while the Individual has remained abstinent for approximately six months as of the hearing and has expressed his intention to maintain his abstinence in the future, he has a long history of significant alcohol consumption throughout his adulthood that includes two alcohol-related arrests. While he made progress, he remains in the early stages of his recovery. In this regard, I am persuaded by the testimony of the DOE psychologist that the Individual’s period of abstinence to date is not yet sufficient to establish adequate evidence of rehabilitation and

reformation. Given these facts, I cannot conclude at this time that the Individual has adequately mitigated the Criteria H and J concerns raised by his past alcohol use.

Similarly, the Adjudicative Guidelines identify the passage of time as an important measure in mitigation concerns raised by past criminal activity. *See* Adjudicative Guidelines, Guideline J, ¶ 32(a) (identifying as a possible mitigating factor that “so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur or does not case doubt on the individual’s reliability, trustworthiness, or good judgment”). In this case, I find that the Individual’s past criminal activity – the most recent of which occurred in November 2012, approximately eight months prior to the hearing – was solely a product of his excessive drinking. As noted above, I find that it is too early in the Individual’s recovery to conclude that he has mitigated the Criteria H and J concerns raised by his past excessive consumption of alcohol. Likewise, I cannot find that there has been a sufficient period of time since the related criminal activity to mitigate the resulting Criterion L concerns. However, once the Individual resolves the security concerns raised by his use of alcohol, the associated Criterion L concerns pertaining to his alcohol-related arrests will also be mitigated.

VI. CONCLUSION

Upon consideration of the entire record in this case, I find that there was evidence that raised doubts regarding the Individual’s eligibility for a security clearance under Criteria H, J and L of the Part 710 regulations. I also find that the Individual has not presented sufficient information to fully resolve those concerns. Therefore, I cannot conclude that restoring the Individual’s suspended DOE access authorization “will not endanger the common defense and security is clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore the Individual’s suspended DOE access authorization at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Diane DeMoura
Hearing Officer
Office of Hearings and Appeals

Date: August 16, 2013