

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 the OHA Director appointed me the Hearing Officer in this case. The DOE introduced eight exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist. The individual introduced two exhibits, and presented the testimony of seven 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 restoring the individual’s security clearance would not endanger the common defense and be clearly consistent with the national interest. 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. NOTIFICATION LETTER AND ASSOCIATED SECURITY CONCERNS

The Notification Letter cited derogatory information within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j) (hereinafter referred to as Criteria H and J, respectively). Exhibit 1.³ Under Criterion J, the LSO cited the report of the DOE psychiatrist, in which he concluded that the individual met criteria found in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) for Alcohol Abuse, as well as statements the individual made during the May 2013

³ Criterion H relates to information indicating that the individual has an “illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychiatrist, 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 psychiatrist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j).

PSI regarding his use of alcohol. *Id.* To support Criterion H, the LSO cited the DOE psychiatrist's finding that the individual met criteria in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) for Alcohol Use Disorder, Mild, and that this disorder, as well as the diagnosis of Alcohol Abuse under the DSM-IV are illnesses or mental conditions that cause or may cause a significant defect in judgment and reliability. *Id.*

The above information adequately justifies the DOE's invocation of Criteria H and J, and raises significant security concerns. Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness, in this case the diagnoses of Alcohol Abuse and Alcohol Use Disorder being of concern under Criterion H. Moreover, excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and thus raises questions about an individual's reliability and trustworthiness under Criterion J. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Adjudicative Guidelines)*, The White House (December 19, 2005) at Guideline G.

IV. FINDINGS OF FACT AND ANALYSIS

The individual is 47 years old, and has worked for a DOE contractor since August 2011. Exhibit 6 at 1; Exhibit 4 at 2. The report of the DOE psychiatrist notes that the individual began drinking in high school on a regular basis, sometimes "two to three nights per week, two to ten beers per night. The subject would become intoxicated a few times per month after consuming more than six beers." Exhibit 4 at 3. After high school, while serving in the military from 1984 to 1987, the individual would drink two to three times per month, consuming a twelve pack of beer and becoming "impaired" each time. *Id.* From 1987 to 2000, the individual would drink two to four beers on Fridays and Saturdays, becoming intoxicated once or twice per year after consuming six beers. *Id.* From 2000 until the May 2013, the individual consumed alcohol most weekends, "drinking six to ten beers on Friday or Saturday night." *Id.*

The individual testified that, on the evening of Thursday, May 2, 2013, he was at a "meeting for one of the nonprofits that I was president of this year, and we were cussing and discussing, and I actually had about 10 to 12 beers, stopped drinking around 10:30, 11:00, . . ." Hearing Transcript (Tr.) at 10. The individual reported to work the following day, May 3, 2013, where he was called for a random breath alcohol screen. The individual's breath alcohol content was measured at 0.059 (g/210L) at 10:39 a.m. and 0.055 at 10:56 a.m., in both cases above his employer's acceptable limit of 0.020. Exhibit 6 at 3; Exhibit 4 at 2.

On the same day, the individual met with the designated psychologist at his workplace, and on May 13, 2013, the individual met with a Licensed Professional Counselor associated with his employer's Employee Assistance Program (EAP). At his May 14, 2013, PSI, the individual stated that the EAP counselor advised him that "the best way to fix it is just quit. 'Cause I don't drink a whole lot anyway." Exhibit 7 at 19. The individual testified at the hearing that he had not consumed alcohol since May 25, 2013, when he "had four beers on the golf course." Tr. at 12. Beginning on June 10, 2013, the individual participated in a sixty-hour Intensive Outpatient Program, which he successfully completed on July 16, 2013. Exhibit B.

Since then, the individual has participated in weekly aftercare sessions. Exhibit B. In addition, the EAP counselor testified that she has met with the individual six times, including their initial meeting

on May 13, 2013. Tr. at 28. The individual testified that he had been to three meetings of Alcoholics Anonymous (AA), but had not yet found a sponsor. Tr. at 23-24.

Regarding an individual's use of alcohol, the *Adjudicative Guidelines* list the following conditions that could mitigate security concerns raised under Guideline G (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.

With respect to condition (b) above, even though the individual has not been diagnosed as alcohol dependent, the DOE psychiatrist, the designated psychologist at the individual's workplace, and the EAP counselor, all of whom testified at the hearing in this matter, agreed with the recommendation that the individual abstain completely from consuming alcohol. Tr. at 35, 97, 105. As of the date of the hearing in this matter, the individual had abstained from the use of alcohol for five months and three days. In this context, each of the listed conditions must be evaluated with respect to whether enough "time has passed" (condition (a)), and whether approximately four months constitutes a clear and established "pattern" of abstinence (conditions (b) and (d)) or "satisfactory progress" (condition (c)).

Considering the issue of length of abstinence apart from other factors, I note that in a prior case before this office, a concern raised by a diagnosis of Alcohol Abuse was found to be sufficiently resolved after a period of "nearly five months" of abstinence. *Personnel Security Hearing*, Case No. PSH-11-0034 (2012). On the other hand, in a number of cases, a concern raised by the same diagnosis was found not to be resolved after a longer period of abstinence. See, e.g. *Personnel Security Hearing*, Case No. PSH-12-0094 (2012) (six months); *Personnel Security Hearing*, Case No. PSH-11-0002 (2012) (seven months); *Personnel Security Hearing*, Case No. PSH-12-0014 (2012) (nine months).

In each of these cases, factors other than length of abstinence were cited as relevant to the ultimate decision. Thus, where five months was considered a sufficient period of abstinence, the individual had, in those five months, become very active in AA, attending two to three meetings per week, and “began working with a sponsor almost immediately after starting in the program.” *Personnel Security Hearing*, Case No. PSH-11-0034 (2012). By contrast, despite six months of abstinence, the concern raised was not found to be resolved where the individual “had not yet identified himself as having a drinking problem, a factor that [the DOE psychiatrist] referred to as ‘a key missing piece.’” *Personnel Security Hearing*, Case No. PSH-12-0094 (2012). Reaching a similar outcome, a Hearing Officer “found compelling the testimony of the DOE psychiatrist that the Individual’s current period of abstinence [nine months] is not sufficient to establish adequate evidence of rehabilitation and reformation, and that his current risk of relapse remains at a moderate level.” *Personnel Security Hearing*, Case No. PSH-12-0014 (2012).

Here, the individual, though attending weekly aftercare sessions, has not found a setting, such as AA, where he has demonstrated a commitment to participation in multiple meetings per week during his five months of abstinence and, as noted above, has not yet found a sponsor in AA. The individual has had medical issues that arguably prevented such a level of involvement, Tr. at 12, as confirmed by the EAP counselor, *id.* at 34, but regardless of the reason for his non-participation, the effect on the pace of the individual’s recovery would be the same.

Thus, the psychologist at the individual’s workplace found the individual’s risk of relapse to be “low to medium or moderate. . . . Typically, the early -- the relapse occurs in the early stages of recovery, rehabilitation. So the first six months are really quite important. The first eight months really is what the research says is the most critical time period.” *Id.* at 93-94. Similarly, the DOE psychiatrist found the individual at a moderate risk of relapse at the time of the hearing, and testified that he wanted the individual “three times a week meeting with someone or a group of people where he has some accountability for his drinking.” *Id.* at 102, 105. The EAP, while finding a low risk of relapse, could “not yet” express a high degree of confidence in that prognosis. “He’s only five to six months in. He’s had a serious health risk in the middle of that. He needs to step it up and continue with AA, sponsorship, abstinence, aftercare, counseling, in order to enhance his likelihood of continued sobriety.” *Id.* at 36.

Taking this testimony into account, I cannot confidently find that this risk was, at the time of the hearing in this matter, low enough to warrant the restoration of his access authorization. *See* 10 C.F.R. § 710.7(a) (requiring that any doubts concerning the individual’s eligibility for access authorization be resolved in favor of the national security). Considering all of the above, and based upon my review of the entire record in this proceeding, I cannot find that the concern raised by the individual’s use of alcohol has been sufficiently resolved in this case, at least not at the time of the hearing in this matter.

V. CONCLUSION

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises security concerns under Criteria H and J. 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 at issue. 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.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: December 6, 2013