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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: October 28, 2013 )  
 ) Case No.: PSH-13-0112  
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Issued: January 22, 2014

**Administrative Judge's Decision**

Steven L. Fine, Administrative Judge:

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 derogatory information raised security concerns about the Individual under Criteria H and J.<sup>1</sup>

<sup>1</sup> Criterion H relates to information that a person has “[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist 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 information that a person 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).

The Notification Letter further informed the Individual that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance.<sup>2</sup> The Individual requested a hearing, and the LSO forwarded the Individual's request to the OHA. The Director of OHA appointed me as the Administrative Judge in this matter on October 29, 2013.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, a family friend, his treating physician (the Physician), his mother, and a DOE consultant psychologist (the Psychologist). *See* Transcript of Hearing, Case No. PSH-13-0112 (hereinafter cited as "Tr."). The LSO submitted five exhibits, marked as Exhibits 1 through 5, while the Individual submitted six exhibits, marked as Exhibits A through F.

## II. FINDINGS OF FACT

On May 17, 2013, the LSO conducted a Personnel Security Interview (PSI) of the Individual. During this PSI, the Individual stated that he would sporadically drink three or four beers on a weekend night. Exhibit 5 at 174. The Individual opined that consuming four beers on a weekend night would probably cause him to be legally intoxicated. Exhibit 5 at 174-175. The Individual initially agreed that he was "probably legally intoxicated twice a week." Exhibit 5 at 175. However, the Individual subsequently denied that he was intoxicated an average of twice a week. *Id.* at 176. The Individual explained that his alcohol use was sporadic, and could occur twice in a given week or not at all. *Id.* at 177. The Individual then estimated that he was intoxicated twice during a typical month. *Id.* The Individual denied using alcohol as a coping mechanism, noting that he doesn't drink alone, and that he only uses alcohol on weekends. *Id.* at 177-178. The Individual also candidly and forthrightly disclosed an extensive history of illegal drug abuse, which included his successful recovery from heroin addiction. *Id.* at 1-173.

At the request of the LSO, the Psychologist evaluated the Individual on August 12, 2013. Exhibit 4 at 2. After completing his evaluation of the Individual, the Psychologist issued a report on August 13, 2013, in which he found that the Individual's drug abuse and heroin addiction were no longer a concern, since he had stopped using illegal drugs, received treatment, and was now in full recovery from his opiate addiction. *Id.* at 7.

However, the Psychologist found that the Individual met the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revised (DSM-IV-TR) for "Alcohol-Related Disorder Not Otherwise Specified (NOS)." Exhibit 4 at 7. After reviewing the Individual's drinking patterns, the Psychologist opined that the Individual most likely becomes legally intoxicated at least one a month. Exhibit 4 at 6. Given the Individual's past history of using alcohol to excess during the years 2008 through 2010, and the Individual's current pattern of becoming intoxicated on a monthly basis, the Psychologist opined that the Individual's Alcohol-Related Disorder NOS had not been mitigated through rehabilitation or

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<sup>2</sup> Effective October 1, 2013, the titles of attorneys in the Office of Hearings and Appeals (OHA) changed from Hearing Officer to Administrative Judge. *See* 78 Fed. Reg. 52389 (August 23, 2013). The title change was undertaken to bring OHA staff in line with the title used at other federal agencies for officials performing identical or similar adjudicatory work.

reformation. Exhibit 4 at 7. The Psychologist further opined that the Individual's monthly intoxication constitutes habitual use of alcohol to excess. Exhibit 4 at 8. The Psychologist noted "the fact that his use of alcohol does not appear to function as a substitute for his drug addiction, suggests that he has the ability to control his drinking. It is recommended that he show this control by becoming abstinent for a period of six months. During this time I recommend that he attend AA meetings and resume his work on the steps. After the six-month period, the expectation would be that he would drink in a moderate, occasional manner that does not result in frequent intoxications." Exhibit 4 at 7-8.

### **III. STANDARD OF REVIEW**

The Administrative Judge'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**

On August 13, 2013, the Psychologist diagnosed the Individual with Alcohol-Related Disorder NOS. This information raises security concerns about the Individual under Criterion H and Adjudicative Guideline I, since the Psychologist opined that the Individual's Alcohol-Related Disorder NOS constitutes an illness or condition that cause, or may cause, a significant defect in the Individual's judgment and reliability. Exhibit 4 at 8; *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) Guideline I at ¶ 27 and G at ¶ 21, 22(e). Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions, under Criterion J and Adjudicative Guideline G, about an individual's reliability and trustworthiness. Adjudicative Guideline G at ¶ 21.

### **V. ANALYSIS**

At the hearing, the Physician, a self-described "addictionologist" who successfully treated the Individual's opiate addiction in 2010-2011, testified on the Individual's behalf. Tr. at 21; Exhibit A at 4. The Physician re-evaluated the Individual on November 5, 2013, and prepared an

“Independent Medical Evaluation Report” which he issued on November 19, 2013. Exhibit A at 4. The Physician testified that the Individual does not have an alcohol disorder at this time. Tr. at 22, 32, 37. The Physician further opined that he “did not notice any evidence of persistent or habitual use of alcohol.” Tr. at 24. However, the Physician admitted that he “did not get the history that [the Individual] becomes legally intoxicated in my assessment.” Tr. at 26. The Physician also testified that it would be unlikely that an Individual who consumed three or four beers over the course of a three-to-four-hour period would become significantly intoxicated. Tr. at 38-39. The Physician was not familiar with the Widmark Equation, however.<sup>3</sup> Tr. at 40. The Physician further testified that, given the Individual’s history of opiate addiction, he would recommend that the Individual permanently abstain from drinking. Tr. at 40.

The Individual also testified on his own behalf at the hearing. He testified that he did not feel intoxicated or impaired on two occasions per month, but rather assumed that he was legally intoxicated whenever he consumed more than two beers. Tr. at 55-56, 74-76, 83-84. The Individual testified that it would take him three or four beers “to get a buzz.” Tr. at 82. The Individual testified that, after receiving his Notification Letter, he now rarely drinks. Tr. at 56, 63-64, 80-81. The Individual admitted that he drank a beer approximately two weeks before the hearing, however, he testified that that was the only time he had used alcohol since he received the Notification Letter. Tr. at 59, 76.

At the hearing, the Psychologist heard the testimony of each of the other witnesses before he testified. The Psychologist testified that he did not see the Individual’s alcohol use as a substitute for opiates. Tr. at 86-87. The Psychologist testified that the Individual had described his drinking as “three to four beers” during both his interview with the Individual and the PSI. Tr. at 89-90. The Psychologist noted that during his interview of the Individual, the Individual indicated that the beers he consumed were “craft beers.” Tr. at 90. The Psychologist testified that the Widmark Equation indicates that three or four craft beers (at 6.2 percent alcohol and 16 ounces per beer) consumed over four hours can cause a blood alcohol level of .09 to .10, which correlates to a significant legal intoxication. Tr. at 90. The Psychologist testified that because of the slight concern that the Individual may still need “some kind of addictive hit,” he recommended that the Individual abstain from alcohol use for a period of six months. Tr. at 94. The Psychologist opined that, at the time of the hearing, the Individual had completed four months of abstinence from alcohol use. Tr. at 96. The Psychologist stated that the Individual, in his hearing testimony, had attempted to minimize his alcohol use. Tr. at 90, 95. The Psychologist testified that the Individual’s minimization of his alcohol use raises his risk of future problematic drinking from “low” to “moderate.” Tr. at 96-97, 107. Accordingly, the Individual has not yet shown that he is reformed or rehabilitated from his Alcohol-Related Disorder NOS.

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<sup>3</sup> The Widmark Equation is a useful tool for predicting Blood Alcohol Concentration (BAC), predicting time elapsed since the last drink, and estimating how many drinks were consumed if the time of the last drink and BAC are known. The equation is frequently relied upon by substance abuse professionals, and was cited by the Psychologist in his hearing testimony as the basis for concluding that the Individual’s drinking patterns most likely resulted in him becoming intoxicated on at least a monthly basis. Tr. at 90.

The Individual has not convincingly rebutted his prior admissions that he drank to intoxication on a monthly basis. The Individual's pattern of drinking to intoxication on a monthly basis falls squarely within the range of consumption that we have found to constitute habitual use to excess. *See, e.g., Personnel Security Hearing, Case No. PSH-12-0113* (2012) ("the Individual's pattern of drinking six to eight drinks a night, once or twice a week, falls squarely within the range of consumption that OHA has found to constitute habitual use to excess"); *Personnel Security Hearing, Case No. VSO-0569* (2002) (drinking to intoxication once per month found to be habitual use to excess); *Personnel Security Hearing, Case No. TSO-0086* (2004) (drinking to intoxication three times per week found to be habitual use to excess); *Personnel Security Hearing, Case No. TSO-0393* (2006) (binge drinking all night on weekends once every two or three months found to constitute habitual use to excess); *Personnel Security Hearing, Case No. TSO-0453* (2007) (drinking to intoxication once or twice per month found to be habitual use to excess); *Personnel Security Hearing, Case No. TSO-0424* (2006) (intoxication 12 times per year between 1994 and 1998, 12 times in 2001, 18 times total in 2002 and 2003, 12 times in 2004 and 10 times in 2005 found to constitute habitual use to excess); *Personnel Security Hearing, Case No. TSO-0738* (2009) (intoxication twice per month between 1998 and 2002 and every night between 2002 and 2007 found to be habitual use to excess).<sup>4</sup> Based on the convincing testimony of the Psychologist that the Individual's risk of relapse is "moderate," I find that the Individual is not rehabilitated or reformed from his Alcohol-Related Disorder NOS, and the accompanying significant defect in judgment and reliability continues to be a security concern.

Accordingly, I find that the Individual's past drinking pattern presents an unacceptable risk to the common defense and national security. For the reasons set forth above, I find that the Individual has not mitigated the Criteria H and J security concerns at issue.

## VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H and J. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has not adequately mitigated the Criteria H and J security concerns. 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  
Administrative Judge  
Office of Hearings and Appeals

Date: January 22, 2014

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<sup>4</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.energy.gov/oha>.

