

DOE psychologist, the individual suffers from Alcohol Use Disorder, Severe. The DOE psychologist further concluded that the individual's Alcohol Use Disorder is a mental illness that causes or may cause a significant defect in her judgment and reliability.

In August 2013, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created substantial doubt regarding her 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 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).²

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 that I convened, the individual presented her own testimony and that of five witnesses. The DOE Counsel called one witness, the DOE psychologist. Both the DOE and the individual submitted a number of written exhibits prior to the hearing.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring her 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 individual is afforded a full opportunity to present evidence supporting her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

² 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 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).

B. Basis for Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites two criteria as bases for suspending the individual's security clearance: Criteria H and J. To support Criterion H, the LSO relies on the diagnosis of the DOE psychologist that the individual suffers from Alcohol Use Disorder, Severe, and the expert's opinion that Alcohol Use Disorder, Severe, is a mental illness that could cause a significant defect in the individual's judgment and reliability. As for Criterion J, the LSO cites the DOE psychologist's opinion and the individual's alcohol use. *See* DOE Exh. 1.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under both Criteria H and J. First, a mental condition such as an Alcohol Use Disorder can impair a person's judgment and reliability and trustworthiness. *See* Guideline I of the *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). Second, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G.

IV. Findings of Fact

The individual has a long history of excessive alcohol consumption. From 2004 to 2009, the individual admitted that she consumed 15 ounces of vodka twice a week. From 2009 to 2012, she consumed 15 ounces of vodka (straight) up to four times a week. Over the last 18 months, from January 2012 until April 2013, the individual admitted to consuming 15 ounces of vodka daily. On April 8, 2013, the individual admitted herself to a hospital for alcohol detoxification and to address her use of alcohol. However, the individual admitted that she relapsed while in outpatient treatment on April 18, 2013, and April 25, 2013, when she consumed a half pint of vodka and a pint of vodka, respectively. DOE Exh. 1.

During a May 15, 2013 PSI, the individual stated that she became concerned with her use of alcohol in May 2012. At that time, she told her family and her supervisors that she had a

problem with alcohol and planned to stop drinking. However, despite this statement, she continued to consume alcohol and continued to hide her alcohol consumption. The individual further admitted that she completely hid her alcohol consumption from friends and family by chewing gum and eating breath mints or hard candy. According to the individual, she chose to consume vodka from a water bottle because she believed it did not smell and no one would discover that she was consuming alcohol. *Id.*

The individual admitted to missing an average of two days of work per week totaling approximately five weeks over the last five months because of drinking, recovering from the effects of her consumption, or recovering from sleep deprivation when she tried not to drink. In addition, she admitted to experiencing hand tremors at work by 3:00 pm in the afternoon. She further admitted that she was unable to fall asleep without consuming alcohol. The individual believes that her alcohol use has negatively affected her family and social life. She admits to choosing to stay home in order to drink rather than to participate in family activities. *Id.*

Based on this information, the individual was referred to a DOE psychologist for a psychological evaluation. On June 27 and 28, 2013, the DOE psychologist evaluated the individual. In her Report, she concluded that the individual met the Diagnostic Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) criteria for Alcohol Use Disorder, Severe, which is equivalent to the DSM-IV-TR diagnosis of Alcohol Dependence, without adequate evidence of rehabilitation and reformation. The DOE psychologist further concluded that the individual's Alcohol Use Disorder, Severe, is an illness or mental condition, which causes, or may cause, a significant defect in judgment and reliability. DOE Exh. 6.

V. Analysis

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)³ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored. Based on the facts in this record, I cannot find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. The Diagnosis of Alcohol Use Disorder, Severe

³ Those factors include the following: 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 at the time of the conduct, the voluntariness of his 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.

The individual does not dispute the DOE psychologist's diagnosis of Alcohol Use Disorder, Severe. Therefore, the focus of the analysis will be on whether the individual has demonstrated adequate evidence of rehabilitation or reformation from Alcohol Use Disorder, Severe.

B. Evidence of Rehabilitation and Reformation from Alcohol Use Disorder, Severe

During the hearing, the individual acknowledged her history of excessive alcohol consumption and described the circumstances surrounding her April 2013 hospitalization for alcohol detoxification. Transcript of Hearing (Tr.) at 113. She testified that on April 7, 2013, she was home alone and drank all day. The individual testified that she realized that she was "killing herself" with her alcohol consumption and decided to call her sister to reach out for help. According to the individual, the next morning she called her supervisor and the Employee Assistance Program at her job. The individual stated that she checked into a six-day alcohol detoxification program the following day and started outpatient treatment the following week. *Id.* at 115. She acknowledged that she relapsed twice, once on April 18, 2013, and again on April 25, 2013, consuming alcohol on both occasions. The individual stated that she has not consumed any alcohol since April 25, 2013. *Id.* at 120. She testified that it was at this point that she realized that "she didn't want to be that person anymore" and realized that she had a disease. *Id.* The individual attended her first Alcoholics Anonymous (AA) meeting on April 29, 2013, and testified that she completed alcohol outpatient treatment on May 10, 2013. *Id.* at 123. As part of her "Aftercare" treatment, she attends three AA meetings per week, as well as meets with her sponsor once a week. *Id.* at 125 and 127. She testified that she is currently working on Step four of the 12-step AA program. The individual also began seeing a therapist on a weekly basis in May 2013. *Id.* at 127. She testified that she has a great deal of support from her husband and family and believes that their communication has improved since she has completed her treatment. *Id.* at 133. She testified that she is also thankful that she had the courage to get help for her alcohol problem. *Id.* at 131. Finally, the individual stated that her future intention is to abstain from alcohol.

During the hearing, the individual also offered the testimony of her therapist, her supervisor, a co-worker, her husband and her sister. The individual's therapist is a psychotherapist who has a background working with individuals that have alcohol and drug issues. *Id.* at 14. The therapist testified that she began meeting with the individual in May 2013 and was impressed that she was well on her way to recovery. *Id.* at 16. She noted that the individual has taken responsibility for her alcohol problem. *Id.* Although the individual suffered two relapses prior to meeting with her therapist, her therapist noted that the individual quickly "got back on the horse" toward recovery. The therapist opined that the individual has a number of positive factors that weigh in her favor, including the fact that the individual regularly attends AA meetings, has obtained a sponsor and is working through the 12 steps of AA, has a relapse plan in place and has good supportive relationships with her husband and her sister. *Id.* at 20 and 21. She opined that that the individual is now in early remission from her Alcohol Use Disorder, Severe, and does not have a mental condition that impairs her judgment and reliability. *Id.* at 27 and 29. She acknowledged, however, that the individual's alcoholism was severe and that the individual has

only achieved about eight months of sobriety. Nevertheless, she gave the individual a favorable prognosis and opined that the individual's risk of relapse is low.⁴

The DOE psychologist listened to all the testimony at the hearing before testifying herself. She testified that at the time she evaluated the individual, the individual met eight of the eleven criteria for Alcohol Use Disorder, Severe and recommended that the individual abstain from alcohol for a period of 12 months. *Id.* at 202. She testified that her initial opinion and recommendations have not changed, stating that the individual has not yet achieved rehabilitation or reformation. According to the DOE psychologist, the individual has a very severe case of Alcohol Use Disorder or Alcohol Dependence. She reiterated that the individual met eight of the eleven criteria which placed her in the severe designation of her diagnosis. *Id.* at 205. Because of the severity and duration of her symptoms and her relapse history, the DOE psychologist still maintains that the individual should achieve 12 months of abstinence in order to be considered rehabilitated. *Id.* at 207 and 208. She noted, however, that as of the date of the hearing, the individual had only achieved seven months and six days of abstinence, which places her solidly in the middle of early remission. Although the DOE psychologist believes that the individual's prognosis is excellent and that she has made many positive changes, she believes that the individual's risk of relapse is still too high at this time to consider the individual rehabilitated. *Id.* at 240.

C. Hearing Officer's Evaluation of the Evidence

In the administrative process, Hearing Officers accord deference to the expert opinion of psychiatrists, psychologists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing, Case No. TSO-0728 (2009)*.⁵ At the outset, I am persuaded by the testimony of the DOE psychologist that the individual has not yet achieved adequate evidence of rehabilitation, particularly in light of the severity of the individual's diagnosis and the individual's two relapses. Moreover, I find none of the factors outlined in the Adjudicative Guidelines apply in this case. *See Adjudicative Guideline, Guidelines G and I, ¶ 23 and ¶ 29, respectively*. For example, the individual's past problematic alcohol use is recent and chronic; she has not established a sufficient pattern of abstinence to ensure a low risk of relapse; she has a history of relapses, and the DOE psychologist has not given her a favorable prognosis. *See Adjudicative Guidelines G ¶ 23(a)-(d)*. Moreover, with regard to *Guideline I*, the DOE psychologist's opinion that the individual is still at risk of relapse does not allow me to mitigate the individual's psychological condition. In short, it is simply too early in the individual's rehabilitation for me to make a predictive assessment of her future behavior with respect to her

⁴ The individual's husband and sister both testified that they have seen positive changes since the individual entered alcohol treatment and has abstained from alcohol, noting that the individual is more outgoing, energetic and less emotionally reactive. *Id.* at 63. The individual's supervisor testified that the individual was very open about her alcohol treatment and is committed to her sobriety. *Id.* at 92. He has also noticed positive changes in the individual. Likewise, the individual's co-worker testified that the individual has talked with her openly and honestly about her alcoholism and believes that the individual does not intend to consume alcohol in the future. *Id.* at 84.

⁵ Decisions issued by OHA are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

alcohol use. For these reasons, I find that the individual has not yet mitigated the DOE's security concerns under Criteria H and J.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious 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 find that the individual has not brought forth convincing evidence to mitigate the security concerns associated with Criteria H and J. 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 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: January 24, 2014