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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-13-0113  
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Issued : January 31, 2014

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**Administrative Judge Decision**  
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Wade M. Boswell, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> 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 at this time.

**I. Background**

The individual is employed by the DOE in a position that requires her to hold DOE access authorization. In April 2013, the individual was involved in a minor traffic accident on a Sunday afternoon. The responding police officer suspected that the individual had been drinking alcohol and, upon conducting a field sobriety test, determined that the individual’s blood alcohol content (BAC) was .10 to .11. She was arrested and charged with driving under the influence of alcohol (DUI). Subsequently,

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<sup>1</sup> 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.

she was transported to a detention center where her BAC continued to measure .10 to .11. She was held in custody overnight.

The individual reported her arrest to the DOE, as required by security regulations. Subsequently, the Local Security Office (LSO) commenced an inquiry and conducted a personnel security interview (PSI) with the individual on May 22, 2013. *See* Exhibit 8. The PSI did not resolve concerns over the individual's DUI arrest and raised additional concerns over the individual's pattern of alcohol consumption. As a result, the individual was referred for evaluation by a DOE consulting psychologist, who conducted a psychological evaluation of the individual on June 25, 2013. *See* Exhibit 6.

Since neither the PSI nor the DOE psychologist's evaluation resolved the security concerns arising from the individual's alcohol usage, the LSO informed the individual in a letter dated August 27, 2013 (Notification Letter), that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance. 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 Criterion H and Criterion J, respectively).<sup>2</sup> *See* Exhibit 1.

Upon her receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. *See* Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO introduced eight numbered exhibits into the record and presented the testimony of one witness, the DOE consulting psychologist. The individual, represented by counsel, introduced eight lettered exhibits (Exhibits A-H) into the record and presented the testimony of three witnesses, including that of herself and that of a forensic psychologist. Subsequent to the hearing, individual's counsel submitted a written closing argument which was also accepted into the record. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric or alphabetic designation and the individual's written closing argument will be cited as "C.A." The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.<sup>3</sup>

## **II. Regulatory Standard**

### **A. Individual's Burden**

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<sup>2</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 . . ." and 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(h) and (j).

<sup>3</sup> OHA decisions are available on the OHA website at [www.oha.doe.gov](http://www.oha.doe.gov). A decision may be accessed by entering the case number in the search engine at [www.oha.gov/search.htm](http://www.oha.gov/search.htm).

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 denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward 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 evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

#### **B. Basis for the Administrative Judge’s Decision**

In personnel security cases arising under Part 710, it is my role as the Administrative Judge 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 eligibility in favor of the national security. *Id.*

#### **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, the LSO cited two criteria as the bases for suspending the individual’s security clearance: Criterion H and Criterion J. Criterion H concerns information that a person has “an 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). It is well established that “certain emotional, mental, and personality conditions can impair judgment, reliability, or 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). Conduct influenced by such psychological conditions can raise questions about an individual’s ability to protect classified information. With respect to Criterion H, the LSO relied on the June 25, 2013, report of the DOE consulting psychologist which concluded that the individual met the *Diagnostic Statistical Manual of the American Psychiatric Association Fifth Edition (DSM-5)* criteria for “Alcohol Use

Disorder – Mild” and that her alcohol use causes a significant defect in judgment and reliability. Ex. 1 and Ex. 6 at 10 – 13.

Criterion J refers to information indicating that an individual 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(h). Excessive alcohol consumption raises a security concern because it can lead to questionable judgment and the failure to control impulses, which in turn can raise questions about a person’s reliability and trustworthiness. *See* Adjudicative Guidelines at Guideline G; *Personnel Security Hearing*, Case No. PSH-11-0035 (April 19, 2012). With respect to Criterion J, the LSO relied upon the report of the DOE psychologist, dated June 25, 2013, which concluded that the individual is a user of alcohol habitually to excess and that there is no evidence of rehabilitation or reformation. Additionally, the LSO noted that the individual had been arrested and charged in April 2013 for driving under the influence of alcohol at a time when her BAC registered .10 to .11. Ex. 1 and Ex. 6 at 12.

In light of the information available to the LSO, the LSO properly invoked Criterion H and Criterion J.

#### **IV. Findings of Fact**

The individual did not begin consuming alcohol until she was an adult; however, since 1986, she has consumed alcohol on a daily basis. Ex. 8 at 53, 67; Tr. at 43. The individual’s pattern of alcohol consumption for at least the prior 15 years has been to consume two ten-ounce glasses<sup>4</sup> of white wine at home each evening. Ex. 6 at 3; Ex. A at 5; Tr. at 78, 44 – 46, 120. She reports experiencing no impairment or symptoms of intoxication from such usage. Ex. 8 at 31, 35; Tr. at 44, 47, 84 – 86.

As a result of moving her father into a new residence, the individual was experiencing a great deal of stress in April 2013. She returned home one Sunday after spending a stressful morning with her father and assumed she would be home the balance of the day. She ate a light lunch and consumed some white wine.<sup>5</sup> Her father unexpectedly needed the individual to take him on an errand and, in the course of the performing the errand, the individual was involved in a minor automobile accident that resulted in property damage, but no personal injuries. The responding police officer suspected that the individual had been drinking and conducted a field sobriety test. Ex. 8 at 10, 14 – 16; Tr. at 48 – 51. The accident occurred about one-and-one-half hours following the

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<sup>4</sup> During the PSI, the individual reported that she was drinking two five-ounce glasses of white wine per evening and the DOE consulting psychologist referred to that same volume in his written evaluation. The individual testified that she subsequently measured the wine glass that she drinks from and that “it measures at about ten ounces.” Tr. at 80.

<sup>5</sup> The individual reports she drank a single large glass of wine prior to the accident. Tr. at 51, 76. The DOE consulting psychologist believes the individual needed to have consumed a considerably larger amount of wine for her BAC to have measured .10 an hour-and-one-half later. Ex. 6 at 3. I need make no finding on the amount of wine consumed in reaching this decision.

individual's consumption of wine. Ex. 8 at 13. Tests conducted at both the site of the accident and at the local detention center measured the individual's BAC at .10 to .11. *Id.* at 18 – 19. The individual was arrested, charged with driving under the influence of alcohol, and held in custody until the next morning. *Id.* at 11 – 13.

Following her arrest, the individual purchased a personal breath analyzer to monitor her BAC levels while at home. *Id.* at 30 – 31. In monitoring her BAC levels, her intent was not to evaluate the amount of alcohol she was consuming, but to “calibrate” the amount of time she needed to allow between consuming the amount of wine she drank each evening and driving. *Id.* at 35 – 36. Following consumption of her routine amount of alcohol at home, her self-tested BAC levels were between .09 and .11. *Id.* at 33 – 34.

On June 25, 2013, the DOE consulting psychologist evaluated the individual at which time the individual was consuming alcohol at the same level as she had at the time of her arrest and as she had over the prior 15 years. Ex. 6 at 3 – 4. The DOE psychologist concluded that the individual is a user of alcohol habitually to excess with no evidence of rehabilitation or reformation. *Id.* at 12 – 13. He also concluded that the individual met the *DSM-5* diagnostic criteria for Alcohol Use Disorder – Mild and that such disorder causes a significant defect in her judgment or reliability. *Id.* at 10 – 13. In the opinion of the DOE psychologist, the individual would need to abstain from alcohol consumption for two years and undergo intensive outpatient alcohol counseling to evidence adequate rehabilitation or reformation. *Id.* at 12 – 13.

The individual retained a forensic psychologist in preparation for her administrative review hearing who evaluated her on November 15 and 20, 2013. Ex. A at 1. The forensic psychologist issued a written psychological evaluation in which he stated that the individual's alcohol consumption was “high,” “higher than it should be,” and “potentially problematic for her future health.” *Id.* at 10 – 11. Notwithstanding, he concluded that the individual did not meet the *DSM-5* diagnostic criteria for Alcohol Use Disorder because such a diagnosis requires that at least two of the eleven criteria enumerated in the *DSM-5* be satisfied and, in his view, the individual only met one of those criteria (Criterion 4: craving or strong desire to use alcohol). *Id.* at 8 – 9, 11. Additionally, the forensic psychologist concluded that the individual did not meet the diagnostic criteria under the *Diagnostic Statistical Manual of the American Psychiatric Association IVth Edition TR (DSM-IV-TR; together with DSM-5, DSM)* for Alcohol Abuse or Alcohol Dependence. *Id.* at 11.

The individual's forensic psychologist recommended that the individual consult an addiction medicine specialist, citing his concerns that the individual's pattern of alcohol consumption was potentially problematic for her future health. Tr. at 134. On December 3, 2013, the individual was evaluated on by the doctor recommended by her forensic psychologist. Ex. G at 1. The addiction medicine specialist issued a report which included his “clinical impression” that the individual met the *DSM-IV-TR* criteria for Alcohol Dependence, although his written report does not include the details of his analysis. *Id.* at 2 – 3. He recommended “complete and total abstinence from alcohol” for the individual and that she undertake a six-week intensive outpatient program for alcohol treatment (IOP) at his clinic. *Id.* at 3.

The individual's long-term pattern of alcohol consumption (i.e., two ten-ounce glasses of white wine each evening) continued following her DUI arrest and during the period in which the LSO was evaluating her continued eligibility for access authorization. Tr. at 120. The individual was drinking to legal intoxication each and every evening for a period of at least 15 years, with the exception of a couple of negligible periods when she abstained from consuming alcohol while taking prescribed medications. *See* Ex. A at 5.

In anticipation of commencing the IOP, the individual began reducing her alcohol consumption in late November 2013, intending to abstain from alcohol consumption while participating in the IOP. Tr. at 73. She consumed one five-ounce glass of wine on December 7, 2013, the evening before commencing the IOP, intending that that be her "last" drink. *Id.* at 61 – 68, 87 – 88. Following the fourth IOP session, the individual consumed the remaining four ounces of wine that she had at home. *Id.* at 62, 73, 90, 92. Four days later, the individual appeared before me for the administrative review hearing that she had requested.

At the administrative review hearing, the individual's counsel introduced testimony from her supervisor with respect to the impact on the agency of the loss of the individual's services and included similar points in his closing argument. *Id.* at 29; C.A. at 6. In a Part 710 proceeding, Administrative Judges are prohibited from considering such loss and, therefore, I make no findings with respect to such matters and have given such testimony no weight in reaching my decision. *See* 10 C.F.R. § 710.27(b).

## **V. Analysis**

I have thoroughly considered the record of 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)<sup>6</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored at this time. 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.

The individual acknowledges a long-term pattern of alcohol consumption (two ten-ounce glasses of white wine each evening) and, the week prior to the administrative review hearing, entered an IOP over concerns that her alcohol consumption could negatively impact her future health. Tr. at 61, 120 – 123. However, she advocates that her DUI arrest

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<sup>6</sup> 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.

was the only time that she exercised poor judgment as a result of her alcohol use and, further, that her alcohol consumption has been controlled, has occurred outside of the workplace and has not impaired her work performance. She reports that her daily alcohol consumption has not resulted in her feeling impaired or interfered in any way with her ability to function. Ex. 8 at 31, 35; Tr. at 44, 47, 84 – 86.

If this proceeding were a review of workplace performance, such arguments may be persuasive; however, a Part 710 administrative review proceeding necessarily looks at the totality of an individual's life. Risks to national security are not confined to the physical space in which a holder of access authorization works or to the period of time that a holder is present in the workplace.

The LSO raises two security concerns in the Notification Letter, both of which are also addressed in the evaluation by the DOE consulting psychologist: one, the use of alcohol habitually to excess and, two, the existence of an illness or mental condition which causes a significant defect in judgment or reliability. Ex. 1. Although a finding that a holder consumes alcohol habitually to excess does not require a diagnosis by a mental health professional, Administrative Judges frequently accord deference to opinions of mental health professions on such matters. I find reasonable and well-founded the conclusion of the DOE psychologist that the individual is a user of alcohol habitually to excess. The individual's pattern of alcohol consumption for at least 15 years was to consume approximately 20 ounces of white wine each evening, with such pattern only diminishing in the three to four weeks prior to the administrative review hearing. Tr. at 120. The individual's self-testing of her BAC levels revealed that the amount of alcohol she consumed daily resulted in her reaching legal intoxication. Ex. 8 at 30 – 34.

My acceptance of the conclusion of the DOE psychologist on this concern is reinforced by the individual's own experts. While her forensic psychologist found that the individual had no condition diagnosable under the *DSM*, his written report comments that the individual's alcohol consumption was "high," "higher than it should be," and "potentially problematic for her future health." Ex. A at 10 – 11. During the hearing, I asked her expert how such terminology in his report compared with the language in Criterion J regarding the use of "alcohol habitually to excess." He equated his terminology that the individual's drinking was "high" to Criterion J's terminology of "excess." Tr. at 182. Further, the forensic psychologist's concerns over the quantity of alcohol that the individual drank resulted in his referring the individual to an addiction medicine specialist, whose evaluation of the individual resulted in the clinical impression that she suffers from Alcohol Dependence as defined in the *DSM-IV-TR*.<sup>7</sup> *Id.* at 134; Ex. G at 3. Neither the written reports of the individual's experts nor the testimony of her forensic psychologist rebut the conclusion of the DOE consulting psychologist that the individual uses alcohol habitually to excess, but lend support to such conclusion.

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<sup>7</sup> The report of the addiction medical specialist who evaluated the individual did not record his analysis supporting his clinical impression of Alcohol Dependence; however, since this report was introduced into the record by the individual without providing supplementary testimony by the specialist, I am accepting and giving full weight to the derogatory information contained therein.

With respect to the concerns raised under Criterion H that the individual has an illness or mental condition that causes, or may cause, a in judgment or reliability, the LSO relied on the conclusion of the DOE consulting psychologist that the individual met the *DSM-5* diagnostic criteria for Alcohol Use Disorder – Mild. Ex. 6 at 12 – 13. The DOE psychologist was present throughout the hearing and, following the testimony of the other witnesses, testified that his opinion continues to be that the individual meets the criteria for Alcohol Use Disorder – Mild. Tr. at 194. Although his analysis of the diagnostic criteria for such disorder had changed from that set forth in his initial evaluation of the individual, his conclusion remained the same.<sup>8</sup> *Id.* at 188 – 193. As of the hearing, the DOE psychologist believed that the individual met at least two of the *DSM-5* diagnostic criteria for Alcohol Use Disorder (Criterion 2: persistent desire or unsuccessful efforts to cut down or control alcohol use; and Criterion 4: cravings or a strong desire or urge to alcohol) and probably met a third (Criterion 10: increased tolerance or diminished effect). *Id.* at 190. Satisfaction of two criteria is required for an Alcohol Use Disorder diagnosis under *DSM-5*. *DSM-5* at 490 – 491. The individual’s forensic psychologist concluded that the individual did not have any condition diagnosable under the *DSM-5* or *DSM-IV-TR*. Ex. A at 11. With respect to Alcohol Use Disorder, the forensic psychologist’s view is that the individual meets one of the diagnostic criteria (Criterion 4), which is insufficient for a *DSM-5* diagnosis. Tr. at 155.

The individual’s forensic psychologist testified that a major difference between his analysis and that of the DOE psychologist is that the forensic psychologist believes that the *DSM* requires a finding of “clinically significant impairment” as a prerequisite for finding diagnostic criteria have been satisfied and he does not believe the individual has experienced such impairment. *Id.* at 147 – 148, 172 – 173. He testified that he has the same disagreement with the individual’s addiction medicine specialist, who the individual saw upon the recommendation of the forensic psychologist; the addiction medicine specialist is presently treating the individual and opined that his clinical impression is that the individual suffers from Alcohol Dependence.<sup>9</sup> Ex. G at 3.

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<sup>8</sup> The individual’s counsel has suggested that the changed analysis by the DOE psychologist detracts from the credibility of his evaluation, contrasting the testimony of the individual’s forensic psychologist which was consistent with his written report. C.A. at 3. In administrative review hearings, DOE expert witnesses are frequently the final witness to testify so as to have the benefit of all available information as of the time of hearing and it is customary that they update their evaluation based upon the testimony at the hearing. As the Administrative Judge, I found it appropriate that the testimony of the DOE consulting psychologist had greater variation from his written report than that of the individual’s forensic psychologist – the DOE psychologist conducted his evaluation six months prior to the hearing and the individual’s psychologist conducted his less than one month prior to the hearing. Additionally, since the individual had been evaluated by the DOE psychologist, the individual acknowledged that she consumed twice as much alcohol daily as she had reported during the PSI, she commenced an IOP, and she had attempted to maintain abstinence without success. (During her testimony, the individual attempted to attribute the misunderstanding with respect to the amount of alcohol she consumed on assumptions made by the LSO and the DOE psychologist; however, the PSI clearly shows that the individual was the source of the original lower quantity reported in the PSI and used by the DOE psychologist in conducting his evaluation. Tr. at 60, 78 – 79; Ex. 8 at 14.)

<sup>9</sup> In any analysis under the *DSM*, it is important to recognize that the *DSM* is designed as a treatment guide for mental health professionals who will continue to use their professional judgments in reaching

I found the testimonial analysis of the DOE consulting psychologist to be persuasive and consistent with the record in this proceeding. The strength of the individual's forensic psychologist was undermined by his acknowledgments that (1) his interpretation of the *DSM* was at odds with both DOE's psychologist and the individual's addiction medicine specialist and (2) his conclusion that the individual does not have Alcohol Use Disorder is, in own words, "a wobbler" in light of the fact that the individual does have a problematic pattern of alcohol use. Tr. at 147–148, 162, 172–173.

The individual argues that even if her alcohol use is found to be a disqualifying security concern, she has satisfied all of the mitigation factors outlined in the Adjudicative Guidelines other than completion of her IOP. C.A. at 5. In making such argument, the individual seems to mistakenly focus on her single DUI arrest as the basis for the LSO's security concern, rather than focusing on her overall pattern of alcohol consumption of which her arrest is a single indication. In analyzing the record in light of the legitimate security concerns arising from her alcohol consumption, we have an individual who consumed alcohol to legal intoxication on a daily basis for at least 15 years and continued to so until three or four weeks prior to her administrative review hearing. *Cf.* Adjudicative Guidelines at Guideline G, ¶ 23(a). Further, the individual waited until one week prior to the hearing (nearly eight months after her arrest) to commence participation in an IOP, experienced a relapse on the fourth day of the program, and, as of the date of the hearing, had been abstinent a mere four days. *Cf.* Adjudicative Guidelines at Guideline G, ¶ 23(b) – (d).

While I commend the individual for commencement of an IOP and establishing a goal of modifying her alcohol consumption, I cannot find based on the foregoing that the individual has mitigated the security concerns associated with Criterion H and Criterion J at this time.

## **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 Criterion H and Criterion 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 associated with Criterion H and Criterion J. Accordingly, I have determined that the individual's access authorization should not be restored at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

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diagnoses and that it was not adopted by the American Psychiatric Association with the expectation that it would be construed as a statute. *See DSM-5* at 21, 25.

Wade M. Boswell  
Administrative Judge  
Office of Hearings and Appeals

Date: January 31, 2014