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**United States Department of Energy  
Office of Hearings and Appeals**

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| In the Matter of: | Personnel Security Hearing | ) |                       |
|                   |                            | ) |                       |
| Filing Date:      | December 11, 2013          | ) |                       |
|                   |                            | ) | Case No.: PSH-13-0127 |
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Issued : March 31, 2014

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**Administrative Judge Decision**

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Wade M. Boswell, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 be granted.

**I. Background**

The individual is an applicant for a DOE security clearance in conjunction with his employment by a DOE subcontractor. In February 2011, the individual completed a Questionnaire for National Security Positions (QNSP) as part of his application for a DOE security clearance and, thereafter, a background investigation was conducted. See Exhibit 6. In June 2013, the Local Security Office (LSO) conducted a personnel security interview (PSI) with the individual to address, *inter alia*, information with

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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.

respect to his alcohol consumption and criminal charges related to a domestic dispute. *See* Exhibit 7. The PSI did not resolve concerns over the individual's alcohol use and, as a result, the individual was referred for a psychiatric evaluation by a DOE consulting psychiatrist, who conducted the evaluation of the individual on August 13, 2013. *See* Exhibit 4.

Since neither the PSI nor the DOE psychiatrist's evaluation resolved the security concerns arising from the individual's alcohol usage, the LSO informed the individual in a letter dated December 5, 2013 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his 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 his receipt of the Notification Letter, the individual exercised his 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 seven numbered exhibits into the record and presented the testimony of one witness, the DOE consulting psychiatrist. The individual introduced two lettered exhibits (Exhibits A and B) into the record and presented the testimony of eight witnesses, including that of himself, his employee assistance program (EAP) counselor and his psychotherapist. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric or alphabetic designation. 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**

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

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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.doe.gov/search.htm](http://www.oha.doe.gov/search.htm).

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 granting his 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 his 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 denying the individual’s security clearance: Criterion H and Criterion J. 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(j). 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* Guideline G 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); *Personnel Security Hearing*, Case No. PSH-11-0035 (April 19, 2012). With respect to Criterion J, the LSO noted (1) two separate domestic disputes in 2011 which were preceded by the individual’s consumption of alcohol and culminated in suicidal acts by the individual, (2) the individual being a self-described “binge drinker” who had drunk to intoxication 12 times in the year prior to the PSI, and (3) the individual’s acknowledgement that his alcohol consumption had contributed to his marital problems and doing poorly when he had been in school. *See* Ex. 1. Additionally, the LSO relied upon the report of the DOE consulting psychiatrist, dated August 22, 2013, which concluded that the individual continues to consume alcohol habitually to excess, without adequate evidence of rehabilitation or reformation. *Id.*; Ex. 4 at 9.

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* Adjudicative Guidelines at Guideline I. 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 August 2013 report of the DOE consulting psychiatrist which concluded that the individual “has not had any formal treatment for alcohol related problems and [his] continued drinking habitually to excess may cause a significant defect in judgment or reliability.” Ex. 1; Ex. 4 at 9.

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

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

The individual does not contest the accuracy of the facts cited by the LSO in the Notification Letter. Ex. 2; Tr. at 91 – 92.

In 2011, the individual and his then-wife agreed to separate after ten years of marriage and, contemporaneously with the disruption to his marriage, the individual engaged in episodes of excessive consumption of alcohol. In one instance in July 2011, the individual was intoxicated following consumption of both vodka and beer<sup>4</sup> when he and his wife began arguing. Their argument progressed to a physical altercation and, at one point, his wife attempted to call the police and the individual took her cellular phone away from her. During the argument, he placed a loaded shotgun under his chin and threatened to “end it all.” Ex. 4 at 4. Although he squeezed the trigger on the weapon, the safety was engaged and it failed to fire. *Id.*; Ex. 6 at 27. He was charged with battery against a household member, interfering with communication and intentionally confining or retaining for this incident. Ex. 4 at 4. These charges were deferred so that the individual could undergo counseling and, at the completion of the required counseling, the charges were dismissed. *Id.* at 3; Ex. 7 at 29 – 31.

In a second incident which occurred in December 2011, he confronted his wife after having seen her out with one of his friends. He had consumed a number of beers prior to the confrontation. He reported that during the argument he felt he was losing everything and wanted to be dead. He cut his wrist with a pocket knife and began bleeding, at which point his wife’s sister forced him to leave. He drove himself to the home of an emergency medical technician where he was stabilized and transported to a hospital. Surgery was required to repair the damage to his wrist and he was hospitalized for three days. Ex. 4 at 4 – 5.

Subsequently, he continued to consume alcohol and became intoxicated approximately 12 times in a year. In the PSI, he reported that his consumption of alcohol contributed to

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<sup>4</sup> Based on the individual’s report of his alcohol consumption prior to this incident, the DOE psychiatrist calculated the individual’s blood alcohol content was 0.18 grams /100 ml or more at the time. Ex. 4 at 4.

his marital problems<sup>5</sup> and to his doing poorly when he was in school. Ex. 1 at 4; Tr. at 91 – 92.

The individual was evaluated in August 2013 by the DOE consulting psychiatrist who concluded that, at the time of evaluation, the individual met the diagnostic criteria set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association IVth Edition Text Revision (DSM-IV-TR)* criteria for Alcohol Abuse in full sustained remission, recognizing both the nature of the individual's alcohol consumption in the period of July 2011 to December 2011 and the absence of symptoms of Alcohol Abuse for more than one year preceding the evaluation. Ex. 4 at 8. The individual never met the *DSM-IV-TR* criteria for Alcohol Dependence and the DOE psychiatrist found no evidence of any ongoing psychiatric disorder, including depression or anxiety for which the individual had been treated during the period of his marital dissolution. *Id.* at 8 – 9. Although the individual's Alcohol Abuse is in full sustained remission, the DOE psychiatrist opined that the individual was continuing to consume alcohol habitually to excess and, to demonstrate adequate rehabilitation or reformation, would need to abstain from alcohol consumption for six months and participate in outpatient therapy and 12-step or other self-help meetings. *Id.* at 9. Additionally, the individual's continued consumption of alcohol habitually to excess may cause a significant defect in his judgment or reliability. *Id.*

The individual has not consumed alcohol to intoxication since June 2013 and has abstained from all alcohol since November 9, 2013. Tr. at 23, 88; Ex. 4 at 6. He has completed alcohol education and awareness training through his facility's EAP, which included nine one-hour training sessions and meetings with a licensed counselor. Tr. at 16, 93. As of the date of the administrative review hearing, the individual had participated in ten meetings of Alcoholics Anonymous (AA) in slightly more than three months and had received a three-month "coin" recognizing his three months of AA participation. *Id.* at 93 – 94. The individual testified that he intended to not consume alcohol in the future and that that intent would be unchanged should he no longer need access authorization. *Id.* at 95.

## 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

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<sup>5</sup> Other than the incidents in 2011 which occurred while his marriage was dissolving and the individual agreeing with the statement in the Notification Letter that his use of alcohol contributed to his marital problems, it does not appear that the individual's consumption of alcohol was an issue within his marriage. At the hearing, his ex-wife testified that alcohol played no role in their marital problems. Tr. at 59. The individual's psychotherapist (who was initially a marital and family therapist for the individual and his then-wife) testified that she had screened for alcohol issues at both the commencement of therapy with the individual and his then-wife and subsequently in sessions with their young children and does not believe alcohol was a factor in their marital problems. *Id.* at 109, 115.

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 be granted. The specific findings that I make in support of this decision are discussed below.

Legitimate security concerns arose as a result of the individual's two incidents of self-harm following alcohol consumption, his subsequent pattern of alcohol consumption and the conclusion of the DOE consulting psychiatrist that the individual earned the diagnosis of Alcohol Abuse in full sustained remission and continued to consume alcohol habitually to excess without adequate evidence of rehabilitation or reformation. *See* Ex. 1. The question before me is whether those concerns have been sufficiently mitigated.

The individual credibly testified that he had not consumed alcohol since November 9, 2013, and that he had had no cravings or encountered any other difficulties in maintaining his abstinence. Tr. at 87 – 88. His testimony was corroborated by that of his EAP counselor, his psychotherapist, his ex-wife, his sister and a close friend. *Id.* at 18, 39, 46, 58, 62, 120. The latter three have all observed him in social settings since he commenced abstinence and believed he was quite comfortable not drinking in settings in which alcohol was present. *Id.* at 39, 46, 58, 62. Even during the individual's period of Alcohol Abuse from July 2011 to December 2011, his work performance was unaffected and he was reliable and dependable; his then-manager testified that she was shocked to hear alcohol concerns being raised with respect to the individual. *Id.* at 29 – 31, 85 – 86.

The individual also testified as to his greater understanding of the effects of alcohol and he acknowledged the role of alcohol in the incidents in 2011. He believes that he has better mechanisms for dealing with extremely stressful situations in the future, has an effective support network and is confident in his willingness to seek support should he need it in the future. *Id.* at 71, 93 – 94, 97 – 98, 101 – 102.

At the administrative review hearing, the DOE consulting psychiatrist attended the entire hearing and testified as the final witnesses so that he would have the benefit of hearing the testimony of the other witnesses. He commented that although the individual testified that he felt his AA attendance was of limited use, the individual's testimony had probably incorporated five different themes from AA and its literature, which reflected the insight the individual has developed around alcohol use. *Id.* at 139. The psychiatrist found no denial with respect to the individual's alcohol use and found honesty with respect to the contributing role of alcohol in his incidents of self-harm. *Id.* at 141. He believed the individual had developed a viable support system. *Id.* at 143.

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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.

With regard to security concerns raised under Criterion J and Criterion H, Administrative Judges traditionally accord deference to the opinions of mental health professionals. At the hearing, the DOE psychiatrist testified that the individual's consumption of alcohol habitually to excess had stopped. *Id.* He noted the individual's outpatient therapy (through his private psychotherapist and his facility's EAP), his AA attendance, his abstinence to date and his commitment to continued abstinence and concluded that, notwithstanding his recommendation of six months of abstinence in his initial evaluation, he believed the individual had demonstrated adequate rehabilitation and reformation as of the date of the hearing. *Id.* at 139, 143 – 144. The individual's EAP counselor specifically testified as to the individual's positive prognosis. *Id.* at 22. The DOE psychiatrist's written evaluation recognized that a shorter period of abstinence was appropriate in this case since the concern was habitual use of alcohol to excess and the individual's earlier Alcohol Abuse was already in full sustained remission. Ex. 4 at 9. *Cf.* Adjudicate Guidelines at Guideline G, ¶23(d) (mitigation of security concerns relating to alcohol is possible when an individual has completed outpatient counseling along with any required aftercare and has demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations and has received a favorable prognosis by a duly qualified professional who is a staff member of a recognized alcohol treatment program). The DOE psychiatrist also opined at the hearing that, in light of the individual's having demonstrated adequate rehabilitation and reformation with respect to his alcohol usage, the individual no longer had an illness or mental condition that could cause a significant defect in his judgment or reliability. Tr. at 144 – 145. *Cf.* Adjudicative Guidelines at Guideline I ¶29(e) (mitigation of security concerns relating to psychological issue is possible when there is no current psychological problem). I find that the individual has resolved the Criterion H and Criterion J security concerns.

## **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 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 be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Wade M. Boswell  
Administrative Judge  
Office of Hearings and Appeals

Date: March 31, 2014