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

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	November 6, 2013)	
)	Case No.: PSH-13-0121
)	

Issued: March 4, 2014

Administrative Judge Decision

William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization¹ 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 and the Adjudicative Guidelines, I have determined that the individual should not be granted an access authorization.

I. Background

The individual works for a DOE contractor that has sought a DOE security clearance for him. The individual’s history of criminal arrests, his use of alcohol, and a diagnosis of Alcohol Abuse and Alcohol Use Disorder raised security concerns in the opinion of the Local Security Office (LSO) in the course of determining his eligibility for a security clearance. On September 24, 2013, the LSO sent a letter (Notification Letter) to the individual advising him that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification

¹ 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.

Letter, the LSO explained that the derogatory information fell within the purview of three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (j), and (l) (hereinafter referred to as Criteria H, J, and L).²

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. At the hearing that I conducted, the individual presented his own testimony and that of three friends and co-workers, and the LSO presented the testimony of one witness, a DOE consultant psychologist. In addition to the testimonial evidence, the LSO submitted eight numbered exhibits into the record. The hearing transcript in the case will be cited as “Tr.”

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 denials”); *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 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 Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence supporting an individual’s eligibility for an access authorization. Even appropriate hearsay evidence may be admitted at hearings. 10 C.F.R. § 710.26(h). An individual is thereby afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

² Criterion H concerns information that a person suffers from “[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). Criterion L concerns information that a person has “[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior. . . .” 10 C.F.R. § 710.8 (l).

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 cites three criteria as the bases for suspending the individual's security clearance, Criteria H, J, and L. With regard to Criteria H and J, the LSO relies on the opinion of a DOE consultant psychologist (DOE psychologist) who determined that the individual meets the criteria for Alcohol Use Disorder, Moderate, as set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association*, Fifth Edition (DSM-5) which, she determined, corresponds most closely to Alcohol Abuse as set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association*, Fourth Edition Text Revised (DSM-IV-TR).³ The DOE psychologist further determined that the individual's alcohol disorder is an illness or mental condition that causes or may cause a significant defect in judgment or reliability. In addition, the LSO cites the following information in support of its security concerns under these criteria: the individual's five alcohol-related arrests spanning the period from 1988 to 2008; his admission during a May 2013 personnel security interview (PSI) that his former wife expressed concerns about his alcohol consumption; and his admission during his July 2013 psychological evaluation that over the past five years, he drinks alcohol about once a week, consuming a quarter-pint to a half-pint on each occasion.

I find that there is ample information in the Notification Letter to support the LSO's reliance on Criteria H and J. The excessive consumption of alcohol 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 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) at Guideline G. The DOE psychologist's conclusion that the individual's Alcohol Abuse is severe enough to cause a significant defect in judgment supports my finding in this regard.

³ The DSM-5, published in 2013, is the most recent edition of this Manual, which is a standard reference for clinical practice widely used among mental health professionals. DSM-5 at xli. The diagnoses of Alcohol Abuse and Alcohol Dependence appeared in earlier editions of the DSM, including DSM-IV-TR, and are specifically cited in the language of Criterion J. 10 C.F.R. § 710.8(j). DSM-5 replaced those diagnoses with a single diagnosis of Alcohol Use Disorder, but the language of Criterion J has not yet been updated to reflect that change.

As for Criterion L, the LSO cites as evidence of criminal conduct the five alcohol-related arrests it cited as derogatory information under Criteria H and J, as well as six additional arrests during the same 20-year period that were not alcohol-related but comprised two assaults, three motor vehicle law violations, and a hunting law violation.⁴ Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness and by its very nature calls into question a person's ability or willingness to comply with laws, rules and regulations. *See* Adjudicative Guidelines at Guideline J. Consequently, I find that the LSO properly relied on Criterion J in this case.

IV. Findings of Fact

A. Criteria H and J

The individual began consuming alcohol in high school, and drank beer to intoxication, by his own report, about once a month. Ex. 6 at 3. Since the age of 18 or 20, he has also consumed hard liquor (vodka or "moonshine") about once a week, while spending time with his friends at the local liquor store or dropping by their homes, usually on the way home from work. He estimated that during those visits he drinks in the range of "one big lick" to a half-pint, which the DOE psychologist estimated to be one to four-and-one-half standard drinks. At age 20, he was charged with Driving While Intoxicated, after drinking moonshine and then crashing his vehicle into a rock wall. His alcohol intake increased around the time of his marriage at age 24 when, in addition to his weekly visits with friends, he was drinking a six-pack of beer a few times a week. By age 25 or 26, he was getting drunk about ten times a year, and drinking a 12-pack about three times a year while out hunting or camping. *Id.* In his thirties, marital discord led to an arrest for domestic assault. The individual stated that he might have had "a couple of beers that morning," but maintained that alcohol had no part in the fight. The couple reconciled, but his drinking eventually became a source of conflict between them. *Id.* at 4.

Around the same time, the individual met someone in the woods who offered him vodka. His blood pressure problem came up in the conversation, and the man told him that vodka would not raise his blood pressure the way "brown liquor" could. Since that time, he tends to choose vodka over beer, and typically drinks two shots of vodka with tomato juice one or two nights a week, consuming between a half-pint and a pint in the course of a week. Based on this information, the DOE psychologist calculated the individual's alcohol intake to average between 3-1/4 and 6-1/2 standard drinks per occasion, in addition to his weekly drink with friends. He was arrested twice for Driving Under the Influence (DUI), in 2004 and again in 2006. He had consumed about eight drinks each time before getting behind the wheel. *Id.* The DOE psychologist also noted that the individual occasionally drank beer in the morning, such as on the mornings before he was arrested for domestic assault in 2001 and for sexual assault in 2008. *Id.* at 5. She also

⁴ The LSO also cited as evidence of criminal conduct the individual's regular consumption of illegally manufactured moonshine. I will not address this particular allegation of criminal conduct. At the hearing, the individual clarified that legally manufactured moonshine is available in liquor stores, and when friends share moonshine with him he does not know whether the offered beverage was legally or illegally manufactured. Tr. at 88. In any event, no evidence was introduced that consumption of illegally manufactured moonshine is a violation of any existing law. *See* Ex. 6 at 14 (DOE psychologist's belief that consumption of illegal manufactured moonshine is not unlawful).

noted that the individual abstained from alcohol for a year, beginning in late 2006, in an unsuccessful attempt to appease his wife's complaints about his drinking and to hold his family together for the sake of the children. The abstinence did not improve the conflict in his marriage, and he was divorced in 2008. *Id.*

At the hearing, the individual testified that his alcohol use peaked before and during the divorce proceedings in 2008 and has tapered off since then. Tr. at 55. He does not believe he has a drinking problem now. *Id.* Three of his witnesses, all of whom have known him for one-and-one-half to two years, testified that they had never seen him consume alcohol and had no reason to believe that he did. *Id.* at 24, 36-37, 45. The fourth witness, the individual's girlfriend, stated that she had seen him drink alcohol twice, one drink each time, in the course of their two years together, and has never seen that alcohol has caused the individual any problems. *Id.* at 16, 18, 20. The individual himself acknowledged that he was drinking too much in 2008, feeling the pressure of the divorce, working harder, and at the same time taking care of his children. *Id.* at 73. At that point, he started drinking less, not because he realized he needed to cut back, but because his family and work responsibilities demanded his attention. *Id.* at 74. He testified that the last time he was intoxicated was last spring or summer, and his last drink was about two weeks before the hearing, when he had a drink of vodka in his workshop. *Id.* at 70, 79. He could not recall when he last drank moonshine, whether commercially produced or not, though he admitted at his July 2013 evaluation that he was still drinking it at that time. *Id.* at 86-87; Ex. 6 at 5. Nor could he recall the last time he stopped at the liquor store or a friend's house for a drink on his way home, but indicated that he might still do so. Tr. at 83. He has not made a conscious decision to change his habits: "If I want to drink, I'm going to drink. And if I don't want to drink, I'm not going to drink. That is the way I have always lived." *Id.* at 107. Nevertheless, he estimates that, in the six months since his psychological evaluation, he has cut back his alcohol consumption by half; asked why, he responded, "I don't have a clue. Just got busy doing other things." *Id.* at 90.

After listening to the testimony of the other witnesses, the DOE psychologist testified that her diagnosis of the individual's alcohol problems had not changed based on what she had heard. *Id.* at 94. In her evaluative report, the DOE psychologist wrote that the individual could demonstrate adequate evidence of rehabilitation from Alcohol Abuse by abstaining from alcohol and engaging in alcohol treatment and psychotherapy for at least one year. Ex. 6 at 17. She also wrote that he could demonstrate reformation from his Alcohol Abuse by abstaining from alcohol for two years. *Id.* At the hearing, the DOE psychologist took note of the fact that the individual has had no involvement with law enforcement since 2008, stating that it gave her a sense that "things are getting better." Tr. at 102. Nevertheless, she explained that her concerns arose from the individual's failure to recognize that he had a problematic relationship to alcohol and to seek help for it. Because he had not yet recognized his alcohol use as a problem, she could not find that the individual had achieved rehabilitation. *Id.* at 103-04. She also accepted the individual's testimony that he was consuming considerably less alcohol not only since his peak consumption in 2008, but even since he saw her six months earlier. She determined, however, that the amount of alcohol the individual admitted to consuming, while a definite improvement, did not demonstrate that he had achieved reformation from his previous alcohol consumption pattern, as she had required abstinence in her evaluative

report. *Id.* at 103. Finally, when asked about the individual's risk of alcohol-related behavior in the future that might raise security concerns, the DOE psychologist stated that her prognosis of the individual's alcohol disorder was "guarded." *Id.* at 108-09. She based that opinion on her experience that risk of relapse is diminished when individuals "embrace wholeheartedly that they have a problem." Where that cornerstone was missing, as in this individual, the DOE psychologist was concerned that recurrence of a major stress could trigger relapse. *Id.* at 109-10.

B. Criterion L

At the hearing, the individual also addressed the LSO's concerns regarding his pattern of criminal activity. He pointed out that he has had no involvement with law enforcement since 2008. *Id.* at 74. Regarding his alcohol-related arrests specifically, he testified, as stated above, that he will continue to drink alcohol as he sees fit. *Id.* at 87, 107. Regarding all of his arrests in general, he explained that he draws a distinction between rules that protect individuals from themselves, such as seat belt laws, and rules that protect society, such as those that secure classified information or ensure safe working environments. *Id.* at 63-64. While he has on occasion not complied with the former, leading to his arrests, he maintains that he would always respect the latter. *Id.* at 59-60.

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) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual should not be granted an access authorization, because I cannot find that doing so 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. Criteria H and J

To his credit, the individual has not been involved with law enforcement since 2008, and his last clearly alcohol-related arrest was in 2006. Moreover, I find that he has been entirely forthright and credible throughout this proceeding. He has spoken his mind before and during the hearing, and left me with no doubts as to his sincerity. Consequently, I find his testimony regarding his current alcohol consumption—that he is only drinking perhaps half as much as he was when he met with the DOE psychologist in July 2013—to be honest and accurate. Nevertheless, by his own report, the individual still drinks vodka in quantities that exceed recognized standards. In addition, as recently as July 2013, he was driving after drinking on those occasions that he stopped for a drink with friends at the local liquor store on his way home. He does not see his alcohol consumption as a problem, and therefore has taken no active steps to address the problem, but rather maintains that he will continue to drink if he wants to. He stated, for example, that he could not recall the last time he had consumed moonshine, but he had not made a conscious decision not to drink moonshine; rather, the opportunity has not

presented itself. *Id.* at 87. His current pattern, which he has no intention of changing, is still risky behavior, as the DOE psychologist confirmed when she deemed his prognosis to be guarded.

I find that the individual was properly diagnosed as suffering from Alcohol Use Disorder, Moderate, and Alcohol Abuse. His forthright testimony and the DOE psychologist's opinion convince me that he has not demonstrated adequate evidence of either rehabilitation or reformation from his alcohol disorder. I have also taken into consideration mitigating conditions set forth in the Adjudicative Guidelines for alcohol consumption concerns, and find that none of them applies in the individual's favor. He states that he will continue to drink alcohol if it suits him, and he has been intoxicated within the past year. He has not acknowledged any issues of alcohol abuse, and has not undertaken any form of treatment. Adjudicative Guidelines at Guideline G, ¶ 23. After considering all the testimony and written evidence in the record, I am convinced that the individual has not mitigated the LSO's security concerns that arise from his alcohol use.

B. Criterion L

When considering the impact of criminal conduct on a person's eligibility for a security clearance, the Adjudicative Guidelines discuss conditions that could mitigate the security concerns raised by the conduct. Among those mitigating factors is one that applies to the individual: that so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment. Adjudicative Guidelines at Guideline J, ¶ 32(a). To his credit, he has not been arrested for more than five years. He ascribes this lengthy period of good citizenship to two changes in his life: that he does not take risks as he did when he was younger; and that the most recent of his arrests occurred before and during his divorce, which was a period of great personal upheaval, and his life is much more stable now. Tr. at 74-75, 79.

The individual's current observance of laws does not, however, relieve my doubt concerning his reliability and good judgment with respect to protecting the national security. He testified that he distinguishes between rules he must follow and rules he need not obey. In effect, he picks and chooses which laws he will observe, applying his own principles. As for the distinction he draws between laws he has violated, which in his mind do not impact others, and security rules, which do impact others, his logic does not give me confidence that he will respect the latter. Even if I were to discount his 2001 and 2008 arrests for domestic and sexual assault as misunderstandings, which I cannot, his 1998 assault on a repairman is anything but a victimless crime, and illustrates his unwillingness to comply with rules that do not suit his purposes. While I respect his independence and find his principles reasonable, his approach to complying with established laws—that is, choosing which to obey, according to his personal standards—is too unpredictable for a security clearance holder. It does not resolve my doubt regarding his reliability and exercise of good judgment in following security rules and regulations, particularly in circumstances in which the purpose of a particular rule or regulation may not be evident to him. After considering all the testimony and written evidence in the record, I am convinced that the individual has not mitigated the LSO's security concerns that arise from his criminal conduct.

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, J, and L. 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 these criteria. I therefore cannot find that granting an access authorization to the individual 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 granted.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: March 4, 2014