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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:     November 29, 2013        )  
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Case No.: PSH-13-0123

Issued: April 21, 2014

**Administrative Judge Decision**

Kimberly Jenkins-Chapman, 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.

**I. Background**

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. In June 2013, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address concerns about his alcohol-related arrest and his alcohol use. In addition to the PSI, the LSO requested the individual’s medical records and recommended a psychological evaluation of the individual by a DOE consultant psychologist (DOE psychologist). The DOE psychologist examined the individual in August 2013 and memorialized his findings in a report

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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.

(Psychological Report). According to the DOE psychologist, the individual suffers from Alcohol Dependence and Alcohol Use Disorder. The DOE psychologist further concluded that the individual's Alcohol Dependence and Alcohol Use Disorder are mental illnesses that cause or may cause a significant defect in his judgment and reliability.

In October 2013, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created substantial doubt regarding his 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).<sup>2</sup>

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 Administrative Judge in this case. At the hearing that I convened, the individual presented his own testimony and that of one witness, his girlfriend. 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 (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 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 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

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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 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).

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.

### **B. Basis for 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 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 diagnoses of the DOE psychologist that the individual suffers from Alcohol Dependence and Alcohol Use Disorder, and the expert's opinion that Alcohol Dependence and Alcohol Use Disorder are mental illnesses 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, the individual's alcohol-related arrest as well as his 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 Alcohol Dependence or 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-standing history of alcohol use. According to the individual, he began consuming alcohol at age 18 as he played in a band and drank while performing. DOE Exh. 6. His alcohol increased in his early 20s and he continued drinking heavily during the course of three marriages. *Id.*

On May 25, 2013, the individual was arrested and charged with Driving Under the Influence (DUI) and Implied Consent Violation. The individual was stopped because of his driving pattern and given field sobriety tests. Based on the observations of the field sobriety tests, the smell of

alcohol and bloodshot eyes, the officer arrested him. Although he admitted to consuming three pints of light draft beer and four ounces of bourbon prior to the arrest, he stated that he did not think he was intoxicated because he drinks like this all the time. The individual refused a blood alcohol test. *Id.*

During his June 2013 PSI, the individual admitted that in 1985, he began to self-medicate with alcohol, stating that he would become intoxicated every night after consuming six to eight beers between 7:30 pm and 10:00 pm. He stated that this pattern of drinking continued for approximately two years, until his spouse conducted an intervention regarding his alcohol use. DOE Exh. 1. The individual further admitted that from April 1987 to January 1988, he attended an outpatient alcohol treatment program and was diagnosed with Alcohol Abuse. *Id.* He stated that he began using alcohol again in approximately 1999, after about 10 years of sobriety and abstinence, when his third marriage began to unravel and he reverted to self-medicating with alcohol again. According to the individual, from 1999 to 2011, he would consume two to three cans of beer each night from 5:30 pm to 10:00 pm and become intoxicated each time he consumed. *Id.* Finally, the individual admitted that since December 25, 2011, his alcohol consumption increased because he purchased a kegerator. He stated that since December 2011, he drinks two to three, 16-ounce draft beers every evening from 5:00 pm to 10:00 pm and becomes intoxicated every time he consumes. The individual stated that his intentions are to continue his current pattern of consumption because he does not feel as though his use of alcohol is problematic. *Id.*

Based on this information, the individual was referred to the DOE psychologist for a psychological evaluation. On August 15, 2013, the DOE psychologist evaluated the individual. In his Report, he concluded that the individual met the Diagnostic Statistical Manual of Mental Disorders, IVth Edition TR (DSM-IV-TR) criteria for Alcohol Dependence and the DSM Vth Edition (DSM-V) criteria for Alcohol Use Disorder. The DOE psychologist further concluded that the individual possesses 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)<sup>3</sup> 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.

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<sup>3</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.

10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

#### **A. The Diagnoses of Alcohol Dependence and Alcohol Use Disorder**

The individual disputes the DOE psychologist's diagnoses of Alcohol Dependence and Alcohol Use Disorder. He asserts through his testimony and documentary evidence that he possesses good judgment and reliability and does not have an alcohol problem. Transcript of Hearing (Tr.) at 29, Indiv. Exhs. A-J.

#### **B. Hearing Testimony**

During the hearing, the individual described the circumstances surrounding his May 2013 DUI. According to the individual, he consumed three glasses of beer at a restaurant and a mixture of bourbon and coke at a roller derby race on the evening of his arrest. Tr. at 48. He described the arrest as "one of the worst days of my entire life." *Id.* at 51. When asked to describe his relationship with alcohol, the individual testified that he likes drinking beer and currently consumes two to three beers in the evening, and more on the weekend, depending on his activities. *Id.* The individual stated that after his May 2013 DUI, his alcohol consumption changed significantly "in that [he] no longer would stay somewhere and immediately get in the car and drive home for fear that [he] would be arrested again for driving under the influence." *Id.* at 52. The individual further explained that he now takes "a proactive stance" with alcohol, stating that if he and his girlfriend are at an event, he would stop drinking two hours prior to leaving the event. *Id.* The individual also testified that since an ignition interlock device was placed in his car, he no longer drinks at an activity where he is responsible for driving himself home. *Id.* at 53. When questioned about his future intention regarding alcohol, the individual testified that he plans to continue to drink, but to never consume alcohol while operating a vehicle. *Id.* at 54. According to the individual, his alcohol consumption does not impair his judgment and reliability.<sup>4</sup>

The DOE psychologist listened to all the testimony at the hearing before testifying himself. He reiterated that the individual meets both the DSM-IV and DSM-5 Criteria for Alcohol Dependence and Alcohol Use Disorder, respectively. The DOE psychologist stated that he is concerned that the individual regularly consumes alcohol and has consumed alcohol at a level which exceeds what is commonly regarded as moderate. *Id.* at 59. He further stated that the individual's past history of excessive alcohol use, treatment for an alcohol disorder and evaluations for alcohol issues by DOE, all collectively raise significant concerns. *Id.* at 60. With respect to the individual's assertion that he plans to continue to drink, the DOE psychologist opined that most professionals who work in the alcohol field, including himself, do not believe

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<sup>4</sup> The individual's girlfriend testified that she has seen the individual intoxicated only once and does not believe the individual has an alcohol problem. She described the individual's daily drinking habit as consuming "couple of beers" in the afternoon. Tr. at 16. The individual's girlfriend further testified that the individual has good judgment.

that moderate consumption is an appropriate course of action for a person with significant alcohol problems, but rather it is risky behavior and not recommended. *Id.* at 62.

After listening to the individual's hearing testimony, the DOE psychologist testified that his diagnoses and recommendations for the individual have not changed. The individual should abstain from alcohol for at least one year and should participate with full compliance in alcohol-related counseling with a professional as well as utilize a 12-step program with a sponsor on a weekly basis. *Id.* at 66, DOE Exh. 6. He noted that the individual who stated that he typically drinks two to three 16-ounce beers per day and sometime more on weekends, is actually having more than stated because a drink is commonly defined as being 12-ounces. *Id.* at 67. According to the DOE psychologist, in terms of commonly accepted medical standards for moderate consumption, the individual's consumption now exceeds that level. *Id.* He reiterated that this consumption is concerning and not wise in light of the individual's problems with alcohol in the past as well as his significant health issues which could be impacted by alcohol. *Id.* Finally, the DOE psychologist concluded that the individual's Alcohol Dependence and Alcohol Use Disorder have not been rehabilitated, and thus still may cause a significant defect in the individual's judgment and reliability. *Id.* at 68.

### C. Administrative Judge's Evaluation of the Evidence

In the administrative process, Administrative Judges 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).<sup>5</sup> At the outset, I am persuaded by the testimony of the DOE psychologist that the individual has not yet achieved adequate evidence of rehabilitation. Moreover, I find that none of the mitigating 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 casts doubt on the individual's current reliability, trustworthiness and good judgment. He has not acknowledged that he has an alcohol problem nor has he established a pattern of abstinence to ensure a low risk of relapse. In addition, the DOE psychologist has not given the individual a favorable prognosis. *See Adjudicative Guidelines G ¶ 23(a)-(d).* Moreover, with regard to Guideline I, the DOE psychologist's opinion that the individual still has a current alcohol problem does not allow me to find mitigation of the individual's psychological conditions. In short, the individual has not yet started his rehabilitation, and therefore I am unable to make a favorable predictive assessment of his future behavior with respect to his alcohol use. For these reasons, I find that the individual has not 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 raised serious security concerns under Criteria H and J. After considering all the relevant information, favorable and unfavorable in a comprehensive common-

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<sup>5</sup> 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>.

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  
Administrative Judge  
Officer of Hearings and Appeals

Date: April 21, 2014