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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: March 4, 2014)
) Case No.: PSH-14-0021
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Issued : June 5, 2014

Administrative Judge Decision

Wade M. Boswell, 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 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 where certain assignments require that he hold DOE access authorization. When the individual was initially an applicant for access authorization, the Local Security Office (LSO) identified security concerns arising from his consumption of alcohol, including arrests in both 2000 and 2002 for Boating Under the Influence of Alcohol (BUI). The individual was referred for an evaluation by a DOE consulting psychiatrist, who opined in November 2002 that the individual was alcohol dependent. *See* Exhibit 6. The individual’s application for a security clearance was denied and he requested an administrative review hearing to

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.

address the LSO's concerns. The hearing was held in June 2004 (2004 Hearing).² At the 2004 Hearing, the individual and his alcohol treatment counselor testified concerning the individual's rehabilitation and reformation of his alcohol dependence and the individual testified that he intended to permanently abstain from alcohol consumption. *See* Exhibit 13. Following the 2004 Hearing, the individual was granted access authorization.

As a holder of access authorization, the individual is subject to periodic reinvestigations. During a reinvestigation, he disclosed that he routinely consumed alcohol. This disclosure raised concerns in light of the individual's prior diagnosis as alcohol dependent and his 2004 testimony that he planned to abstain from alcohol consumption. The LSO commenced an inquiry and conducted a personnel security interview with the individual on June 19, 2013 (PSI). *See* Exhibit 11. The PSI did not resolve concerns over the individual's recent alcohol consumption and, as a result, the individual was referred for evaluation by a DOE consulting psychiatrist, who conducted an evaluation of the individual in September 2013. *See* Exhibit 4.

Since neither the PSI nor the DOE psychiatric evaluation (2013) resolved the security concerns arising from the individual's alcohol usage, the LSO informed the individual in a letter dated December 18, 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).³ *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 (2014 Hearing). The LSO introduced 13 numbered exhibits into the record of the case and presented the testimony of one witness, the DOE consulting psychiatrist who had conducted the 2013 evaluation. The individual, represented by counsel, introduced two lettered exhibits (Exhibits A and B) into the record and presented the testimony of three witnesses, including that of himself. 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.⁴

² The decision on the individual's earlier administrative review hearing is reported at *Personnel Security Hearing*, Case No. TSO-0080 (October 26, 2004).

³ See Section III below.

⁴ OHA decisions are available on the OHA website at www.oha.doe.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

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 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 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 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 2013 evaluation by a DOE consulting psychiatrist which concluded that the individual met the *Diagnostic Statistical Manual of the American Psychiatric Association IVth Edition Text Revision (DSM-IV-TR)* criteria for alcohol abuse and that his alcohol abuse is an illness or mental condition which causes, or may cause, a significant defect in the individual's judgment and reliability. Ex. 1 at 3; Ex. 4 at 12.

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* 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 2013 evaluation by a DOE psychiatrist which concluded that the individual suffers from alcohol abuse without adequate evidence of rehabilitation or reformation. Ex. 1; Ex. 4 at 12. Additionally, the LSO noted, *inter alia*, that: (a) the individual resumed consuming alcohol in April 2005, notwithstanding that he had been diagnosed as alcohol dependent by a DOE consulting psychiatrist in 2002 and had acknowledged he would be abstinent from alcohol, and (b) the individual acknowledged that since he resumed consuming alcohol in 2005 he has consumed six to seven 12-ounce beers every Friday and Saturday during the months of April through September and three to four 12-ounce beers every other Friday and Saturday during the months of October through March. Ex. 1 at 3.

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 facts cited by the LSO in issuing the Notification Letter. Tr. at 56. Where there are inconsistencies in the record of this proceeding, I have carefully evaluated the individual's statements in reaching the findings of facts set forth below.

The individual began consuming alcohol socially when he was approximately 20 years old and, while in his 20's, he also used cocaine and marijuana. Ex. 12 at 12, 32, 41. As a result of testing positive for marijuana twice while working for an earlier employer, the individual was required to complete a 12-session outpatient drug treatment program. Ex. 9; Ex. 12 at 20 – 27.

As an adult, the individual has spent substantial time during the warmer months boating and has tended to consume greater amounts of alcohol while engaged in activities associated with boating. Ex. 11 at 25 – 27, 32 – 34. Such alcohol consumption resulted in the individual being arrested on two different occasions when he was approximately 30 years old. Ex. 7 at 1 – 2. While piloting his boat one day in 2000, the individual hit

another boat. He had consumed approximately 15 beers on the day of the accident; his blood alcohol content measured .20 at the hospital where he had been taken for treatment of a broken jaw resulting from the accident. Ex. 12 at 7. Subsequently, he was charged and convicted for BUI and Reckless Operation of a Boat. Ex. 8 at 1 – 7; Ex. 12 at 7 – 8.

In 2002, while an applicant for access authorization, the individual was stopped on his boat for a safety check on a day that he had been drinking beer all afternoon. Ex. 6 at 3. He failed a field sobriety test and refused to take a Breathalyzer test, with resulting charges (and convictions) for both BUI and Violations of the Implied Consent Law. Ex. 11 at 90 – 94. While the individual's second BUI charge was pending, he was evaluated by the first DOE consulting psychiatrist in 2002. The DOE psychiatrist diagnosed the individual as alcohol dependent and, by history, cannabis dependent and recommended that he be evaluated and treated by a recognized alcohol treatment center. Ex. 6 at 6.

As part of the individual's second BUI conviction, he was ordered to see an alcohol counselor who he continued to see voluntarily after completing the court-ordered counseling sessions. Ex. 11 at 13, 66, 94. His counselor also diagnosed him as alcohol dependent. Ex. 13 at 46, I-3. The individual disliked attending meetings of Alcoholic Anonymous and, with the assistance of his counselor, found a church-based recovery program that he attended regularly in 2004 and 2005. Ex. 11 at 96 – 97; Ex. 13 at 48 – 49, 71. The individual did not attend the structured alcohol treatment program recommended by the DOE psychiatrist, or any other structured alcohol treatment program. Ex. 4 at 7. As part of his recovery program, the individual began abstaining from alcohol consumption following his second BUI conviction. Prior to the 2004 Hearing, the individual experienced two relapses – in September 2003 while on vacation with his wife and in May 2004 (the month prior to the 2004 Hearing) while visiting a friend after work. Ex. 13 at 66, 77 – 78.

At the 2004 Hearing, the individual stated he intended to remain abstinent from alcohol consumption. Ex. 11 at 105 – 106; Ex. 13 at 76. At the 2014 Hearing, he confirmed that it was his intent in 2004 to be understood as committing to permanent abstinence. Tr. at 60.

The DOE psychiatrist, who evaluated the individual in 2002, testified at the 2004 Hearing that relapses are typical with alcohol use disorders and that a person's willingness to confront relapses and the support available to respond to such relapses are more important than the fact that relapses may have occurred. At the 2004 Hearing, the DOE psychiatrist testified that he was favorably impressed by the individual's responses to the relapses that he had experienced. Ex. 13 at 86 –87. Following the 2004 Hearing, the individual was granted access authorization.

The following year, the individual returned to consuming alcohol in the belief that he would be able to consume responsibly. Ex. 12 at 14. At the 2004 Hearing, he testified that he no longer owned a boat to evidence that he had changed environmental factors that triggered his alcohol consumption. Ex. 13 at 74 – 75. The same year that he resumed drinking, he purchased another boat. Tr. at 67. Since resuming alcohol consumption in 2005, he tends to consume six to seven 12-ounce beers every Friday and Saturday during

the boating season (and less during the remainder of the year). Ex. 11 at 25 – 27. He purchases and generally drinks beer which has lower alcohol content. *Id.* at 28. Subsequent to the 2004 Hearing, he acknowledges having been intoxicated five to six times, having had hangovers six to eight times and having passed-out one or more times. *Id.* at 39, 58, 73 – 76.

As a result of the individual disclosing during a periodic reinvestigation of his security clearance that he was consuming alcohol, the LSO referred the individual to a second DOE consulting psychiatrist. In September 2013, the DOE psychiatrist evaluated the individual and concluded that he suffers from alcohol abuse, without evidence of evidence of rehabilitation or reformation. To evidence adequate rehabilitation or reformation, the DOE psychiatrist recommended that the individual complete a structured inpatient or outpatient treatment program, with documented participation in twelve-step recovery meetings and established familiarity with a recovery model, and complete one year of complete sobriety in conjunction with a structured program (or longer without completion of such a program). Ex. 4 at 12. The DOE psychiatrist opined that the individual's alcohol abuse is an illness or mental condition which causes, or may cause, a significant defect in his judgment or reliability. *Id.*

The individual's access authorization was suspended in December 2013. Ex. 1. He has been abstinent from alcohol since February 6, 2014, and states that he intends to remain abstinent. Tr. at 38, 60.

One week prior to the 2014 Hearing, the individual was evaluated by a forensic psychiatrist, whose report was submitted into the record by the individual but who did not appear to testify. According to the individual's forensic psychiatrist, the individual no longer meets the criteria for an alcohol use disorder since he commenced abstinence in February 2014. Ex. B at 1.

At the 2014 Hearing, the DOE psychiatrist modified his recommendation and believes that to evidence adequate rehabilitation the individual would need to complete 18 months of complete abstinence in conjunction with a structured treatment program (as opposed to the 12 months originally recommended). Tr. at 74 – 76.

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)⁵ and the Adjudicative

⁵ 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.

Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored. 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 was diagnosed as alcohol dependent by a DOE psychiatrist in 2002 and, at the 2004 Hearing, the individual's treating counselor was in accord with that diagnosis. Ex. 6 at 6; Ex. 13 at 46. In 2013, a second DOE psychiatrist concluded that the individual no longer met sufficient diagnostic criteria for an alcohol dependence diagnosis, but met sufficient criteria set forth in the *DSM-IV-TR* to be diagnosed as suffering from alcohol abuse. Ex. 4 at 12; Tr. at 90 – 91. This later diagnosis is documented in a detailed report, which summarizes the individual's history, reports on the clinical examination of the individual and analyzes the relevant *DSM-IV-TR* diagnostic criteria; the diagnosis was further explained and updated by the DOE psychiatrist in his testimony at the 2014 Hearing. *See* Ex. 4; Tr. at 74 – 94.

One week prior to the 2014 Hearing, the individual underwent a psychiatric examination that had been arranged by the individual's counsel. The forensic psychiatrist prepared a written evaluation (Forensic Report), which is essentially one page in length. Ex. B. The individual submitted the Forensic Report into the record; however, the forensic psychiatrist did not testify.⁶ In the Forensic Report, the individual's psychiatrist opined that under the *Diagnostic Statistical Manual of the American Psychiatric Association Fifth Edition (DSM-5)* the psychiatrist "certainly concur[red] that [the individual] had an alcohol use disorder, but since he has embraced abstinence in February he no longer meets criteria. Even if he were still drinking alcohol he would be on the border of alcohol use disorder." *Id.* at 1. The Forensic Report provides no analysis to support a conclusion that the individual does not meet the *DSM-5* diagnostic criteria for alcohol use disorder. Further, both Criterion J and the 2013 DOE psychiatric evaluation use the terminology set forth in the *DSM-IV-TR* and the Forensic Report does not discuss the diagnostic criteria described in the *DSM-IV-TR*. The Forensic Report references the individual's work with an alcohol counselor in 2002 – 2004, but omits the counselor's suggested diagnosis (alcohol dependence), and misstates the "alcohol dependence" diagnosis of the DOE psychiatrist in 2002 as "alcohol abuse" – which is considered a less severe condition. *See Id.* Since the forensic psychiatrist did not appear to testify, these deficiencies in his report could not be addressed nor could he address the individual's prognosis which was not included in the Forensic Report.

With respect to alcohol-related security concerns, Administrative Judges traditionally defer to the opinions of mental health professionals. In cases where differing professional opinions are introduced into the record, the Administrative Judge necessarily assesses the

⁶ The availability of expert witnesses was discussed with both DOE's and the individual's counsels prior to establishing the date for the 2014 Hearing. Three business days prior to the scheduled hearing date, the individual's counsel telephonically requested a postponement of the hearing because the individual's forensic psychiatrist was scheduled to speak at an out-of-town conference on the hearing date. Consistent with OHA practice, the hearing was not rescheduled although the individual's counsel was reminded that telephonic testimony from the forensic psychiatrist would be accepted.

reasonableness of each opinion. As noted above, the individual's forensic psychiatrist submitted a written evaluation with no explicit analysis to support his conclusions and he was not presented as a witness and, therefore, could not be examined with respect to his evaluation and diagnosis. For these reasons, I have given limited weight to the Forensic Report. The DOE psychiatrist's 2013 written evaluation and 2014 testimony were, on the other hand, thorough and carefully reasoned.

Any analysis of a security concern arising from an individual's misuse of alcohol must review any evidence that would mitigate the concern. The individual testified at the 2014 Hearing that, when he resumed alcohol consumption following the 2004 Hearing, he believed such consumption was not problematic since he experienced "no obvious issues pertaining to the use of alcohol as so far as legal issues, work performance issues, [and] relationships with friends and family...." Tr. at 25. For these reasons, the individual struggled with how to proceed when he received the Notification Letter in December 2013; however, he subsequently decided to abstain from alcohol. *Id.* In February 2014, he began attending meetings of the church-based recovery group with whom he had been working at the time of the 2004 Hearing and he has completely abstained from alcohol since February 6, 2014. *Id.* at 40, 61. The individual testified at the 2014 Hearing, as he did at the 2004 Hearing, that he intended to permanently abstain from alcohol consumption. *Id.* at 38, 60.

Although I do not doubt the sincerity of the individual's testimony with respect to his intention to permanently abstain from alcohol consumption, I cannot ignore that he expressed the same intent at his 2004 Hearing and, one year later, relapsed and thereafter regularly consumed alcohol (at times to intoxication) for approximately nine years. The individual's self-awareness regarding his alcohol use is limited. For example, he testified at the 2014 Hearing that his longest period of total abstinence was from 2002 to 2006. *Id.* at 51. This is contradicted by the 2004 testimony that he experienced relapses in September 2003 and May 2004 (which was one month prior to the 2004 Hearing) and his statements to the LSO that he resumed alcohol consumption in April 2005. Ex. 1; Ex. 13 at 66, 77 – 78; Tr. at 56 – 59. His longest period of abstinence appears to be one year. *Id.* at 59.

With respect to his "relapse" that began in 2005 and continued into 2014, the individual testified that "I think it's fairly common with folks in my situation, ... after some length of time of abstinence to – to get a little arrogant, maybe prideful, a little overconfident and think, you know, I've get this thing licked and ... I can just put it behind me and live my life like a normal person." *Id.* at 41 – 42. Such testimony does not reflect any greater depth of understanding of his alcohol misuse than his 2004 testimony in which he used similar language to explain his relapse which occurred a month earlier when he stopped after work to visit a friend: "he knows my situation and does not offer, but I knew he had some beer and it was, I made a mistake, after you have had some time of sobriety you kind of get a little prideful and you think I can handle this, a little bit won't hurt." Ex. 13 at 77.

Other aspects of the individual's testimony at the 2014 Hearing also paralleled his testimony in the 2004 Hearing. While such parallels may favorably demonstrate

consistency in some contexts, in this context such parallels strongly suggest that the individual's understanding of his alcohol consumption and his ability to control his consumption are no greater in 2014 than they were in 2004, which was approximately one year prior to his abandoning his commitment to abstinence. Such parallels also undermine the credibility of the individual's 2014 testimony regarding his future intentions. For example, in 2014 the individual testified that, as he developed personal relationships with other participants in his church-based recovery group, he planned to identify a "sponsor" with whom he could work. *Id.* at 81 – 82. While I would normally credit such statement as a positive step in one's reformation, I am reluctant to do so here as the individual expressed the *same* intent in his 2004 testimony with respect to the *same* recovery group *but* acknowledged during the 2014 Hearing that he did *not* establish such a mentoring relationship following the 2004 Hearing.⁷ Tr. at 39, 63. Also during his 2014 testimony, the individual testified that his church-based recovery group had a separate class in which he could study "the twelve steps" that are traditionally included in a recovery program and that he intended to join the class when it began a future cycle of classes. Ex. 13 at 80 – 81. Again, while this intent is meritorious, it is undermined by the individual's similar testimony in 2004 *and* his subsequent acknowledgment that he had never enrolled in any such class following the 2004 Hearing even though he presumed such classes had been available.⁸ Tr. at 49, 63.

During the individual's 2014 testimony, he made a few isolated statements reflecting that abstaining from alcohol would improve his life and was consistent with his spiritual beliefs; however, the foremost motivation for his abstinence appears to be his belief that abstinence is necessary to placate DOE's security concerns (e.g., "But ultimately I realized that my job here at the plant ultimately depends upon [total abstinence]"). Tr. at 25. The DOE psychiatrist who attended the 2014 Hearing similarly noted this theme in the individual's testimony and commented: "it's the difference between having to stop drinking and wanting to stop drinking.... If someone's in a spot of having to stop, the very nature is to try to break the rule...of having to not drink, and I think that...decreases his prognosis for success." *Id.* at 78.

The Adjudicative Guidelines recognize the relapsing nature of alcohol conditions and therefore, to mitigate such concerns, require evidence that an individual can control his or her use of alcohol and *not* relapse into misuse. *See* Adjudicative Guidelines at Guideline

⁷ Compare the individual's 2014 testimony that he was "in the process of trying to develop some more personal relationships with some of the other men in my group and trying to identify who I believe would be a best fit for a sponsor for me" with his 2004 testimony that "the reason I haven't inquired more about a sponsor is I think over time, as I get more comfortable in the program, and become better friends with some of the folks in there and know them more on a personal basis, ... that a sponsor would come along, you know, that I and that person would be comfortable working together." Tr. at 39; Ex. 13 at 81 – 82.

⁸ Compare the individual's 2014 testimony that: "I've looked at a class that has a specific, you know, start time, and that's something that I have intentions of inquiring about, finding out when there's an opportunity that I can become part of that twelve-step program...." with his 2004 testimony that "I haven't started that process yet. It being an interval in nature going through the steps, it is something that you have to sign up for ahead of time and when they start the program new, the next time that start, I hope to get involved in that." Tr. at 49; Ex. 13 at 80 – 81.

G ¶23(a) – (d). Both the Adjudicative Guidelines and DOE practice have traditionally looked at two factors as a predictor of appropriate use of alcohol in the future: (1) education and treatment with respect to alcohol use and (2) the amount of time during a person has abstained or controlled their alcohol use. The DOE psychiatrist, who evaluated the individual in 2013 and testified at the 2014 Hearing, recommended the following steps be taken by the individual to evidence adequate rehabilitation or reformation of the his alcohol abuse: completion of a structured inpatient or outpatient alcohol treatment program; participation in a 12-step program and becoming familiar with a recovery model; and complete abstinence for 18 months in conjunction with a structured program or longer without completion of such a program.⁹ Ex. 6 at 12; Tr. at 75, 93. As of the 2014 Hearing, the individual had not completed a structured alcohol treatment program. *Id.* at 63. (In 2002, a DOE psychiatrist had also recommended that the individual participate in a structured alcohol treatment program and the individual declined that recommendation as well. Ex. 6 at 7.) The individual has been participating in a church-based recovery group and has been abstinent from alcohol for three months of the date of the 2014 Hearing. Tr. at 40, 61. While such participation and abstinence are to be encouraged, they are insufficient to evidence rehabilitation of the individual’s alcohol abuse. At the 2014 Hearing, the DOE psychiatrist opined that the individual’s risk of relapse is high. *Id.* at 77. *Cf.* Adjudicative Guidelines at Guideline G ¶23(d) (favorable prognosis of a treating mental health professional may support mitigation of a alcohol related security concern). Based on the foregoing, I find no mitigation of the security concerns associated with Criterion J.

The DOE psychiatrist opined in both his written evaluation and at the 2014 Hearing that the individual’s alcohol abuse is an illness or mental condition which causes, or may cause, a significant defect in his reliability or judgment. Ex. 6 at 12; Tr. at 94. In the absence of mitigation of security concerns arising from the individual’s alcohol abuse, the individual has also failed to mitigate the security concerns arising under Criterion H.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H and J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns associated with Criteria H and J. Accordingly,

⁹ The 2013 written evaluation by the DOE psychiatrist recommended one year of abstinence in conjunction with a structured program. However, at the 2014 Hearing, the DOE psychiatrist testified following all of the other witnesses and stated that, based on the testimony that he had heard, he was increasing his recommendation to require abstinence for a period of 18 months in conjunction with participation in a structured treatment program. The DOE psychiatrist testified it was the first time he had increased his recommendation at a personnel security hearing. A primary factor in the increased recommendation was the parallels noted above in the individual’s testimonies in the 2004 and 2014 Hearings; the transcript of the 2004 Hearing had not been provided to the DOE psychiatrist as part of his 2013 evaluation of the individual. Tr. at 74 – 76.

I have determined 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.

Wade M. Boswell
Administrative Judge
Office of Hearings and Appeals

Date: June 5, 2014