*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

United States Department of Energy
Office of Hearings and Appeals

In the Matter of:	Personnel Security Hearing	)
		)
Filing Date:	December 18, 2014	)
		) Case No.: PSH-14-0110
		)

Issued: March 25, 2015

Administrative Judge Decision

William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization[1] 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's access authorization should not be restored at this time.

I. Background

The individual works for a DOE contractor in a position that requires that he hold a DOE security clearance. In June 2014, shortly after arriving at work, the individual took an alcohol test that indicated a breath alcohol content in excess of the allowable limit for his facility. The positive test result, as well as the individual's recounting of his then-current alcohol consumption and earlier alcohol-related arrests during a July 28, 2014, Personnel Security Interview (PSI), raised security concerns in the opinion of the Local Security Office (LSO). As a result, the LSO referred the individual to a DOE consultant

[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.

psychologist (DOE psychologist) for a mental health evaluation. On November 19, 2014, 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 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).[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, the individual presented his own testimony and that of four other witnesses, and the LSO presented the testimony of one witness, the DOE psychologist. In addition to the testimonial evidence, the LSO submitted eight numbered exhibits into the record, and the individual submitted eight exhibits, which I labeled Exhibits A through H. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric or letter designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.

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 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). Hence, an

[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).

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 support for its security concerns under Criteria H and J, the LSO relies on the opinion of the DOE psychologist, who determined that the individual is a user of alcohol habitually to excess which, in his opinion, causes or may cause significant defects in the individual's judgment and reliability. In addition, the LSO cites the positive results of the individual's June 25, 2014, alcohol test, his statements regarding his alcohol consumption, and three alcohol-related arrests that occurred between 1988 and 1993. Ex. 1.

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.

IV. Findings of Fact

In June 2014, the individual was completing the application process to obtain Department of Transportation certification (a "driver's file") that would allow him to transport certain large equipment at his DOE facility. Tr. at 33. On June 25, 2014, shortly after arriving at work, he was told he needed to take an unannounced drug and alcohol test as part of his qualification for the driver's file. *Id.* at 34. About two hours after he had started work, and more than 12 hours after he had last consumed alcohol, his breath was tested twice. Ex. 7 at 31, 34, 55. The results of the first breath test were that the individual had a breath alcohol content (BAC) of .04 g/210 L. *Id.* at 34. A second test, administered 15 to 20 minutes later, yielded a BAC of .037 g/210 L. *Id.* at 35-36. He had fixed himself two drinks the night before but, as was his habit, he had not measured the alcohol in his drinks and consistently has stated that he does not know how much alcohol he consumed that night. *Id.* at 52-53; Tr. at 36-37.

The individual reported during his July 28, 2014, PSI that he does not recall details of his alcohol consumption during his younger years, nor his three alcohol-related arrests, the last being Driving While Intoxicated (DWI) in 1993. Ex. 7 at 103-06, 116, 141. He does not recall that he received a diagnosis or attended counseling as a result of his DWI, but stated that he reported to a probation officer for three to six months. *Id.* at 126-27. Responding to questioning about his alcohol drinking pattern, the individual estimated that from 1999 to 2014, he consumed one or two mixed drinks with his dinner, but not every night. *Id.* at 141, 148, 150. He also stated that he could not accurately report the amount of alcohol in those drinks, because he has never measured the amount he poured, but rather mixed it "to taste." *Id.* at 151. He conceded that, because he does not measure the alcohol in his drinks, he may be consuming more than the one-and-one-half ounces of alcohol than would be contained in a standard mixed drink. *Id.*

The DOE psychologist evaluated the individual in September 2014. He determined that the individual met the criteria for neither Alcohol Abuse nor Alcohol Dependence as set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association*, Fourth Edition Text Revised (DSM-IV-TR). Ex. 4 (Psychological Assessment Report) at 7; *see* Tr. at 121-22. Nevertheless, based on his review of the individual's personnel security file and his own interview with the individual, he reached the opinion that the individual uses alcohol habitually to excess. *Id.* He calculated, based on accepted alcohol metabolism rates, that in order for the individual to have had a BAC of .04 g/210 L 12 hours after consuming alcohol, his BAC 12 hours earlier would have been approximately .25 g/210 L. Ex. 4 at 5. That level of BAC would have necessitated consuming 11 to 12 standard drinks and would cause "symptoms of alcohol poisoning in many people (e.g., blackouts, coma)." *Id.* at 5, 7.[3] These calculations led the DOE psychologist to conclude that the individual had developed a high tolerance to alcohol, in that he not only does not suffer such symptoms but does not perceive himself as intoxicated after his customary two drinks. *Id.* at 7. Following the June 25, 2014, incident, after which the individual's access authorization was suspended, he began abstaining from alcohol, participated in ten sessions with an on-site Employee Assistance Program (EAP) counselor, and attended two Alcoholics Anonymous (AA) meetings. He then found a Christian-based recovery program and was attending those sessions regularly at the time the DOE psychologist issued his Report. *Id.* at 6. The DOE psychologist concluded that the individual's diagnosis as a user of alcohol habitually to excess demonstrated a significant defect in judgment or reliability. *Id.* at 8. He would require that the individual demonstrate control over his drinking by remaining abstinent for one year, participating in an intensive outpatient alcohol treatment program of at least six weeks' duration, and attending an aftercare follow-up program for the remainder of the year. *Id.*

At the hearing, the individual focused his testimony on the steps he has taken since the June 25, 2014, incident. He stated that his last drink was on June 24, 2014, the evening

[3] At the hearing, the DOE psychologist testified that more recent research indicates that metabolism rates are actually somewhat slower than previously believed. After recalculating the individual's estimated alcohol ingestion based on his BAC of .04 and this newer rate, he concluded that the individual had consumed the equivalent of 10 to 11 standard drinks the night before, and had a BAC of .22 (rather than .25) g/210 L. Although these calculations indicate that the individual may have consumed slightly less alcohol than previously estimated, the DOE psychologist maintained that his concerns and conclusions were unaffected by this new information. Tr. at 115.

before his breath alcohol test. Tr. at 61. He testified that he has remained abstinent since then, and has had no difficulty changing his habit of drinking on a regular basis. *Id.* at 42-43. Within a few days of the breath alcohol test, he began seeing the EAP counselor on a weekly basis, and continues to see her, though not as frequently. *Id.* at 38-39. While she advised him that he could continue to drink as many as two drinks per day, she counseled him to measure the alcohol he pours into each drink, and limit it to one and one-half ounces per drink, so he will know accurately how much alcohol he is ingesting. *Id.* at 39. In October 2014, the individual began seeing a licensed alcohol and drug abuse counselor in addition to the EAP counselor. *Id.* at 40; Ex. A. He has studied the effect of alcohol on the body with this counselor, attending, at first, two group sessions and one private session per week. *Id.* at 48. Finally, through his Christian-based recovery program, which follows steps similar to those of AA, he feels he has achieved a better understanding of the effects of alcohol and what responsible drinking is. *Id.* at 51. In closing, the individual stated that he has not really felt any difference in his life since he stopped drinking alcohol. *Id.* at 52.

The individual's EAP and alcohol abuse counselors each testified at the hearing, and each agreed with the DOE psychologist's conclusions in his report. *Id.* at 77, 100. The EAP counselor confirmed the individual's counseling program. She explained that they reduced the frequency of their meetings when the individual started working with the alcohol abuse counselor. *Id.* at 98. She clarified that she had recommended abstinence to the individual, but also educated him as to low-risk, healthy drinking in the event he choose not to abstain. *Id.* at 99-100. She also counseled, and continues to counsel, him regarding his reactions to stresses in his life, including the suspension of his access authorization. *Id.* at 106-08. As early as August, however, she had found the individual's alcohol consumption to be of "no concern," and as of the date of the hearing, with eight months of sobriety, she feels that the individual is at low risk of abusing alcohol in the future. *Id.* at 101.

The alcohol abuse counselor testified that the individual enrolled in an intensive outpatient program under his direction. This counselor determined that, somewhat unusually for alcohol users, the individual has no "triggers" that cause him to drink. Rather, his drinking is simply a matter of habit, and he has had no reported cravings since he began abstaining. *Id.* at 34. 76-77. In his opinion, the individual's problem with alcohol arose from inattention to how much he was consuming, as demonstrated by his surprise at his positive test results on June 25, 2014. *Id.* at 80. The alcohol abuse counselor assessment of the individual's risk of relapse to abuse or misuse of alcohol in the future, as of the date of the hearing, was very low, because the individual was aware of his problem and had been conscientious and committed in his participation in the program. *Id.* at 79, 81. He also stated that the program, which usually runs for 12 weeks but in the individual's case had run for about 16 weeks due to holidays and the counselor's unavailability, was nearly completed; he felt that one final debriefing session might suffice, after which the individual would begin aftercare, all the while continuing with his Christian-based recovery program. *Id.* at 89-90.

In his testimony at the hearing, the DOE psychologist maintained his opinion that the individual consumes alcohol habitually to excess, albeit now in a period of abstinence. He stated that his understanding of laboratory reports clearly confirmed the individual's

assertion that he continues to abstain from alcohol. *Id.* at 113. The reports nevertheless also confirmed, in his opinion, that the individual was previously consuming alcohol heavily. *Id.* He further explained that the individual has acquired tolerance to high alcohol consumption to the extent that he was able to function with a BAC that would debilitate many others. *Id.* at 114. He acknowledged that the alcohol abuse counselor's intensive outpatient program did not meet all the criteria he would normally require of such a program; nevertheless, he approved of the program on the basis of the counselor's experience and reputation. *Id.* at 117. He expressed some reservation about the substitution of the Christian-based recovery program for AA, because the former is not as structured and does not focus as intensely on alcohol problems, but conceded the value of the support the individual gains from full participation in the program. *Id.* at 118. In light of the individual's efforts and success to date, the DOE psychologist stated that ten months of abstinence and rehabilitation would assure him that the risk of relapse to intoxication would be comfortably low. *Id.* at 116. As of the hearing, the individual had completed nearly eight months of abstinence and rehabilitation. The DOE psychologist placed the individual's risk of relapse "below moderate, below an average level," but still sought more passage of time in his new pattern of behavior. *Id.* at 116, 121.

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's access authorization should not be restored at this time. I cannot find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

The individual has maintained a pattern of significant alcohol consumption for at least 20 years. I reach this conclusion because the individual has consistently maintained that he has never measured the alcohol he has poured into his mixed drinks, but has mixed them "to taste." His June 25, 2014, BAC test results demonstrate that he had consumed far more alcohol on the previous evening than he believed. Laboratory results and testimony indicate that his consumption that evening was typical, habitual behavior. I am convinced that the individual was truly unaware of the quantity of alcohol he was regularly consuming, and was shocked when faced with positive BAC test results. He immediately stopped drinking alcohol, and his testimony to that effect is supported by the testimony of his counselors and a number of negative random alcohol tests. Exs. B, E, F, H. In addition to engaging in counseling, he has regularly attended a Christian-based recovery program, as supported by the record. Ex. A (attendance sheet); Ex. G (letter from program leader).

In short, the individual has taken significant steps to alter his previous pattern of behavior with regards to alcohol, all the more remarkable because he was until recently quite unaware that it presented a problem. Nevertheless, as of the date of the hearing, he had been engaged in rehabilitative efforts for slightly less than eight months, and the DOE

psychologist felt that insufficient time in rehabilitation had passed for him to find the risk of relapse to heavy drinking to be comfortably low. Although he was obviously impressed by the individual's efforts, such that he revised the required period of rehabilitation from 12 to 10 months, the DOE psychologist was not willing to state that the individual was safely in control of his alcohol consumption as of the day of the hearing. I too am left with doubts as to whether the individual has reached a point in his rehabilitation that his risk of relapse is low. I am particularly concerned that his responses to questioning about his future intentions with respect to alcohol have been indistinct. At both the July 2014 PSI and at the hearing, the individual stated that he had not yet contemplated whether he would resume drinking when he was permitted to do so. Ex. 7 at 182, 195-96; Tr. at 61-62. I am therefore convinced that, despite the treatment he is receiving, it is too soon to conclude that the individual has resolved his alcohol problem. I have taken into consideration a number of mitigation factors in his favor, specifically, his acknowledgment of his alcohol problem, his abstinence, and his voluntary treatment program. Adjudicative Guidelines at Guideline G, ¶ 23. Despite these favorable factors, and after considering all the testimony and written evidence in the record, I am not convinced that the individual has resolved the LSO's security concerns that arise from his alcohol use.

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 these criteria. I therefore cannot find that restoring the individual's access authorization 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 restored at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Administrative Judge
Office of Hearings and Appeals

Date: March 25, 2015