

August 2014, a DOE consultant-psychologist (DOE psychologist) evaluated the individual and issued a report. Ex. 7. On November 5, 2014, the LSO sent a letter (Notification Letter) to the individual informing him that there existed derogatory information that raised security concerns under 10 C.F.R. §§ 710.8 (h) and (j) (Criteria H and J, respectively).² See Ex. 1 (Notification Letter, November 5, 2014). The Notification Letter also informed the individual that he was entitled to a hearing before an Administrative Judge in order to resolve the security concerns. *Id.*

The individual requested a hearing on this matter. Ex. 2. The LSO forwarded his request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. At the hearing, the individual presented his own testimony and that of six other witnesses, and the LSO presented the testimony of one witness, the DOE psychologist. In addition to the testimonial evidence, the LSO submitted ten numbered exhibits into the record, and the individual submitted one exhibit, which I labeled as Exhibit A. The hearing transcript in this 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 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

² Criterion H concerns information that a person has “an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a 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 conduct indicating that the individual has “been, 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).

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. Findings of Fact

By the individual's own estimate, throughout his college and military careers, he drank beer to the point of intoxication roughly once a week from August 1981 through April 2006, with the exception of periods of military deployment. Ex. 9. From April 2006 to February 2007, he was drinking four to six beers each day and was intoxicated daily. *Id.* at 49-51. Upon leaving the military, he voluntarily sought alcohol counseling, which he attended once or twice weekly from March 2007 to October 2010. *Id.* at 87-88. He was diagnosed at that time with Alcohol Dependence. *Id.* at 86. Although he did not abstain from alcohol once he started treatment, he did cut back to two to three beers twice a week until late 2008. *Id.* at 55-58, 89. At that point, he decided to abstain from alcohol altogether, and remained abstinent until sometime in 2010. *Id.* at 58-59. He stated at the PSI that job stress caused him to resume drinking, in a pattern that he maintained until recently: two to six beers or two to three glasses of wine about three times a week. At the hearing, the individual maintained that his pending divorce was an additional stress that contributed to his returning to alcohol. Tr. at 134. He always drinks alone, at home, and becomes intoxicated generally once a week on a weekend night. Ex. 9 at 60, 62-63. He stated that he self-medicates with alcohol, to relieve stresses, including that of his divorce. *Id.* at 64. His only alcohol-related arrests were in late 1982 and early 1983 while he was in college. *Id.* at 95-99; Tr. at 128.

In August 2014, the DOE psychologist evaluated the individual and diagnosed him with Alcohol Dependence, without adequate evidence of rehabilitation or reformation. Ex. 7 at 9. The psychologist noted that the individual had not sustained sobriety and recommended nine months of total abstinence "to see if he has control over his drinking." *Id.* at 10. He wrote that he would have more confidence in the individual's control of his drinking if the individual also attended Alcoholics Anonymous (AA) meetings three to four times per week, got a sponsor, and provided evidence that he is actively participating in AA's Twelve-Step Program. *Id.* Finally, the DOE psychologist identified two mental conditions that, in his opinion, cause or may cause a significant defect in judgment or reliability: the Alcohol Dependence discussed above, and the individual's lack of candor. The psychologist stated that the individual "has shown a willingness to not keep his commitments," as demonstrated by the commitment he made to an OPM investigator in 2009 to abstain from alcohol, which he later broke, and by his commitment to his marriage, which he broke when he had an affair with another soldier's wife. The DOE psychologist wrote: "Making but not keeping commitments is a mental condition seen in narcissistic, antisocial and borderline personality disorders. [The individual] does not meet the criteria for these personality disorders but this is a mental condition or tendency that prevents me from trusting his stated intentions." *Id.*

The individual testified at the hearing that he had his last alcoholic drink on August 7, 2014, two days after his psychological evaluation. Tr. at 139; Ex. 7 at 2. According to the individual, by mid- to late-August 2014, within two weeks of his psychological evaluation, he began attending two forms of treatment: Self Management and Recovery Training (SMART) and AA. Tr. at 139; Ex. 2 at 4-5.³ He testified that he attends each program once a week, consecutively on the same night, and attends one or more AA sessions on weekends if he feels the urge to drink. *Id.* at 137, 173. Although the two programs have differing philosophies—for example, SMART does not require abstinence—he feels that AA is nevertheless a good reinforcement of SMART’s teachings. *Id.* at 94, 140. For about two months, he has had a temporary AA mentor, who will soon be retiring to another part of the country; they are working together to find a replacement mentor for the individual. *Id.* at 16, 18-19. The individual now recognizes that he has an alcohol problem, and intends to stay sober. *Id.* at 135.

IV. Derogatory Information and Associated Security Concerns

As support for its security concerns under Criteria H and J, the LSO cited the DOE psychologist’s opinion that the individual met the criteria for Alcohol Dependence set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association Fourth Edition, Text Revision (DSM-IV-TR) and the criteria for Substance (Alcohol) Use Disorder, Moderate Severity, established in the DSM’s Fifth Edition (DSM 5). The DOE psychologist stated in his evaluation that the individual’s Alcohol Dependence can cause significant defects in judgment and reliability. I find that there is ample information in the Notification Letter to support the LSO’s reliance on Criteria H and J regarding the individual’s alcohol consumption. 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 also concluded, following his evaluation of the individual, that the individual’s lack of candor, manifested through his failure to keep commitments, constituted a discrete mental condition that causes or may cause a significant defect in judgment or reliability. Ex. 1; Tr. at 196. I find ample information in the record to support the LSO’s reliance on Criterion H regarding the individual’s lack of candor.⁴ According to the Adjudicative

³ The records maintained in the individual’s medical file indicate that he first attended on September 24, 2014, and attended 13 times from that date through March 4, 2015. Ex. A. His attendance was routinely recorded by the group leader, a retired therapist who testified at the hearing that he is an accurate recordkeeper. He stated that if the records do not indicate the individual’s attendance at session earlier than September 24, 2014, he most likely was not present. Tr. at 112. The individual produced no documentation in support of his AA attendance. Both he and his AA sponsor testified that the AA sessions he attends do not record attendance for participants other than hospital inpatients. *Id.* at 18, 31, 138.

⁴ A majority of our Criterion H cases involve the diagnoses of specific psychological disorders or conditions by mental health professionals using diagnostic criteria set forth in the DSM. However, the regulations do not require a formal diagnosis of a disorder in order to invoke Criterion H. *See* 10 C.F.R. § 710.8(h); Adjudicative Guidelines, Guideline I, ¶ 27 (“Certain emotional, mental, and *personality conditions* can impair judgment, reliability or

Guidelines, psychological conditions that cast doubt on an individual's judgment, reliability, and trustworthiness may raise security concerns. Adjudicative Guidelines, Guideline I, ¶ 27.

V. Analysis

In making a determination regarding the individual's eligibility for DOE access authorization, I have thoroughly considered the record in this proceeding, including the hearing testimony and the documentary evidence. For the reasons set forth below, I am unable to find that restoring the individual's suspended DOE 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).

The individual did not dispute any of the specific underlying facts of this case. Tr. at 149. Rather, he asserted, through his attorney, that he admits he has a problem with alcohol, has maintained his sobriety through SMART, AA, and a support system, and knows that he must continue to abstain. He contends that these facts mitigate the LSO's security concerns. *Id.* at 12.

In the course of the hearing, six witnesses testified on behalf of the individual. His AA sponsor testified that the individual is serious about remaining sober and working through the AA program. *Id.* at 17. He did not know whether the individual had had alcohol problems in the past, or whether he had participated in AA before. *Id.* at 23. He vouched for the individual's attendance at the weekly AA meetings that he himself attended, and had no doubt that the individual attended those that he missed. *Id.* at 24, 30, 35. He had no doubts about the individual's openness or candor. *Id.* at 26.

The individual's SMART counselor likewise attested to the individual's commitment to, and participation in, that program. He stated that, while the record does not demonstrate consistent weekly attendance, at least some weekly sessions, particularly around the winter holidays were canceled. *Id.* at 95. He explained that the individual had participated in SMART nine years ago, was quite knowledgeable about the program, and optimistic that the individual would succeed in controlling his alcohol problem. *Id.* at 90, 100. In his opinion, the individual's co-existing conditions of depression and Post-Traumatic Stress Disorder (PTSD) did not adversely affect his recovery, provided he is receiving treatment for those disorders as well. *Id.* at 105. He would not express an opinion regarding the individual's candor beyond the SMART group. *Id.* at 111.

Four witnesses, all current or former supervisors or co-workers, attested to the high quality of the individual's work and his exemplary work ethic. *Id.* at 41, 51, 66, 68, 84. Each one denied having ever seen the individual consume alcohol or appear under its influence in the workplace. *Id.* at 41, 53, 67, 83-84, 86. None had any concern about his candor. *Id.* at 45, 52, 68, 83.

At the hearing, the individual testified that he has held a security clearance for 26 of the past 30 years and has never had a problem with it, except for a charge of adultery in 2006. *Id.* at 122-23. Because the DOE psychologist found that the individual lacked candor in part due to his extramarital affair in 2006, the individual offered the following explanation. He and his wife separated in 2003, after which time they never again cohabited. *Id.* at 124. From 2003 until the

trustworthiness. *A formal diagnosis of a disorder is not required* for there to be a concern under this guideline.") (emphasis added). *See also Personnel Security Decision*, OHA Case No. PSH-13-0006 (April 19, 2013).

divorce was finalized in December 2014, he and his wife remained married for the sake of the children, to protect them from being stigmatized by divorce. *Id.* In 2006, while in the military, the individual had a one-week affair with the spouse of another member of the military. *Id.* at 123-24; Ex. 7 at 5. He testified that at the time of the affair, he considered his marriage “pretty much nonexistent.” *Id.* at 126.

The individual also addressed the DOE psychologist’s finding that he lacked candor when he told the OPM investigator in 2009 that he intended to remain abstinent from alcohol. He explained that it was his intent at the time not to resume drinking, but no one can predict the future. *Id.* at 134. At a later date, however, he did resume drinking, believing that it would have “absolutely no effect on my job.” *Id.* at 135.

After listening to the individual’s testimony, the DOE psychologist did not change his opinion regarding the individual’s Alcohol Dependence and lack of candor. In explaining the basis for his opinion regarding the individual’s lack of candor, the DOE psychologist noted discrepancies between the individual’s testimony and his prior statements that added support to his original bases for that opinion: his extramarital affair in 2006 and his resumption of alcohol consumption after stating his intent in 2009 to remain abstinent. He pointed out that the individual had testified that he had never consumed alcohol at work-related events, but his notes indicated that he had done so at his prior job. *Id.* at 151, 183. He also noted that the AA sponsor had stated that the individual was working on AA Steps 1, 2 or 3, while the individual claimed he was working on Step 4. *Id.* at 184. In addition, he expressed concern that the individual had not told his sponsor about his past history of alcohol abuse, nor was his SMART counselor aware of the individual’s duration of sobriety. *Id.* at 185. The DOE psychologist also found a discrepancy between the individual’s assertion that his sobriety date was August 7, 2014, and his attorney’s claim in his opening statement that it was “8/14/15.” *Id.* A final discrepancy that the DOE psychologist mentioned concerned the start of the individual’s most recent treatment: whether it was in mid-August 2014 as the individual claimed or in late September as reflected in the only documentation in the record. *Id.* at 203.

I disagree with the DOE psychologist’s conclusion that the individual’s lack of candor falls within Criterion H. I do not challenge the assertion that, in certain cases, a person’s lack of candor may be so consistent and pervasive that it constitutes a mental condition or personality trait that “causes or may cause a significant defect in judgment or reliability.” Criterion H. In the case before me, however, I find that some of the factual underpinnings for the DOE psychologist’s conclusion are incorrect or, at the least, inconsistent with a common-sense view of human behavior. I agree with the DOE psychologist that an extramarital affair, even under the conditions the individual testified to, demonstrates a lack of candor in the form of deceit and breaking commitments, in particular regarding the non-participating spouses. On the other hand, I have no basis to conclude that the individual’s stated intention to remain sober in 2009 was disingenuous at the time; to reason so, solely on the basis that he did not live up to his commitment within the next year and in spite of his testimony, would doom the social value of any promise. In addition, with the benefit of the transcript, I have confirmed that some of the inconsistencies the DOE psychologist thought he observed and relied upon as support for his conclusion are not inconsistencies at all. For example, the AA sponsor’s testimony supports the individual’s assertion that he is working on Step 4 of the AA program, *id.* at 25, and the

individual's attorney stated the individual's sobriety date as "the first week of August 2014," which is consistent with the individual's claim of August 7, 2014. *Id.* at 12. The remaining inconsistencies that the DOE psychologist identified at the hearing are as likely matters of faulty memory or a desire to preserve privacy as they are willful acts attributable to a personality trait, but I cannot determine that they demonstrate a pattern of behavior that supports the DOE psychologist's conclusion.

At the hearing, the DOE psychologist maintained his opinion that the individual was not rehabilitated from his diagnosis of Alcohol Dependence. *Id.* at 186. He noted his concern that, despite his apparent success at remaining abstinent for over seven months, the individual responds to external rather than internal forces; in other words, he drank at "what he viewed as a nonproblematic level, until it was made clear to him that somebody found it problematic." *Id.* at 188. He abstains because "if he drank he would endanger his job." *Id.* at 188, 201 (citing Ex. A at 16). In his evaluative report, the DOE psychologist recommended that the individual abstain from alcohol for nine months and, for further confidence, attend AA meetings three to four times per week. Ex. 7 at 10. At the hearing, the DOE psychologist stated that he required nine months rather than the standard 12-month rehabilitation period, because he viewed the individual as someone who had already acquired many of the necessary skills in previous treatment, and gave him "the benefit of the doubt." *Id.* at 191. After hearing the individual's testimony, the DOE psychologist testified that he "would be much more comfortable with a 12-month" period of rehabilitation. *Id.* at 193. His reasoning for lengthening the period of rehabilitation was that he was not compelled by any evidence that the individual had internalized his motivation for abstinence. He felt the individual was still responding to external forces—keeping his job, for one—and was not sure that maintaining sobriety was a priority for the individual. *Id.* at 194. He also stated that the individual's failure to reveal his full history of alcohol use demonstrated a lack of focus on transparency and candor, which the DOE psychologist sought in those in recovery. *Id.* at 196.

With respect to the security concerns regarding the individual's Alcohol Dependence as cited in the Notification Letter under Criteria H and J, I find that the individual has not mitigated those concerns. Among the factors that may serve to mitigate security concerns raised by an individual's alcohol use are that "so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," that "the individual acknowledges his or her alcoholism or issues of alcohol abuse [and] provides evidence of actions taken to overcome this problem . . .," and that "the individual has successfully completed inpatient or outpatient counseling or rehabilitation . . ., has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations . . . and has received a favorable prognosis by a duly qualified medical professional" Adjudicative Guidelines, Guideline G, ¶ 23. In this case, a DOE psychologist has found that the individual is properly diagnosed with Alcohol Dependence and has not yet demonstrated rehabilitation. Although the individual has acknowledged his problem with alcohol, is currently participating in two forms of treatment, and has been abstinent for seven months, I am convinced by the DOE psychologist's opinion that the individual has not demonstrated rehabilitation from his diagnosis of Alcohol Dependence. I must concur with the DOE psychologist that seven months is too short a period of rehabilitation, under the circumstances of this case, and I cannot

conclude that the individual has reduced his risk of relapse to intoxication to an acceptably low level. Consequently, I find that the individual has not mitigated the Criteria H and J concerns.

VI. Conclusion

Upon consideration of the entire record in this case, I find that there was evidence that raised doubts regarding the individual's eligibility for a security clearance under Criteria H and J of the Part 710 regulations. I also find that the individual has not presented sufficient information to fully resolve those concerns. Therefore, I cannot conclude that restoring the individual's suspended DOE 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). Accordingly, I find that the DOE should not restore the individual's suspended DOE access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Administrative Judge
Office of Hearings and Appeals

Date: April 23, 2015