

also concluded that the individual demonstrates difficulty holding commitments and being fully candid, which are mental conditions that are likely to result in significant defects in his judgment and reliability.

In April 2015, 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 three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (j) and (l) (hereinafter referred to as Criteria H, J, and L respectively).²

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 manager. 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 (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 granting 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

² 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). Finally, Criterion L relates, in relevant part, to information that a person has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. . . ." 10 C.F.R. § 710.8(l).

broad range of evidence at personnel security hearings. Even appropriate hearsay 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 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 three criteria as bases for denying the individual's security clearance: Criteria H, J and L. To support Criterion H, the LSO relies on the diagnosis of the DOE psychologist that the individual suffers from Alcohol Dependence, not yet in remission, and the expert's opinion that Alcohol Dependence is a mental illness that could cause a significant defect in the individual's judgment and reliability. In addition, the LSO relies on the DOE psychologist's conclusion that the individual demonstrates difficulty holding commitments and being fully candid, which are mental conditions that are likely to result in significant defects in judgment and reliability. As for Criterion J, the LSO cites the DOE psychologist's opinion regarding his diagnosis of Alcohol Dependence, the individual's alcohol-related incidents, and the individual's 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 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.

Finally, as for Criterion L, the LSO cites the individual's misrepresentations on his 2003 and 2014 Questionnaires for National Security Positions (QNSPs) as well as misrepresentations made during his 2004 and 2014 Personnel Security Interviews (PSIs). The security concern at issue here is that conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. *See id.* at Guideline E.

IV. Findings of Fact

The individual has been involved in a number of alcohol-related incidents. He was arrested and charged with three Driving While Intoxicated (DWI) offenses, in 1989, 1990, and 1991, respectively. Ex. 1, 3. The individual admitted that he consumed a six-pack of beer prior to each of the arrests. In May 2006, the individual was issued a criminal summons for Battery Against a Household Member due to a verbal altercation with his wife. *Id.* A witness told police that the individual was highly intoxicated. The individual also admitted to consuming two 12-ounce beers prior to the altercation. *Id.* In addition, in April 2012, the individual was issued a citation for Unreasonable Noise. He admitted that he consumed six 12-ounce beers prior to this incident. During his April 2014 PSI, the individual admitted that he had continued to consume alcohol, even though his doctor suggested that he stop. He also admitted that, in February 2012, he consumed a 30-pack of beer over the course of the day. *Id.*

Based on this information, the individual was referred to a DOE psychologist for a psychological evaluation. On June 19, 2014, 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, not yet in remission. The DOE psychologist concluded that the individual possesses an illness or mental condition, which causes, or may cause, a significant defect in judgment and reliability. Ex. 4. He also concluded that the individual demonstrates difficulty holding commitments and being fully candid and that these are mental conditions that are likely to result in significant defects in the individual's judgment and reliability. *Id.*

In addition to the individual's alcohol-related issues, the individual has misrepresented information on two QNSPs and during two PSIs. On his September 2003 QNSP, the individual certified that he had never been charged with or convicted of any offense related to alcohol or drugs. However, he was arrested and charged with DWI in 1989, 1990 and 1991. On his February 2014 QNSP, the individual indicated that he had not had a security clearance eligibility or access authorization denied, suspended or revoked. On November 5, 2014, he signed a Standard Form 86 Certification certifying that there were no changes to his February 2014 QNSP even though his DOE L clearance was suspended on July 15, 2014. In addition, on his February 2014 QNSP, the individual certified that he had not been issued a summons, citation or ticket to appear in court in a criminal proceeding against him within the last seven years. However, he was issued a citation for Unreasonable Noise on April 12, 2012, for which he admitted that he had to appear in court. With respect to the individual's PSI in August 2004, the individual misrepresented information regarding his alcohol use. Finally, in his April 2014 PSI, the individual admitted that he failed to report an April 2012 citation issued to him for Unreasonable Noise to DOE as required. *Id.*

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)³ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be granted. Based on the facts in this record, I cannot find that granting 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.

A. The Diagnosis of Alcohol Dependence

The individual does not dispute the DOE psychologist's diagnosis of Alcohol Dependence, not yet in remission. Therefore, the focus of the analysis will be on whether the individual has demonstrated adequate evidence of rehabilitation or reformation.

B. Evidence of Rehabilitation and Reformation from Alcohol Dependence

During the hearing, the individual testified that his stepson committed suicide in 2011 and that his father died in 2012. Transcript of Hearing (Tr.) at 17. He stated that these two traumatic events made a significant impact on him and that he drank alcohol to cope with the losses. The individual acknowledged that drinking alcohol was not the right mechanism to use for coping with stress, but stated that he did not know of any other way to cope at that time in his life. *Id.* He acknowledged his alcohol-related incidents. According to the individual, his May 2006 summons for Battery Against a Household Member was dismissed. He testified that this incident occurred when he was trying to prevent his wife from leaving their home and driving away. *Id.* at 18. The individual stated that, after being evaluated by the DOE psychologist, he has attended counseling with his employer's Employee Assistance Program and has focused on spending time with his family. *Id.* at 19, 20. According to the individual, he lost the urge to drink alcohol in May of 2015. He further testified that he stopped drinking in June 2015. When asked whether he has been totally abstinent since June 2015, the individual testified that he still occasionally has a glass of wine or beer at dinner with his wife. *Id.* at 20. The individual further testified that he has taken random drug tests and that the results have all been negative. He acknowledged that he has not yet participated in an Intensive Outpatient Treatment program or Alcoholics Anonymous as recommended by the DOE psychologist, but stated that he is willing to do so. He also acknowledged that he has not seen a psychiatrist as recommended. *Id.* at 28. He stated that he is committed to living a better life that is free of alcohol.⁴

The DOE psychologist listened to all the testimony at the hearing before testifying himself. He testified that he did not learn of anything in the hearing that would change his opinion outlined in his June 2014 Report. *Id.* at 45. The DOE psychologist testified that he believes the individual

³ 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.

⁴ During the hearing, the individual offered the testimony of his manager. *Id.* at 10. The individual's manager testified that he has never seen the individual drunk and that the individual is a good employee. *Id.* at 15.

attempts to be a good and responsible man, but that he is compromised by two issues; his drinking and his cognitive style. *Id.* He noted that the individual cannot stop drinking, even with firm recommendations that he do so. The DOE psychologist reiterated that the individual should totally abstain from alcohol. *Id.* With respect to the individual's cognitive style, he testified that the individual is not very detail-oriented, but rather makes more generalized statements that lack reflectiveness. *Id.* The DOE psychologist opined that the individual's cognitive style makes it difficult for one to know how much the individual really drinks. *Id.* He cited as an example the individual's testimony that he stopped drinking in June 2014, but when questioned further about his abstinence, the individual testified that he meant that he reduced his alcohol consumption. *Id.* at 46. According to the DOE psychologist, the individual's cognitive style does not value being accurate if he believes it may reflect poorly on him. *Id.* He added that the individual consciously obscures facts and he finds it difficult to believe him. *Id.*

The DOE psychologist further testified that the individual did not follow the recommendations he suggested, including addressing the issue of his chronic low-level depression. *Id.* at 47. He believes that the individual has some unresolved grieving associated with the traumatic events of both his stepson and father's deaths. He opined that the individual remains mildly depressed which is associated with his alcohol problem, and recommends that the individual see a psychiatrist for an antidepressant medication. *Id.* at 52. The DOE psychologist testified that the individual will continue to be vulnerable with his alcohol problem until his depression is addressed. *Id.* at 51. Finally, he reiterated that the individual should abstain from alcohol and address his depression with medication. He believes the individual's prognosis is poor over the "next year or two" that he will not drink to intoxication. *Id.* at 58.

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).*⁵ 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 Guidelines, Guidelines G and I, ¶ 23 and ¶ 29, respectively.* For example, the individual's past problematic alcohol use is recent and, although he now acknowledges that he has an alcohol problem and has taken some actions to overcome his problem, he has not yet 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 at Guideline G, ¶ 23(a)-(d).* Moreover, with regard to Guideline I, the DOE psychologist's opinion that the individual still has a current alcohol problem as well as a low-level depression does not allow me to find mitigation of the individual's psychological condition. In short, the individual has not yet established adequate evidence of rehabilitation, and therefore I am unable to make a favorable predictive assessment

⁵ 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>.

of his future behavior with respect to his alcohol use. For these reasons, I find that the individual has not yet mitigated the DOE's security concerns under Criteria H and J.⁶

C. Criterion L

The key issue under Criterion L is whether the individual has brought forward sufficient evidence to demonstrate that he is reliable and trustworthy, and that he is no longer subject to pressure, coercion, exploitation or duress. For the reasons set forth below, I find that the individual has not provided sufficient information to resolve the Criterion L concerns at issue.

The DOE's concerns under Criterion L are that the individual misrepresented information regarding his alcohol-related incidents, his alcohol use, and his clearance status on his 2003 and 2014 QNSPs and during his 2004 and 2014 PSIs. During the hearing, the individual was questioned about his answers and omissions. *Id.* at 40. He testified that with respect to his 2014 QNSP, he misunderstood the question related to his security clearance and did not list his citation for Unreasonable Noise on this form because, according to the individual, it was dismissed in court and he did not know that he had to report it. Likewise, during his 2014 PSI, the individual testified again that he did not report his citation for Unreasonable Noise because it had been dismissed. He further testified that he misunderstood the questions asking about offenses involving alcohol or drugs and acknowledged that he did not read the 2003 and 2014 QNSPs thoroughly. *Id.* at 41. Finally, with respect to inconsistent answers he gave regarding his alcohol consumption during his 2004 PSI and his 2014 PSI, the individual testified that he could not remember his specific alcohol consumption. *Id.* at 42. In all of the instances, the individual testified that he was not attempting to hide information from DOE. *Id.* at 39-42.

To determine whether the individual has mitigated the Criterion L concerns, I considered the relevant factors set forth in Adjudicative Guideline E. Among the factors which could serve to mitigate the security concerns are: (1) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; (2) the omission or concealment was caused by improper or inadequate advice of authorized personnel; (3) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; (4) the individual has acknowledged the behavior and obtained counseling to change the behavior; and (5) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress. *See Adjudicative Guidelines* at ¶ 17(a)-(e). None of these factors apply in this case. Although the individual has acknowledged his behavior with respect to his misrepresentations on his QNSPs and during his PSIs, he did not make prompt, good-faith efforts to correct his omissions before being confronted with the facts, his misrepresentations are recent and he has not taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation or duress. I was not convinced by the individual's testimony that this behavior is unlikely to recur in the future. In addition, I believe these concerns are related to the individual's alcohol problem and depression and are intertwined with the LSO's concerns under Criteria H

⁶ Because I have made a finding that the individual has not mitigated the DOE's security concerns under Criteria H and J with respect to alcohol, I need not make a finding regarding the individual's behavior traits which the DOE psychologist found to be mental conditions under Criterion H.

and J which have not yet been mitigated. Accordingly, I conclude that the security concerns raised under Criterion L have not been sufficiently resolved.

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, J and L. After considering all the relevant information, both favorable and unfavorable, in a comprehensive common-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 adequately mitigate the security concerns associated with Criteria H, J and L. I therefore cannot find that granting 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 granted. 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: August 27, 2015