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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:	July 7, 2015)	
)	Case No.: PSH-15-0055
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Issued : October 8, 2015

Administrative Judge Decision

Wade M. Boswell, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (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 granted.

I. Background

The individual is an applicant for DOE access authorization in conjunction with his employment by a DOE contractor. The individual had previously applied for DOE access authorization, approximately six years ago, in conjunction with a prior employment at with different DOE contractor in a different geographic location. The Local Security Office (LSO) suspended processing his earlier application as a result of criminal charges pending against him for allegedly operating a motor vehicle while intoxicated (DWI); subsequently, his employment was terminated. Security concerns which arose during the investigation of the individual’s initial application remained unresolved at the time of the

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.

administrative closure of his application for access authorization (including those related to alcohol use and to the accuracy of information reported by the individual on his 2009 Questionnaire for National Security Positions (QNSP)). *See* Exhibit 3.

Following receipt of the individual's current application for access authorization, the LSO conducted a personnel security interview (PSI) with the individual on June 13, 2014, to address those issues unresolved from his earlier application. *See* Exhibit 15. Since the PSI did not resolve concerns about the individual's eligibility, the LSO referred the individual for an evaluation by a DOE consulting psychologist, who conducted a psychological evaluation of the individual on July 17, 2014. *See* Exhibit 5. While the individual's application was still being evaluated by the LSO, the individual self-reported that he had received a criminal summons for Simple Battery (Battery) arising from a dispute at his condominium complex. *See* Exhibit 9. Subsequently, the LSO conducted another PSI with the individual, which took place on December 19, 2014, and re-referred the matter to the DOE consulting psychologist; the DOE consulting psychologist revised his evaluation of the individual based on the new information (including the transcript of the December PSI and local police reports), without conducting an additional interview with the individual. *See* Exhibits 4 and 14.

Since neither the PSIs nor the DOE psychologist's evaluations resolved the security concerns, the LSO informed the individual in a letter dated April 16, 2015 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility for 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 Criterion H, Criterion J and Criterion L, respectively).² *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. At the hearing, the LSO introduced 15 numbered exhibits into the record and presented the testimony of one witness, the DOE consulting psychologist. The individual, represented by counsel, introduced 12 lettered exhibits (Exhibits A – L) into the record and presented the testimony of five witnesses, including that of himself, his counselor at his employee assistance program (EAP), the director of an alcohol treatment program, and a forensic psychologist. 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.³

² See Section III below.

³ OHA decisions are available on the OHA website at www.energy.gov/oha. A decision may be accessed by entering the case number in the search engine at www.energy.gov/oha.

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).

An individual must come forward with evidence to convince the DOE that granting or restoring his or her 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 or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay 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 three criteria as the bases for denying the individual's security clearance: Criterion H, Criterion J, and Criterion L. 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 upon (1) the February 2015 report of the DOE consulting psychologist in which the psychologist opined that the individual met the *Diagnostic Statistical Manual of the American Psychiatric Association, IVth Edition, Text Revision (DSM-IV-TR)*,⁴ criteria for Alcohol-Related Disorder, without adequate evidence of rehabilitation or reformation, and that such disorder is a condition or mental illness which "has and can continue to cause significant defects in his judgment or reliability," and (2) the July 2014 report of the DOE consulting psychologist in which the psychologist opined that the individual has narcissistic tendencies and that these "tendencies and [his] need to maintain self-esteem by denying faults and shifting responsibilities are likely to continue to cause significant defects in his reliability and judgment." Ex. 4 at 4; Ex. 5 at 15; Ex. 1 at 3.

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 noted seven incidents in which the individual had been arrested or cited by law enforcement officers, all of which involved either alcohol consumption or illegal possession of alcohol. Ex. 1 at 4.

Criterion L concerns information that an individual has engaged in conduct "which tends to show that the individual is not honest, reliable, or trustworthy...." 10 C.F.R. § 710.8(l). Conduct reflecting questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations raises questions about an "individual's reliability, trustworthiness and ability to protect classified information." Adjudicative Guidelines at Guideline E. With respect to Criterion L, the LSO alleges: (1) the individual made statements to the LSO which were inconsistent with local police reports prepared during an investigation, which culminated in the individual being charged with criminal Battery; (2) five instances in which the individual was terminated by employers for failure to observe workplace requirements (three of which involved either intoxication or alcohol consumption at work); (3) omission by the individual from his 2009 QNSP of one civil judgement, seven collection accounts, and five alcohol-related arrests or citations; (4) omission by the individual from his 2014 QNSP of two alcohol-related citations; and (5) seven incidents in which the individual had been arrested or cited for alcohol-related infractions, plus a warrant issued for the individual's arrest following his failure to attend DWI school as court ordered. Ex. 1 at 5-7.

⁴ The Notification Letter states that the DOE consulting psychologist made this diagnosis under the *Diagnostic Statistical Manual of the American Psychiatric Association, 5th Edition (DSM-5)*; however, the psychologist's report does not cite the *DSM-5* for the diagnosis of Alcohol-Related Disorder and, at the hearing, the DOE consulting psychologist testified that he made this diagnosis under the criteria set forth in the *DSM-IV-TR*. *See* Ex. 4; Tr. at 224-25.

In light of the information available to the LSO, the LSO properly invoked Criterion H, Criterion J and Criterion L.

IV. Findings of Fact

The individual agreed that most of the factual matters set forth by the LSO in the Notification Letter are correct; however, in those instances of disagreement, I have carefully considered the testimony and the record as a whole, including the arguments presented by both the individual and the LSO, in reaching the findings of fact set forth below. *See* Tr. at 150-62.

Criminal and Other Alcohol-Related Matters. In June 2002, the individual ran a red light and collided with another vehicle while he was operating a vehicle while intoxicated. He was arrested and charged with Aggravated DWI. Ex. 1 at 4; Tr. at 150. As a result of this DWI, the individual was court ordered to attend DWI school and, in May 2003, the court issued a warrant for the individual's arrest for his failure to complete the education requirement. Ex. 1 at 8; Ex. 14 at 117; Tr. at 161-62.

In 2002,⁵ 2003 and 2004, municipal police cited the individual as a minor in possession of alcohol (MIP) and, in 2005, university police cited the individual for possession of alcohol in a location where alcohol was prohibited. Ex. 1 at 8; Tr. at 161-62.

During 2008 – 2009, the individual was terminated from five jobs, three for alcohol-related offenses (including for consuming alcohol at work or for being intoxicated at work). The two other terminations also reflect the individual's failure to comply with workplace regulations: one, for failure to arrive on time to document an event at a third-party location and, the other, for failure to show up for work as scheduled without notice or explanation. Ex. 1 at 5-6; Tr. at 155.

In October 2009, municipal police arrested and charged the individual with Aggravated DWI. Following his arrest, his blood-alcohol content (BAC) measured .30 g/210L. Ex. 15 at 169-75.

Three days following his October 2009 arrest for DWI, the individual submitted a QNSP with respect to his application for DOE access authorization. Ex. 10 at 1; Ex. 13 at 15. In response to the question about whether he had *ever* been charged with any offense related to drugs or alcohol, the individual reported his 2002 DWI and stated, "I have definitely learned my lesson, and I have not had any incidents with the law since. I currently do not drink at all...." *Id.* at 11. The individual did not report the alcohol-related citations he received in 2002, 2003, 2004, or 2005 or his DWI arrest three days earlier. *Id.* Notwithstanding these omissions, he certified that the QNSP was true, complete and correct to the best of his knowledge and belief. *Id.* at 15.

⁵ The individual had two separate alcohol-related incidents in 2002: in June 2002, he was arrested for Aggravated DWI; and, in September 2002, he was cited as a minor in possession. Ex. 12 at 49-50.

In response to an identical question on his 2014 QNSP, the individual omitted his 2005 citation by university police for possession of alcohol in a restricted area.⁶ Ex. 12 at 46-53; Tr. at 161-62.

In September 2014, the individual consumed alcohol one evening after work while his wife was not at home and, subsequently, went to the swimming pool at his residential complex. He entered a communal hot tub which was occupied by two women he did not know and proceeded to touch one of them under the water. She asked him to stop and to get away from her, but he remained in the hot tub and later he began rubbing her arms or shoulders. Ex. 14 at 20, 33-34, 41-43, 45, 82, 84-88, 98-108; Ex. 8 at 3-5. Municipal Police charged the individual with Battery. *Id.* at 2; Ex. 9. He acknowledges the incident and states that he would not have acted in the manner he did had he not consumed alcohol that evening. Ex. 14 at 84-88. Witnesses described the individual as “heavily intoxicated,” smelling of alcohol, and appearing impaired. Ex. 8 at 3-4. The individual states he only consumed two, 12-ounce beers that evening. Ex. 14 at 45, 88. The individual’s self-report of the quantity of his alcohol consumption is not credible.

After receiving the citation by mail for the above-described Battery, the individual timely filed an incident report with his employer. Ex. 9. In the incident report, he stated “There were no drugs or alcohol involved;” this is contradicted by his subsequent acknowledgement that he had consumed alcohol prior to the incident at the communal hot tub and that alcohol had influenced his behavior that evening. *Id.* at 1; Ex. 14 at 45, 88.

During the PSI conducted three months *prior* to the incident at the communal hot tub, the individual stated that he rarely consumed alcohol, limiting his consumption to approximately once every other month. Ex. 15 at 120. During the PSI conducted three months *after* the incident, the individual stated that he was committed to sobriety and had consumed no alcohol since the incident at the communal hot tub on September 11, 2014. Ex. 14 at 108. This was a false statement as the individual was continuing to consume alcohol at the time of the second PSI on December 19, 2014. Tr. at 132, 138-40.

The individual testified that he has abstained from alcohol consumption since April 4, 2015; however, no evidence was submitted into the record to corroborate his self-report⁷ and I make no finding with respect to his abstinence from alcohol. *Id.* at 116, 192. The individual entered an intensive outpatient program (IOP) for alcohol treatment on June 25, 2015; as of the date of the hearing, the individual had completed 14 group sessions of the 36 required IOP group sessions. *Id.* at 63-65.

⁶ The Notification Letter states that the individual’s response to this question also omitted his 2003 citation for MIP. Ex. 1 at 6. However, the 2003 MIP citation is listed on the individual’s 2014 QNSP. *See* Ex. 12 at 51.

⁷ The testimony of each of the individual’s EAP counselor, his forensic psychologist, and the director of his IOP included references to the individual’s current abstinence; however, such testimony appears to rely on the individual’s self-reports of his abstinence to these individuals. There was no evidence introduced into the record of independent breath or urine testing or other verification of the individual’s claims of abstinence.

Financial Accounts. At the time of the individual's 2009 application for access authorization, the LSO obtained a credit report on the individual which showed a civil judgment against the individual and seven collections accounts. Ex. 7. The individual submitted no evidence establishing any errors in this report. When the individual completed his 2009 QNSP, he stated that he had not had any judgments placed against him and he had not had any bills or debts turned over to a collection agency. Ex. 13 at 12. Notwithstanding these omissions, he certified that the QNSP was true, complete and correct to the best of his knowledge and belief. *Id.* at 15.

Psychological Conditions. Although the individual does not meet the criteria set forth in the *DSM-5* for Narcissistic Personality Disorder, he has narcissistic tendencies. The individual presents as a vulnerable narcissist, as described in the *DSM-5* chapter entitled "Alternative DSM-5 Model for Personality Disorders" under the heading Narcissistic Personality Disorder. Ex. 4 at 4; Ex. 5 at 13-15; Tr. at 119-204, 208-212, 230-235. *See DSM-5* at 767-68. The individual's narcissistic tendencies constitute a psychological condition of a nature that causes, and "is likely to continue to cause, significant defects in his reliability and judgment." Ex. 5 at 15. This is a treatable condition for which the individual has not received treatment. Tr. at 230-35.

The individual meets the criteria set forth in the *DSM-IV-TR* for Alcohol-Related Disorder, Not Otherwise Specified, without adequate evidence of rehabilitation or reformation. This disorder is a condition or mental illness which has caused, and can continue to cause, significant defects in the individual's judgment or reliability. Ex. 4 at 4; Tr. at 225-29.

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)⁸ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be granted. 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.

⁸ 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.

A. Mitigating Evidence

With few exceptions, the individual does not contest the factual accuracy of the matters set forth by the LSO in the Notification Letter. Tr. at 150-62. Instead, the individual argues that the behavior cited occurred at a time when he was younger and immature and is not an accurate reflection of the person he is today, who has committed himself in marriage, volunteers with teenagers, and strives to be an asset at his job. Much of the cited behavior, according to the individual, was alcohol driven. He testified that he experienced an epiphany in April 2015 and has committed himself to a new, alcohol-free life, focused on the future of his family. *Id.* at 111-14, 117-20, 193. He argues that “lying” is something alcoholics do and that he is moving beyond this stage of his life. *Id.* at 195, 238, 240.

With respect to his alcohol misuse, he has been abstinent since April 4, 2015 and is approximately halfway through an IOP which he commenced June 25, 2015. *Id.* at 63-65, 116, 192. He believes that his alcohol misuse has been controlled and no longer represents a security concern. *Id.* at 238, 243-44.

With respect to the narcissistic tendencies noted by the DOE psychologist, the individual believes that the DOE psychologist is mistaken and that he does not have narcissistic tendencies. *Id.* at 75, 88-91, 242.

B. Administrative Judge Evaluation of Evidence – Criterion L Security Concerns

The individual does not dispute that he was arrested, charged or cited on six different occasions between 2002 and 2005 for alcohol related offenses, although he attempts to minimize the significance of certain of these incidents (e.g., claiming that he was cited as an MIP for being at events where others were drinking, but he was not). Tr. at 161-62; Ex. 12 at 50-52. He offers no corroboration to support his lack of culpability on any of these occasions and his attempts to recast such events detract from his credibility and raise questions about his candor. He was charged and convicted of *Aggravated* DWI in both 2002 and 2009; at the time of his second DWI arrest, the individual’s BAC measured .30 g/210L. *Id.* at 47, 50; Ex. 15 at 169-75. Any argument that the individual’s criminal conduct is isolated to an earlier, less mature period of his life is defeated by the Battery citation that he received in September 2014. *See* Ex. 8; Ex. 9. With respect to that incident, he acknowledges that, on an evening when his wife was away from home, he entered a communal hot tub at his residential complex and approached and touched a woman he did not know and, even after the woman objected and asked him to leave her alone, he repeated the physical contact. Ex. 14 at 20, 33-34, 41-43, 45, 82, 84-88, 98-108; Ex. 8 at 3-5. Although the individual claims that the complainant exaggerated his behavior (which is consistent with his pattern of minimization), he acknowledges behavior that constitutes battery. Security concerns arising as a result of criminal conduct may be mitigated in instances where there has been a significant lapse of time since the conduct occurred or other evidence that the conduct is unlikely to recur. *See* Adjudicative Guidelines at Guideline J, ¶ 32(a) and (d). The individual has presented no viable

mitigation⁹ of the Criterion L security concerns arising from his criminal conduct, which spans a 12-year period and includes an incident one year prior to the administrative review hearing.

The individual acknowledges that he was terminated from five jobs in 2008 – 2009. Three terminations involved the individual’s misuse of alcohol (either consuming alcohol on the job or arriving at work impaired by alcohol); the fourth, for arriving late for a Sunday morning event that he was scheduled to document at a church; and, the fifth, for not showing up as scheduled for work. Ex. 1 at 5-6; Tr. at 155. All five employment terminations evidence the individual’s inability or unwillingness to comply with workplace rules and regulations. *See* Adjudicative Guidelines at Guideline E, ¶ 15. Although the individual argues this workplace behavior was limited to a brief, difficult period of time when he was younger and less mature, I cannot agree. Such behavior is consistent with the individual’s disregard for social norms codified in criminal laws (discussed above) and his disregard for legal requirements that required honest and truthful reporting of information to the DOE (discussed below) and, together, evidences a pattern of dishonest, untrustworthy and unreliable behavior. *See* Adjudicative Guidelines at Guideline E, ¶ 16(d)(3).

When the individual originally applied for DOE access authorization in 2009, he completed a QNSP (which he certified as true and complete) in which he stated that he had had no judgments placed against him and had had no bills or debts turned over to a collection agency. Ex, 13 at 12. These statements are contradicted by a 2009 credit report, which shows a civil judgment against the individual and seven collections accounts. Ex. 7. At the hearing, the individual testified that these accounts were not listed on his 2015 credit report and, therefore, must have been resolved; however, he presented no documentation as to whether these financial matters had actually been resolved and, if so, when. Tr. at 158-61. The 2015 credit report submitted into the record shows a 24-month credit history on the accounts listed in the 2015 report. Ex. F. This is not relevant to the security concern, which is whether the individual omitted derogatory financial information that was required to be disclosed in 2009. With respect to the security concerns arising from such omission, the individual has presented no mitigating evidence.¹⁰

The 2009 QNSP also asked whether the individual had “*ever* been charged with any offense(s) related to drugs or alcohol.” Ex. 13 at 11. In response, the individual reported his 2002 DWI and stated, “I have definitely learned my lesson, and I have not had any

⁹ Although the argument was not clearly articulated, the individual suggested that alcohol was a component in each instance of criminal conduct cited by the LSO and that, by evidencing adequate rehabilitation and reformation of his alcohol misuse, he has resolved the security concerns arising from his criminal conduct. I need not address the merits of such argument as the individual has failed to evidence adequate rehabilitation or reformation of his alcohol misuse, as is discussed below.

¹⁰ The financial information submitted by the individual includes his credit ratings from each of three national credit bureaus; each of the credit bureaus state that the individual’s credit rating has been negatively impacted by “serious delinquency.” Ex. F at 25-27; Ex. G at 1-2. This reinforces, rather than mitigates, the LSO’s concern.

incidents with the law since. I currently do not drink at all, and I am confident that this incident is irrelevant [sic] and insignificant with regards to my job performance and eligibility for this clearance.” *Id.* The individual did not report the alcohol-related citations he received in 2002, 2003, 2004, or 2005. He also failed to report that, three days prior to his certification of his QNSP as true and complete, he had been arrested for Aggravated DWI with a BAC of .30 g/210L. At the hearing, the individual initially attempted to explain his response on the QNSP as he “possibly filled this section out prior to ... signing it.” Tr. at 145. Later he testified that the attorney representing him on the DWI advised him not to report the DWI. *Id.* at 146. He offered no corroboration for this testimony. It is highly unlikely that a licensed attorney would advise a client to omit an arrest which was required to be disclosed to the federal government on a national security questionnaire; even if an attorney did advise such an omission, that does not mitigate the gratuitous and false statement made by the individual that he had had no incidents with the law since 2002 and that he currently did not drink.¹¹ The individual deliberately omitted significant information and falsified relevant facts relating to his alcohol-related arrest when he completed his 2009 QNSP. *Cf.* Adjudicative Guidelines at Guideline E, ¶ 16 (a) and (b). The individual has not resolved the security concern arising from these omissions from his 2009 QNSP.

With respect to the individual’s 2014 QNSP, the LSO alleged that, in response to an identical question with respect to alcohol-related offenses, the individual omitted his citation for MIP in 2003 and his citation for improper possession of alcohol on a university campus in 2005. Ex. 1 at 6. A review of the 2014 QNSP shows that the 2003 citation was disclosed. Ex. 12 at 51. With respect to the 2005 citation, the individual testified that he had researched his police records while completing his 2014 QNSP and did not believe he had received a citation in 2005. Tr. at 155-57. He later realized that he had been cited in 2005 by university police and such a citation would not have appeared in the databases that he had researched. *Id.* at 161-62. He identified this as an unintentional oversight. In light of the individual’s otherwise complete disclosure on his 2014 QNSP of his alcohol-related arrests and citations, I find credible the individual’s explanation that he unintentionally overlooked a university issued citation. The individual has sufficiently resolved the security concerns arising from his alleged omissions from his 2014 QNSP. *See* Adjudicative Guidelines at Guideline E, ¶ 17(c).

Subsequent to the individual’s completion of his 2014 QNSP, the individual was charged with criminal Battery for an incident at a communal hot tub located at his residential complex, which was previously described. The LSO alleges that the individual’s reporting of this incident was not accurate and raises additional concerns with respect to

¹¹ Likewise, I find the individual’s oral report of his 2009 DWI, which he made nearly three months following both his arrest and his certification of the QNSP, does not resolve the security concern. *See* Ex. 10. The oral report also attempts to blame the omission of the 2009 DWI on advice from an attorney, but does not address the omission of four other alcohol-related citations or the false statement that the individual “currently [did] not drink at all.” The individual’s oral report of his 2009 DWI, when viewed in the totality of the false information certified by the individual, was neither a prompt nor a good faith effort to correct his 2009 QNSP; also, it did not reflect full and truthful cooperation by the individual with the LSO. *Cf.* Adjudicative Guidelines at Guideline E, ¶ 17(a) and (b).

the individual's honesty, reliability and trustworthiness. The individual acknowledges that, on an evening when the individual's wife was away from home, he entered a communal hot tub in which there were two women he did not know. He has also acknowledged that he touched one of the women on the arms under water and she told him to leave her alone. Subsequently, he then began touching her again and was told a second time to leave her alone. Ex. 14 at 20, 33-34, 41-43, 45, 82, 84-88, 98-108; Ex. 8 at 3-5. The individual was described as heavily intoxicated, smelling of alcohol, and having impaired functioning. *Id.* at 4. The woman filed a report with the municipal police, who interviewed the woman, her friend (the other woman in the hot tub) and the woman's boyfriend (who was present at the swimming pool). *See* Ex. 8. The police charged the individual with Battery. Ex. 9 at 3.

The individual reported the incident to his employer's security office in a timely manner. In his description, the individual stated "There were no drugs or alcohol involved" in the incident. *Id.* at 1. This is not true as the individual subsequently acknowledged during a PSI that he had two, 12-ounce beers prior to leaving his apartment and that he would not have been so forward with the women in the hot tub had he not had the alcohol. Ex. 14 at 45, 84-88. The individual's false statement in the incident report parallels his gratuitous (and false) statement in his 2009 QNSP that he currently did not drink when, in fact, he had been arrested three days earlier for DWI with a BAC of .30 g/210L. Further, at the hearing, the individual testified that he had had a "few beers" that evening before going to the communal hot tub, thereby creating doubt that his consumption was limited to the two beers he had previously claimed in the PSI. *See* Tr. at 138.

The individual has consistently stated that he was not intoxicated that evening and that the complainant exaggerated the degree of his violation in the hot tub. *Id.* at 153-54. The police report on the incident contains the statements of the complainant and the two witnesses. These statements are credible and I accept their descriptions as an accurate portrayal of the incident in the September 2014. *See* Ex. 8. In reaching this conclusion, I have considered the individual's prior minimization of his alcohol consumption and anti-social (criminal) behavior. I also note that the individual reported that the security guard at the swimming pool had suggested to the individual several times that he should leave the hot tub/pool area and had not suggested that the other parties should leave. Ex. 14 at 29-30, 34. Having weighed the evidence presented, I find that the individual misrepresented to the LSO the occurrences which led to his being charged with Battery in September 2014. Therefore, the individual has not resolved the security concerns with respect to his lack of honesty, reliability and trustworthiness arising from his self-report of the September 2014 incident.

Beyond the matters set forth in the Notification Letter, the individual also deceived the LSO during the PSI conducted following the incident in the communal hot tub. During the PSI (which was conducted on December 19, 2014), the individual stated that following the incident he decided to discontinue alcohol consumption and had consumed no alcohol since the evening of the incident on September 11, 2014. *Id.* at 101-08. At the hearing, the individual's EAP counselor testified that she had first met with him in October 2014 and that the individual had discussed his alcohol consumption at a wedding at the beginning of that month. Tr. at 42-43. The individual's forensic expert also testified

that the individual was consuming alcohol at the end of 2014. *Id.* at 104. Such information contradicts the individual's statements during the PSI that he had been abstinent from alcohol for over three months. Ex. 14 at 108.

During my examination of the individual at the hearing, I asked him to explain what he meant during the PSI when he was asked by the LSO, "When was the last time you had any alcohol?"¹² and he had responded, "The incident, September the 11th, 2014." Tr. at 140. He initially responded to my question at the hearing by testifying that, "I fell off the wagon a few times. I was still continuing to go to AA. I think that's what I tried to convey at my PSI." *Id.* When I pressed him for further clarification of the exchange during the PSI, he responded "I guess I just didn't understand the question." *Id.* at 141. I then asked the individual to explain what the question had meant to him and he responded, "[I]t is a pretty straightforward question.... At the time I don't know why I answered the question like that. I can't answer that." *Id.*

The foregoing exchange exemplifies the individual's general lack of candor at the hearing. I found the individual's testimony lacked credibility.

As set forth above, other than with respect to the matters relating to disclosure on his 2014 QNSP, the individual has failed to resolve the Criterion L security concerns.

C. Administrative Judge Evaluation of the Evidence – Criterion J Security Concerns

The DOE consulting psychologist evaluated the individual in July 2014 and concluded that, although the individual met the *DSM-IV-TR* diagnostic criteria for Alcohol Abuse for a ten-year period ending in 2011, he no longer warranted such diagnosis or a concern about his being a user of alcohol habitually to excess. Ex. 5 at 14. Following the September 2014 incident at the communal hot tub, the DOE consulting psychologist reviewed the police reports on the incident, the transcript of the PSI conducted in December 2014, and other documents. He commented that while the individual's general lack of candor made it difficult to make a definitive diagnosis, he continued to be of the opinion that the individual did not meet the diagnostic criteria for Alcohol Abuse and "has not been diagnosed with Alcohol Dependence or being a user of alcohol habitually to excess." Ex. 4 at 3.

A finding that an individual has been, or is, a user of alcohol habitually to excess does not require a diagnosis by a mental health professional, and Administrative Judges reach conclusions with respect to such alcohol usage independent of the opinions of mental health professionals. *See* 10 C.F.R. § 710.8(j). In this case, the administrative record provides limited information with respect to the individual's patterns of alcohol consumption. Four of the criminal citations cited by the LSO with respect to Criterion J relate to *possession* of alcohol and do not evidence *excessive* use. The only incidents

¹² This question and response (which appears on page 108 of the transcript of the PSI) were preceded by a lengthy discussion about the hot tub incident, the individual's decision immediately thereafter to abstain from alcohol, his participating in Alcohol Anonymous meetings, and his "sobriety" since the incident.

cited by the LSO that evidence *excessive* use of alcohol are the individual's two arrests for Aggravated DWI (2002 and 2009), and, perhaps, the incident in the communal hot tub (2014). Three occurrences of excessive use over 12 years (with a lapse of several years between each occurrence), in the absence of other evidence, are insufficient to support a finding of *habitual* excessive consumption of alcohol. Therefore, I defer to the opinion of the DOE psychologist that the individual has not been a user of alcohol habitually to excess and, therefore, find the individual has sufficiently resolved the security concerns arising under Criterion J.

**D. Administrative Judge Evaluation of the Evidence – Criterion H
Security Concerns**

Alcohol-Related Disorder, Not Otherwise Specified. Upon the DOE psychologist's initial evaluation of the individual, the DOE psychologist found that the individual did not warrant any psychological diagnosis with respect to alcohol. Ex. 5 at 13-14. When the DOE psychologist was asked to re-evaluate the individual following the September 2014 incident in the communal hot tub, the DOE psychologist found that the individual met the *DSM-IV-TR* diagnostic criteria for Alcohol-Related Disorder, without adequate evidence of rehabilitation or reformation, and that this is a condition or mental illness which causes, or could cause, a significant defect in the individual's judgment or reliability. Ex. 4 at 3-4.

The individual does not contest that he has had an issue with respect to alcohol. Tr. at 82, 236-37. His EAP counselor testified that, although her organization does not make diagnoses, she is treating the individual for alcohol issues. *Id.* at 23. The individual's forensic psychologist declined to make a *DSM* diagnosis of the individual, but stated that the individual is "an alcoholic." *Id.* at 98, 102. The individual, at the recommendation of both his EAP counselor and his forensic psychologist, commenced an IOP for alcohol treatment. *Id.* at 82. The director of the individual's IOP program testified that the individual has completed 14 group sessions of the 36 required sessions. *Id.* at 64.

Therefore, the question before me is whether the individual has evidenced adequate reformation and rehabilitation of his alcohol disorder. The individual testified at the hearing that he experienced an epiphany¹³ in early April 2015 and realized that his alcohol use was burdening his family life and it was not the direction that he wanted to go as a married man. *Id.* at 111-12. According to the individual, he has abstained from alcohol consumption since April 4, 2015. *Id.* at 116, 192. To the extent that this is true, I commend the individual for his abstinence; however, I note that the individual did not corroborate his claims of abstinence with the testimony of other witnesses or provide documentation in the form of breath or urine tests. In light of his prior erroneous reports

¹³ In addition to the "epiphany" described by the individual at the hearing, the individual spoke of experiencing different epiphanies in each of the PSIs conducted by the LSO. In December 2014, the individual said he had had an "epiphany" following the incident at the communal hot tub and, as a result, had become abstinent from alcohol. Ex. 14 at 102. In June 2013, the individual described having a "personal epiphany" in 2002, following his first DWI, which resulted in him changing his relationship with alcohol. Ex. 15 at 133.

to the DOE of on his alcohol use,¹⁴ I cannot conclude that he is currently abstinent on the evidence before me.

His expert witnesses, who appeared to be relying on the individual's self-reports of abstinence, testified that he is in the "middle" of his recovery with a "good" prognosis. *Id.* at 31, 65, 71, 99, 100. The DOE psychologist, who was present throughout the hearing and testified after having heard the testimony of all the other witnesses, testified that the individual was in early partial remission of his alcohol disorder, however, his abstinence of five months "had been too short of a time to be confident about..." his prognosis. *Id.* at 226. To evidence adequate rehabilitation and reformation, the DOE psychologist opined at the hearing, the individual would need to abstain from alcohol for 12 months from the commencement of his IOP (i.e., from June 25, 2015), complete his IOP, and continue with the IOP's aftercare program 12 months following his completion of the IOP. The DOE psychologist further opined that, as a result of the individual's lack of adequate reformation and rehabilitation of his Alcohol-Related Disorder, his disorder continues to be a condition or mental illness which causes, or may cause, a significant defect in the individual's judgement or reliability. *Id.* at 229.

In light of the individual's limited abstinence (five months), his not having completed his present treatment program (14 of 36 required group sessions), and his having returned to alcohol consumption following completion of alcohol treatment after his 2009 DWI, I am persuaded by the reasonableness of the opinion of the DOE psychologist and find that the individual has not resolved the security concerns arising from his Alcohol-Related Disorder. *See* Adjudicative Guidelines at Guideline G, ¶ 23(c) and (d).

Narcissistic Tendencies. Upon the DOE psychologist's initial evaluation of the individual, the DOE psychologist opined that the individual manifested narcissistic tendencies, which constituted a mental condition that had caused and would continue to cause (if untreated) significant defects in the individual's reliability and judgment. Ex. 5 at 14-15. Under Criterion H, a security concern can result from a mental condition even if that condition does not constitute a mental illness diagnosable under the *DSM*. *See* 10 C.F.R. § 710.8(h). In his written evaluation, the DOE psychologist noted that the *DSM-5* required the presence of five or more of the criteria set forth therein for a diagnosis of Narcissistic Personality Disorder and that the individual presented with only four of the specified criteria¹⁵ and, therefore, he was not diagnosing the individual with Narcissistic Personality Disorder. Ex. 5 at 14. He stated that the individual's narcissistic tendencies

¹⁴ Most notably, the individual has twice previously reported to the DOE that he was abstinent from alcohol consumption: on his 2009 QNSP he stated that he currently did not drink at all and in his most recent PSI he stated he had not consumed any alcohol in the prior three months. In both instances, the individual was actively drinking at the time he represented to the DOE that he was abstinent.

¹⁵ The DOE consulting psychologist noted the following behaviors as meeting specific criteria set forth in the *DSM-5* for Narcissistic Personality Disorder: sense of superiority or specialness (Criterion 1); believing his specialness or uniqueness is such that people of a lesser status do not grasp it or, if they do, are readily envious (Criteria 3 and 8); and requires admiration and to some extent has shown an arrogant or haughty attitude (Criterion 9). Ex. 5 at 14.

were reflected in his need to maintain self-esteem by denying faults and shifting responsibility *Id.* at 15. This is a condition that is amenable to treatment. *Id.*

In mitigation of this security concern, the individual argues that he does not suffer from such tendencies. He points to his volunteer work with middle school students as an example of an undertaking inconsistent with a narcissistic disorder. Ex. D; Tr. at 51-54. His also presented testimony of a forensic psychologist who opined that, based on his evaluation and testing, the individual did not meet the criteria for Narcissistic Personality Disorder and did not present as a malignant narcissist.¹⁶ *Id.* at 88-91. Since the individual does not believe he suffers from narcissistic tendencies, he presented no evidence of treatment for such condition (and, presumably, has not sought treatment for it).

At the hearing the DOE psychologist noted that he had not diagnosed the individual under the *DSM-5* as suffering from Narcissistic Personality Disorder and that his diagnosis was that the individual presented as a vulnerable narcissistic, which presents differently than a classic or malignant narcissistic. *Id.* at 199-202. He testified that the *DSM-5* contained a section with alternative models for personality disorders and that, under the alternative models, the individual would meet the proposed criteria for Narcissistic Personality Disorder. *See DSM-5* at 767-68; Tr. at 201,

The individual's mitigation focused upon whether or not he suffers from Narcissistic Personality Disorder under the *DSM-5* or presents as a malignant narcissist; the LSO has claimed neither. The LSO's security concern is that, based upon the evaluation of the DOE consulting psychologist, the individual presents with narcissistic tendencies that cause or may cause a significant defect in his judgment or reliability. Ex.1 at 3. At the hearing, the DOE psychologist testified that the individual's vulnerable narcissism "allows him to tell stories or not to be truthful or to withhold things ... that he should have report" and to "say things that are not truthful until someone else [who] knows more ... drags it out [of him]." Tr. at 206. This description is consistent with my observations of the individual at the hearing and persuades me of the reasonableness of the DOE psychologist's analysis. Adjudicative Guidelines at Guideline I, ¶ 28(a) and (b); *Cf. Id.* at Guideline I, ¶ 29(a), (b), (c), and (e).

Based on the foregoing, I find the individual has not resolved the Criterion H security concerns arising from his narcissistic tendencies.

¹⁶ The individual also present testimony of his EAP counselor and the director of his IOP, both of whom testified that they did not view the individual as a narcissist. The EAP counselor (who is licensed as a counselor and not as a psychologist) testified that she was not an expert in Narcissistic Personality Disorder and that her organization did not make diagnoses. Tr. at 21-22, 41. For these reasons, I have given her testimony *de minimus* weight on this issue. The IOP director (who is licensed as a counselor and not a psychologist) testified that he had "not seen the indications of a Narcissistic Personality Disorder" in the individual. *Id.* at 75. A *DSM-5* diagnosis Narcissistic Personality Disorder is not the issue before me and I have discounted his testimony on this issue.

V. Conclusion

In the above analysis, I have found that the individual has sufficiently mitigated the security concerns arising under Criterion J and certain of the matters alleged with respect to Criterion L. Notwithstanding the foregoing, other derogatory information in the possession of the DOE raises security concerns under Criterion H and additional security concerns under Criterion L and, 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 resolve all these security concerns. Accordingly, I have determined 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.

Wade M. Boswell
Administrative Judge
Office of Hearings and Appeals

Date: October 8, 2015