

reasons for those concerns. Ex.1. The Notification Letter also informed the individual that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning her eligibility for an access authorization.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and the OHA Director appointed me the Administrative Judge in this case. The DOE introduced 12 exhibits into the record of this proceeding (Exs. 1-12), and called the DOE psychologist as a witness. The individual presented the testimony of three witnesses, including her own. *See* Transcript of Hearing, Case No. PSH-15-0088 [hereinafter cited as “Tr.”].

II. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, an Administrative Judge must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative review proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring 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 regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

III. NOTIFICATION LETTER AND ASSOCIATED SECURITY CONCERNS

The Notification Letter cited derogatory information within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j) (hereinafter referred to as Criteria H and J, respectively). Exhibit 1.³ In support of its Notification Letter, the LSO cited the following: 1) a DOE psychologist concluded that the individual meets the *Diagnostic and Statistical Manual of Mental Disorders, 5th Edition* (DSM-V) criteria for a Mild Alcohol Disorder, without adequate evidence of rehabilitation or reformation, and that her condition

³ Criterion H relates to information indicating that the individual has an “illness or mental condition of a nature which, in the opinion of a psychologist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Under Criterion J, information is derogatory if it indicates that the individual has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychologist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j).

causes or may cause a significant defect in her judgment or reliability; 2) in November 2013, after she consumed four alcohol beverages and felt “buzzed,” she fell over the edge of a cliff, broke her nose, fractured her wrist, and had a gash in her head; and 3) in June 2010, the individual was charged with Driving Under the Influence of Alcohol (DUI) after she consumed five alcoholic beverages with a breath alcohol content (BAC) of .12, and operated a vehicle that rolled-over and crashed, breaking two of her fingers. Ex. 1.

I find that each of these allegations is valid and well supported by the record in this case. See 10 C.F.R. § 710.27(c) (requiring Administrative Judge to “make specific findings based upon the record as to the validity of each of the allegations contained in the notification letter”). I further find that this information adequately justifies the DOE’s invocation of Criteria J and H, as it raises significant security concerns related to excessive alcohol consumption, which often leads to the exercise of questionable judgment or the failure to control impulses, and calls into question the individual’s future reliability and trustworthiness. See *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 19, 2005) (Adjudicative Guidelines) at ¶ 21 (Guideline G).

IV. FINDINGS OF FACT

A. Individual’s history of alcohol consumption

The individual is in her mid-twenties and works for a DOE contractor. Ex. 7 at 2. She began consuming alcohol to intoxication when she was 17 to 21 years old, becoming intoxicated approximately three times a week. Ex. 7 at 4. At parties, she typically consumed four beers and five to eight ounces of vodka over five to six hours. *Id.* When she was 18 years old, she was charged with petty theft for attempting to steal a bottle of rum for a party that she was hosting. Ex. 7 at 5. She admitted that she stole alcohol on at least five occasions before she was caught. *Id.* After she was charged with theft, she was required to attend Alcoholics Anonymous (AA) meetings twice a week for six months, but continued to consume about the same amount of alcohol as she had prior to her arrest. *Id.*

In June 2010, the individual was charged with a DUI after celebrating her 21st birthday. *Id.* Before driving home after her birthday celebration, she consumed five alcohol beverages. *Id.* While driving home, she fell asleep at the wheel, caused a single vehicle rollover accident, and broke two fingers. *Id.* Her BAC registered at .12 and she had to appear to court and attend a six-month DUI certified education program. *Id.*; Ex. 8. After being charged with the DUI, the individual stopped consuming alcohol before operating a vehicle. Ex. 7 at 5. From when she was 21 years old to when she visited the DOE psychologist in July 2015, she consumed approximately three alcoholic beverages, usually beer, over a three to four hour period, about three to four times a week after work and often felt “buzzed.” *Id.* She regularly became intoxicated on the weekends by consuming five to six drinks over a five to six hour period. *Id.* Sometime in November 2013, the individual was “buzzed” after drinking approximately four drinks over a few hours while she was with some friends, she slipped off the edge of a cliff while walking, and fell about 10 feet. Tr. at 40. She then had to be transported by ambulance to a hospital and treated for several injuries, including a cut in her head, broken nose, and fractured wrist. Ex. 7 at 5, 7. After this incident, the individual still did not modify the amount of alcohol she consumed. Tr. at 40. In March 2015, she consumed six whiskey sours over five to six hours for St. Patrick’s Day and reported to work the next day hungover. Ex. 7 at 5. A month later,

in April 2015, she became intoxicated while kayaking on a lake after drinking six beers, which occurred just a few days before her PSI. *Id.*; Ex. 11 at 63.

B. DOE psychologist's evaluation and recommendation

When the DOE psychologist evaluated the individual in June 2015, she concluded in her Report that the individual was a user of alcohol to excess and met the criteria under the DSM-V for Mild Alcohol Disorder. Ex. 7 at 12. She also concluded that there was no adequate evidence of rehabilitation or reformation. In order for there to be adequate evidence of rehabilitation or reformation, the DOE psychologist recommended that the individual do the following:

complete an outpatient alcohol program and any required aftercare, or meet with a licensed therapist specializing in alcohol/drug abuse or harm reduction over a period of approximately six months, in order to establish a habit of modified consumption, which does not include drinking to intoxication, for a minimum period of eight months.

Ex. 7 at 13.

C. Individual's actions for reformation

The individual testified that she was very grateful for the interview with the DOE psychologist and that the DOE psychologist's report motivated her to change how she consumed alcohol. Tr. at 41. Prior to their meeting, the individual did not realize that her consumption of alcohol was damaging her body and health and so when she learned that it did, she wanted to change her drinking habits. Tr. at 41.

After meeting with the DOE psychologist and reviewing her Report, the individual contacted a dependency program and began meeting with a therapist in July 2015 and participating in an early recovery program in September. Tr. at 56, 66. Even though it was not recommended or required by the DOE psychologist, the individual also abstained from alcohol for 30 days. Tr. at 43. In reflecting on the period of abstinence, the individual stated that while a few days felt more challenging than others, it helped her in following the advice of the DOE psychologist. Tr. at 46. She also changed her level of alcohol consumption to moderate consumption and has not been intoxicated since she was evaluated by the DOE psychologist. Tr. at 44, 63. She currently consumes alcohol two to three times a week and no more than two drinks at a time. Tr. at 59.

The individual testified that she participates in an early recovery program that is supposed to conclude by mid-January 2016. Tr. a 49. As of the time of the hearing, she had five more courses to attend before its completion. Tr. at 48. She explained that through her participation in the early recovery program, she has learned about how alcohol affects the brain, co-dependency and denial, and coping mechanisms for consuming less alcohol. Tr. at 67. After she completes the treatment program, she plans to continue meeting with the therapist from the dependency program on a monthly basis. Tr. at 64. She also has sought assistance from the Employee Assistance Program, which she also testified she plans to continue after she completes the early recovery program. Tr. at 64.

Since the individual has changed her drinking pattern, she noticed changes with her health and body. For example, she noticed losing weight, having more energy and feeling healthier. Tr. at 44. She also has less anxiety and sleeps better. Tr. at 53. The individual stated that she has “really turned over a stone and just [is] not looking back and [is] moving forward.” Tr. at 45. She further testified that “no matter what happens with his proceeding, I will continue to be on that path for myself.” Tr. at 42. The individual stated that her friends have been supportive of her decision to not consume alcohol. Tr. at 69. They have not pressured her to consume alcohol when they hang out. Tr. at 69.

D. Individual’s mother and father’s testimonies

The individual’s mother testified that she has noticed the individual changing her drinking habits and consuming alcohol in moderation since July 2015. Tr. at 16. She also observed that at their recent Thanksgiving dinner, the individual did not consume any alcohol. Tr. at 14. While she rarely sees her daughter consume alcohol, when the individual was living with her parents a few years ago, the individual used to consume more than what she considered healthy. Tr. at 17. The individual’s mother also testified that the individual attends classes on Wednesday nights for her alcohol consumption, which she knows because the individual used to visits her parents on those nights. Tr. at 17. The individual’s father testified that her DUI charge in 2010 was a “milestone” in her life that resulted in a “visible difference of behavior.” Tr. at 26. He knows that the individual sees a counselor and has weekly therapy sessions; he also has observed that she reduced her alcohol intake at family gatherings. Tr. at 28. He further testified that he sees a “real commitment” from the individual to address her problems with alcohol consumption. Tr. at 30.

E. DOE psychologist’s testimony

After hearing the testimony from the individual and her parents, the DOE psychologist testified that the individual has a very good prognosis. Tr. at 72. She described the individual as being very open when she first evaluated her; she also believes that their meeting was the first time the individual was “confronted in a way about her drinking.” Tr. at 73. In light of the individual’s participation in the early recovery program, ongoing therapy and 30-day abstinence, the DOE psychologist testified that she would not have greater confidence concerning the individual’s risk of relapse if the individual was drinking to moderation for eight months, as originally recommended, versus six months. Tr. at 74. Due to the individual’s age, she has a “high level of confidence that [the individual is] going to go forward and be less reckless, more moderated with her drinking.” Tr. at 75. She further opined that the individual is at a low risk of relapse and that she consumes alcohol at a moderate or reasonable amount. Tr. at 75-76. Hence, the DOE psychologist concluded that individual has demonstrated adequate evidence of rehabilitation or reformation. Tr. at 76.

V. ANALYSIS

In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines and the regulations. After due deliberation, I have determined that the individual should be granted an access authorization.

Of significant relevance to my decision is that the individual acknowledged she had a problem with alcohol and has provided evidence of overcoming this problem by participating in therapy, joining an

early recovery program, and changing how much alcohol she consumes, even trying abstinence for 30 days. *See Adjudicative Guidelines G*, ¶ 23(b) & (c). Moreover, OHA Administrative Judges accord significant deference to mental health professionals regarding issues of rehabilitation, reformation and risk assessment. *See Adjudicative Guidelines G*, ¶ 23(d) & I, ¶ 29(c). In this matter, the DOE psychologist testified that the individual has a very good prognosis and has demonstrated adequate evidence of rehabilitation and reformation.

The regulations also compel me to consider several other factors, including the age and maturity of the individual at the time of the conduct, the absence or presence of rehabilitation or reformation, and other pertinent behavioral changes. 10 C.F.R. § 710.7(c). Here, the individual was in her late teens and early to mid-twenties when she consumed alcohol to excess, sometimes engaging in dangerous or unlawful activity while intoxicated. However, the individual stated, and the testimonies of her mother, father and the DOE psychologist confirmed, that her meeting with the DOE psychologist markedly affected her by making her aware of the harmful effects of alcohol on her health and the need to change her drinking habits. In consideration of her relatively young age and maturity, her genuine recognition that she needed to modify her alcohol consumption and seek treatment, and change in behavior, which the DOE psychologist concluded evinced rehabilitation, I find that the individual has sufficiently resolved the concerns with regard to her alcohol consumption.

VI. CONCLUSION

As stated above, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H and J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth sufficient evidence to resolve the security concerns associated with these criteria. I therefore find that granting the individual an access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual should be granted an access authorization at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Shiwali G. Patel
Administrative Judge
Office of Hearings and Appeals

Date: January 5, 2016