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**United States Department of Energy  
Office of Hearings and Appeals**

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| In the Matter of: | Personnel Security Hearing ) |                       |
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| Filing Date:      | January 14, 2016 )           | Case No.: PSH-16-0001 |
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Issued: May 2, 2016

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**Administrative Judge Decision**

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William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I have determined that the individual’s access authorization should be restored.

**I. Background**

The individual works for a DOE contractor in a position that requires that he hold a DOE security clearance. In March 2013, the individual was arrested and charged with assault of a family member. As a result, he was placed on probation for one year, starting in August 2013, during which time he was required, among other things, to abstain from alcohol. On July 29 and 30, 2014, shortly before the expiration of his probationary period, the individual drank alcohol, and on July 30, 2014, he was arrested and charged with Driving Under the Influence (DUI). During an October 2014 Personnel Security Interview (PSI) conducted by the Local Security Office (LSO), the individual described the events that led to his two arrests. Because alcohol was involved in each arrest, the LSO referred the individual to a DOE consultant psychologist (DOE psychologist) for a mental health evaluation, from which the DOE psychologist concluded that the individual did not suffer from any alcohol-related mental health disorder. On April 7, 2015, the LSO sent a letter (Notification Letter) to the individual advising

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<sup>1</sup> 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.

him that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L).<sup>2</sup>

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. At the hearing, the individual presented his own testimony and that of seven other witnesses. The LSO submitted 24 numbered exhibits into the record. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

## **II. Regulatory Standard**

### **A. Individual’s Burden**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> 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**

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

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<sup>2</sup> Criterion L concerns information that an individual 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 . . . Such conduct or circumstances include, but are not limited to, criminal behavior . . .” 10 C.F.R. § 710.8(l).

or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

### **III. The Notification Letter and the Security Concerns at Issue**

As support for its security concerns under Criterion L, the LSO cites the individual's March 3, 2013, arrest for Assault Causing Bodily Injury to a Family Member, his July 30, 2014, DUI arrest, and his admissions during his October 23, 2014, PSI that he had consumed alcohol on July 29 and 30, 2014 in violation of his probation. Ex. 1.

I find that there is ample information in the Notification Letter to support the LSO's reliance on Criterion L. Criminal activity, including arrests and violation of probation, creates doubt about a person's judgment, reliability, and trustworthiness, and calls into question his ability or willingness to comply with laws, rules, and regulations. *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 J.

### **IV. Findings of Fact**

During his first marriage, the individual was a social drinker. Tr. at 110, 122. In 2010, he remarried; he and his second wife drank alcohol regularly. *Id.* at 111, 164; Ex. 10 at 3. On March 3, 2013, the individual and his wife argued, and the police, after being called to their residence, found bruises on his wife allegedly caused by the individual. Ex. 20 at 9. The individual was arrested and charged with Assault Causing Bodily Injury to a Family Member. *Id.* at 7. Ultimately, the individual pleaded guilty and, as a condition of the plea, consented to one year of probation starting on August 13, 2013. Ex. 15 at 5. He successfully completed a court-ordered intensive outpatient program (IOP) that addressed, among other things, effective communication, impulse control, anger and stress management, and substance abuse education. *Id.* at 6; Ex. 11. He did not follow up this program with any additional treatment or counseling, such as the weekly aftercare program offered by the IOP provider or Alcoholics Anonymous (AA) meetings. Tr. at 16.

One term of the probation was that he not consume alcohol. Ex. 15 at 5. While on business travel in another state in late July 2014, the individual decided that he could safely resume drinking alcohol. Tr. at 136-37. On July 29, 2014, roughly two weeks before his probationary period was to lapse, he consumed three beers with no apparent ill effects. *Id.* at 137; Ex. 22 at 7. The following evening, he drank beer again, but then drove from his hotel in search of food and was pulled over by the local police. Ex. 22 at 10-11. Testing established that he had a blood alcohol content of .17, for which he was arrested and charged with DUI. *Id.* at 13. In addition to the fines and penalties associated with his DUI conviction, the individual's probationary period was extended nine months, until May 13, 2015, and required that he "[s]ubmit to drug and alcohol evaluation and successfully complete any treatment as recommended" and attend at least three AA meetings per week. Ex. 13 at 4. He has complied with all his probation terms, and the probation period has now expired. Tr. at 166.

On the same day that his probationary period was extended, the individual returned to the IOP provider for evaluation. A licensed professional counselor at that program, who testified at the hearing, determined that the individual was suffering from Alcohol Abuse. Ex. 11; Tr. at 11, 32. Because he had successfully completed the IOP in the preceding year and remained abstinent, and because the counselor viewed the recent relapse as a common slip-up and the arrest as a life-changing event for which he was embarrassed and distraught, she determined that participating in the IOP a second time would not be appropriate in his case, and instead designed a treatment program for him that included participation in weekly aftercare sessions and continued individual counseling, along with his court-mandated AA participation. Ex. 11; Tr. at 15-17, 34. He continues to participate in that treatment program. Tr. at 19-20, 31.

The DOE psychologist evaluated the individual in January 2015. Ex. 10. After reviewing the individual's personnel security file, interviewing him, and administering a number of psychological tests to him, he determined that the individual did not meet the criteria for alcohol dependence or alcohol abuse as set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association*, Fourth Edition Text Revised (DSM-IV-TR). *Id.* at 6. Nor did he find that the individual used alcohol habitually to excess, while acknowledging that the individual clearly abused alcohol on one occasion, which resulted in a DUI conviction in July 2014. *Id.*

At the hearing, the individual's counselor testified that she believed the individual has been abstinent since his arrest in July 2014. Tr. at 22, 30. She stated that he has been actively involved in AA, aftercare, and individual counseling. *Id.* at 19-20. He has divorced his second wife, who was a serious drinker, and has now married again, this time to a former drinker who has been a non-drinker for many years. *Id.* at 29. She noted that the recent lapse occurred when he was away from home and therefore away from his family support system. *Id.* at 27. Although she diagnosed the individual with alcohol abuse in 2014, when the DOE psychologist did not, she now finds that the individual's condition is in full remission, after nearly two years of abstinence and appropriate treatment. *Id.* at 30-32. She testified that the arrest taught him that he cannot control his drinking but must instead abstain forever, and she believes he has embraced that knowledge. *Id.* at 20, 28. Finally she expressed her opinion that the individual's criminal activity—the two arrests in 2013 and 2014—was related to alcohol consumption, and her prognosis was that he will remain abstinent in the future. *Id.* at 18, 23, 33.

Other witnesses testified on the individual's behalf at the hearing. His AA sponsor stated that the individual is comfortable in his abstinence, is an active and focused participant in AA, and "is on the right path" to maintaining long-term sobriety. *Id.* at 39, 43, 45, 47. A number of witnesses spoke of his sources of support, which include his wife, his sons, and his church community, in which he has grown more active since renewing his commitment to abstinence following his 2014 arrest. *Id.* at 62-63, 65, 81-82, 113-14, 117-18, 123-24, 127. A co-worker and one of his sons expressed their opinions that future criminal activity is very unlikely, because the 2013 and 2014 arrests involved alcohol and they are convinced that the individual will maintain his abstinence. *Id.* at 85, 114. The individual's current wife testified that following her own divorce she stopped drinking alcohol, and that there is no alcohol in their life together. *Id.* at 90, 97. She was angry and shocked when she learned of his 2014 arrest but then observed

his firmer devotion to his abstinence, his treatment program, and their church community. *Id.* at 92, 98, 104.

Finally, the individual testified that he was remorseful, ashamed, and disappointed in himself for choosing to drink alcohol in July 2014 after being abstinent. *Id.* at 135. He firmly believes that alcohol contributed to both arrests. *Id.* at 19-20. He pointed out that he had had virtually the same argument with his second wife in March 2013 two days before his arrest, but he had not been drinking, and it was resolved without a confrontation. Two days later, he was drinking as well as she, and the argument led to confrontation and an arrest. *Id.* at 143-44. He believes, despite the DOE psychologist's opinion, that he is an alcoholic, cannot control his drinking, and must remain abstinent. *Id.* at 147. He also believes that he now possesses the tools as well as the support structure to maintain his sobriety. *Id.* at 160.

## **V. Analysis**

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. I find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

The individual has maintained his abstinence, through AA, counseling, aftercare, and family and church support, since his DUI arrest in July 2014. I am convinced that the DUI arrest shocked and embarrassed him, to such a degree that he is firmly committed to leading a life free of alcohol. I am also convinced that his criminal activity, which is limited to his two arrests and his violation of his probation terms, involved alcohol, which he was consuming with some regularity during his second marriage, and has since renounced with apparent success. As a result of his DUI arrest in July 2014, he has learned that he cannot drink at all. His commitment to abstinence is now reinforced through AA, counseling, and a sturdy support system.

The Adjudicative Guidelines at Guideline J address the conditions that can raise security concerns due to criminal activity. Those that apply to the facts in this case are "a single serious crime or multiple lesser offenses" and "violation of parole or probation." Guideline J, ¶ 31(a), (e). I must also consider, however, whether any mitigating factors also apply to the facts in this case. Only one mitigating condition stated in Guideline J is appropriate in light of the facts. Paragraph 32(a) states that mitigation of a security concern may be appropriate where "so much time as elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Guideline J, ¶ 32(a). Although the arrests did not take place many years ago, some time has passed since their occurrence. More important to note, however, is that the record before me consistently demonstrates that the individual has changed his approach to his sobriety since his most recent arrest in such a manner that it is highly unlikely that he will resume drinking alcohol, even on a social basis. Because I find that his criminal

activity occurred in an environment of alcohol consumption and he no longer lives in that environment, criminal activity is unlikely to recur. After considering all the testimony and written evidence in the record, I am convinced that the individual has resolved the LSO's security concerns that arose from his alcohol use and associated conduct.

## **VI. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion L. 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 this criterion. I therefore find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be restored.

William M. Schwartz  
Administrative Judge  
Office of Hearings and Appeals

Date: May 2, 2016