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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: March 31, 2016 )  
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Case No.: PSH-16-0022

Issued: June 2, 2016

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**Administrative Judge Decision**

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William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXX (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. On July 11, 2015, the individual was arrested and charged with Aggravated Driving While Intoxicated (DWI) when he was found passed out behind the wheel of a vehicle which was parked on a dirt road. The individual reported the incident to his security office, and on August 25, 2016, a Personnel Security Interview (PSI) was conducted by the Local Security Office (LSO). The LSO referred the individual to a DOE consultant psychologist (DOE psychologist) for a mental health evaluation. In her October 20 2016, report of her evaluation of the individual, the DOE psychologist concluded that the individual suffers from Alcohol-Related Disorder Not Otherwise Specified, a mental illness or condition that, in her opinion, causes or may cause a significant defect in judgment or reliability.

On January 12, 2016, the LSO sent a letter (Notification Letter) to the individual advising him that it had reliable information that created a substantial doubt regarding his eligibility to hold a security

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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.

clearance. In the 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).<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 four other witnesses, and the LSO presented the testimony of one witness, the DOE psychologist. In addition to the testimonial evidence, the LSO submitted fifteen numbered exhibits into the record, and the individual submitted eight exhibits, identified as Exhibits A through H. 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.

## **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.

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<sup>2</sup> Criterion H concerns information that a person suffers from “[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). Criterion L concerns information that a person has “engaged 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. Such conduct or circumstances include, but are not limited to, criminal behavior....” 10 C.F.R. § 710.8(l).

## **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 support for its security concerns under Criteria H and J, the LSO relies on the opinion of the DOE psychologist, who determined that the individual suffers from Alcohol-Related Disorder Not Otherwise Specified, a mental condition that, in her opinion, causes or may cause significant defects in the individual's judgment and reliability. Ex. 1. In further support of these criteria, and with regard to Criterion L, the LSO cites:

- The individual's "use of alcohol habitually to excess" between the ages of 17 and 18;
- His August 26, 2010, arrest for Aggravated DWI, Larceny (taking beer), Open Container, and Registration Display;
- His November 19, 2010, charge for Minor in Possession and Vehicle Subject to Registration Exceptions;
- His July 11, 2015, arrest for Aggravated DWI; and
- 11 other specified incidents of "criminal conduct" relating to vehicle or traffic violations, between January 7, 2009, and December 20, 2013.

*Id.*

I find that there is ample information in the Notification Letter to support the LSO's reliance on Criteria H, J and L. The excessive consumption of alcohol is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines) at Guideline G. In addition, criminal activity creates a doubt about a person's judgment, reliability and trustworthiness; by its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations. *Id.* at Guideline J.

## **IV. Findings of Fact**

The individual's first alcohol-related arrest occurred in August 2010, when he was 18 years old; he was charged with Aggravated Driving While Intoxicated (DWI), Larceny (taking beer), Open Container, and Registration Display. Ex. 6 at 1. The charges were later dismissed. *Id.* That arrest took place prior to his employment with the DOE facility, and was disclosed to his employer as part of the onboarding process. Tr. at 139. At the hearing, the individual acknowledged the propriety of

the DWI charge but, with regard to the larceny charge, asserted that he had paid for the beer. Tr. at 141.

On November 19, 2010, the individual was arrested and charged with Minor in Possession and Vehicle Subject to Registration Exceptions. Ex. 3 at 2. That charge was also dismissed. *Id.* At the hearing, the individual acknowledged the propriety of the arrest, but asserted that he was unaware that there were two bottles of beer in the bed of a pickup truck he had just purchased. Tr. at 134. He further noted that the bottles were sealed, and were out of his reach, so it was clear that he had not intended to drink them as he drove. *See* Tr. at 134-136.

The individual was also engaged in 11 other specified incidents of “criminal conduct” relating to vehicle or traffic violations, between January 7, 2009, and December 20, 2013. Those incidents include: registration and insurance violation (January 27, 2009); reckless driving (March 2, 2009); seat belt violation (April 23, 2009); stop sign violation (September 10, 2009); speeding (May 27, 2010); speeding and no insurance (July 1, 2010); operating a vehicle without a license and insurance violation (August 6, 2010); driving on a suspended license, no seatbelt, and failure to have required interlock (June 7, 2011); windshield violation (January 13, 2013); speeding (November 5, 2013); and no seatbelt (December 20, 2013). Ex. 1 at 2-3.

The individual was 24 years old at the time of his most recent arrest. Tr. at 121. On the evening of July 10, 2015, at approximately 9:00 p.m., the individual arrived home, where he lived with his fiancée.<sup>3</sup> *Id.* at 113. He states that he and his fiancée spoke, and then he began to work on his car. *Id.* He states that, as he was working on his car, he began to drink from a four-pack of 16-ounce beers he had purchased. *Id.* He asserts that, subsequently, at about midnight, he and his fiancée began to argue. *Id.* At approximately 12:30 p.m., by which time he had consumed three of the four beers and started on the last one, he decided to leave the house, rather than continue engaging in the argument. *Id.* at 111. However, he alleges that, after driving approximately one-quarter mile, he determined that he should not be driving, because he had been drinking, so he pulled off the road, and fell asleep behind the wheel. *Id.* at 111-12. Between 2:30 and 2:45 a.m., he was awakened by a police officer, who administered a Blood Alcohol Content (BAC) test. Ex. 3 at 1. His BAC registered at 0.23 and 0.22. *Id.* He then failed a field sobriety test, and was arrested and charged with Aggravated DWI. *Id.* The individual promptly reported the incident to his facility’s security office. *Id.*

Shortly after his 2015 arrest, the individual voluntarily consulted with the coordinator for his facility’s onsite behavioral health program, a licensed psychologist. Tr. at 105. As a result of that consultation, the individual voluntarily signed an Abstinence/Recovery Agreement, pledging to abstain from alcohol or illegal drugs for a period of one year, from August 2015 to August 2016. Ex. B. The agreement requires random testing of the individual. *Id.* The individual submitted documentation that all tests were negative through April 13, 2016, *id.*, and indicated at the hearing that his tests continued to be negative thereafter. *See* Tr. at 122.

As part of his probation for his 2015 arrest for Aggravated DWI, the individual was first required to wear an alcohol monitor. Tr. at 123. He did so successfully, without an alcohol violation. *Id.* When the monitor was removed, he was placed in a court-ordered random drug testing program, for the

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<sup>3</sup> At some point during the course of events discussed in this case, the individual became engaged to his girlfriend, who then became his fiancée. To avoid confusion, she will be referred to as his fiancée throughout this Decision.

period August 17, 2015, to January 4, 2016. Ex. D. The program required that he call in daily, between 8:00 and 9:00 a.m. to determine if he was required to submit for testing that day. *Id.* The individual submitted documentation demonstrating that all such random tests were negative. *Id.* Following successful completion of the program, the criminal case was dismissed. Ex. H.

In addition, the individual began attending Alcoholics Anonymous (AA) meetings shortly after the arrest. He provided documentation of attendance at more than 40 such meetings between October 13, 2015, and April 21, 2016. Ex. C. At the hearing, he testified that he continues to attend AA meetings, and intends to continue doing so. Tr. at 127.

Because the LSO was unable to resolve its concerns during a PSI in August 2015, the individual was referred to a DOE psychologist. She evaluated the individual in October 2015 and concluded that the individual met the criteria for Alcohol-Related Disorder Not Otherwise Specified, as set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR). Ex. 8 at 8. She based her diagnosis on his 2010 and 2015 arrests for Aggravated DWI, as well other alcohol-related arrests. *Id.* at 7. She also observed that the individual had not been forthright when reporting, on a number of occasions, the amount of his alcohol consumption. In particular, she found it difficult to believe that his extremely high BAC and stuporous condition at the time of his arrest on July 11, 2015, was the result of his consumption of only two beers, as he told the arresting officer, or even only the three-plus beers he reported to her. *Id.* at 5. Her report states that his diagnosed alcohol disorder, combined with his lack of candor with respect to alcohol consumption, “comprise an illness and mental condition which cause, or may cause, a significant defect in judgment and reliability.” *Id.* at 8. As adequate evidence of rehabilitation or reformation, the DOE psychologist recommended, in addition to the random urinalysis tests required by the terms of his probation and his voluntary abstinence agreement, six months of at least weekly attendance at an alcohol treatment program of his choosing. *Id.* at 7.

At the hearing, the individual did not deny the charges, or seek to discount them, stating, “I take full responsibility for all the mistakes that I’ve made.” Tr. at 100. Instead, he noted that the bulk of them occurred when he was 17 to 18 years old, at a time when he enjoyed racing cars, both at racing venues and on city streets. *Id.* at 145. His life has changed considerably since those days, as he now carries a college course load while holding a full-time job, shares a home with his fiancée, is soon to become a father, and drives a minivan. *Id.* at 158. He still tinkers with cars but now drives them responsibly. *Id.* at 158-59. His 2013 “speeding” ticket was for exceeding the posted limit by a few miles per hour, not for drag racing as in the past. *Id.* at 160. Concerning his latest arrest, the individual acknowledged the lapse in judgment, but repeatedly cited his growing awareness of the potential effects of alcohol, and his efforts at rehabilitation. He indicated that, with a pending marriage, his fiancée’s pregnancy, and the potential loss of his job, he has determined that he must abstain from alcohol consumption altogether, to avoid any potential relapse. *Id.* at 103, 154-55, 179.

At the hearing, the individual’s fiancée testified that the individual is now abstaining from alcohol. *Id.* at 14. Also testifying was a co-worker, who stated that the individual “follow[s] the rules and policies as best as I’ve seen anybody else do it.” *Id.* at 45. The individual’s AA sponsor also testified on his behalf, and indicated that the individual is clearly committed to the AA program. *Id.* at 62. He stated that the individual has an “excellent chance” of abstaining from alcohol. *Id.* at 67. Also testifying was the coordinator for his facility’s onsite behavioral health program, a licensed psychologist, who stated that the individual “has learned a valuable lesson with this and that he’s very

open to learning what he's needed to learn in order to change himself . . ." *Id.* at 85. He termed the individual's prognosis as "excellent." *Id.* at 89.

Two substance abuse counselors assessed the individual, as part of the onsite abstinence program. Both determined that no further treatment was necessary, beyond the abstinence program and any court requirements. Ex. E.

Finally, the DOE psychologist testified at the hearing. She stated that, based on record evidence and testimony at the hearing, she believed that the individual did suffer from Alcohol-Related Disorder Not Otherwise Specified, but that he had demonstrated adequate evidence of rehabilitation. Tr. at 177-178. She noted that the individual had met all of the recommendations she had made for him in her report, including six months of abstinence and six months of alcohol treatment. *Id.* at 170. In addition to noting his ten-month period of abstinence, she cited his "maturity," and "the intervention that he has had and the understanding that he has now that he did not have [previously]." *Id.* at 174.

The DOE psychologist expressed her confusion over the individual's high BAC after the amount of beer he admitted to drinking prior to the 2015 arrest, which formed the principal basis for her concern about his candor.<sup>4</sup> Tr. at 173. However, after observing that the individual has been very consistent in reporting his consumption before that arrest, she stated that "the candor that he's demonstrated to others would . . .mitigate that concern for me." *Id.* at 171, 173. She termed his prognosis as being "good to very good." *Id.* at 173.

## 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.

I find that the individual was properly diagnosed as suffering from Alcohol-Related Disorder. Nevertheless, the record, in particular, the testimony of the individual, his AA sponsor, the coordinator for his facility's behavioral health program, the DOE psychologist, and others, establishes a period of abstinence and an amount of alcohol education that satisfies the experts who testified at the hearing. The concurrence of the mental health experts (evidenced in hearing testimony and exhibits entered into the record) demonstrates to me the confidence they have in the individual's progress through treatment and his motivation to remain sober at all times.

With respect to the DOE psychologist's observation regarding the individual's candor, I note that the principal basis for her concern was his underreporting of alcohol consumption, particularly leading

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<sup>4</sup> The DOE psychologist initially believed that the BAC of 0.22 and 0.23 indicated that the individual had consumed more than three beers. As a result, she had cited his lack of candor as a factor in her evaluation. However, testimony at the hearing indicated that the beer cans in question were 16 ounces each, as opposed to the commonly-accepted standard of 12 ounces, and that the individual may have had a portion of a fourth can.

up to his July 2015 arrest. While the facts as presented may not entirely account for his extremely high BAC at that time, the DOE psychologist was nevertheless convinced by the evidence evinced at the hearing that his candor was no longer at issue. I find no independent grounds for questioning his candor.

I am convinced that the individual has learned a great deal as a result of his July 2015 arrest, both through alcohol education and through enduring the consequences of his actions, and is highly motivated to avoid a similar situation in the future. I have taken into consideration a number of mitigating factors in his favor, specifically his abstinence, his voluntary participation and significant progress in a treatment program, and the DOE psychologist's favorable prognosis of the individual. Adjudicative Guidelines at Guideline G, ¶ 23(a), (b), (c). 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 arise from his alcohol use.

I further find that the LSO's security concerns raised by the individual's history of law enforcement activity have been resolved. These numerous incidents fall into two distinct categories. Many of the incidents cited in the LSO's security concerns relate to a pattern of vehicular violations that occurred when the individual was younger and engaged in drag racing on city streets, a passion that has fortunately cooled. The record makes clear that the individual has matured since that time, and that the danger of repeating that pattern are minimal. Of greater concern are three alcohol-related arrests, the most recent of which is his July 2015 arrest for Aggravated DWI. Because I have found, above, that he has resolved the security concerns regarding his alcohol consumption, for the same reasons, concerns about future criminal activity related to alcohol consumption are similarly resolved. Adjudicative Guidelines at Guideline J, § 32(a), (d).

## **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 Criteria H, J and 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 these criteria. 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: June 2, 2016