



the security regulations at 10 C.F.R. § 710.8(h) and (j) (hereinafter referred to as Criterion H and Criterion J).<sup>2</sup>

After receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. The LSO forwarded this request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Administrative Judge. At a hearing convened pursuant to 10 C.F.R. § 710.25 (e) and (g), the DOE introduced nineteen exhibits (DOE Exs. 1-19) into the record and presented the testimony of a DOE psychologist. The Individual presented his own testimony, the testimony of his Employee Assistance Program (EAP) counselor, his supervisor and two co-workers. In addition, he also introduced three exhibits, statements from his Department of Veterans Affairs (VA) psychologist, VA counselor, and his primary care physician (Ind. Exs. A-C). *See* Transcript of Hearing, Case No. PSH-16-0057 (Tr.).

## II. Regulatory Standard

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictates 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 or restoring 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 proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his [or her] 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). This standard implies that there is a presumption against granting or restoring a security clearance. 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); *see also Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard indicates “that security determinations should err, if they must, on the side of denials”).

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<sup>2</sup> Criterion H refers to information indicating that an individual has “[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Criterion J references information showing 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).

### III. Notification Letter and Associated Security Concerns

As previously noted, the LSO cites Criteria H and J as the basis for suspending the Individual's security clearance. The LSO cites an evaluative report from the DOE Psychologist opining that the Individual suffers from Alcohol Dependence with Physiological Dependence, in Early Full Remission, without adequate evidence of rehabilitation or reformation, as Criteria H and J derogatory information. Ex. 1; see Ex. 4 at 7-8. In addition, the LSO also cites three alcohol-related incidents as derogatory information under Criteria H and J. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses and can raise questions about an individual's reliability and trustworthiness. *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House* (December 19, 2005), Guideline G, at ¶ 21 (Adjudicative Guidelines).

### IV. Hearing Testimony and Evidence

In February 2015, the Individual was arrested for Battery against a Household Member and Negligent Use of a Deadly Weapon. DOE Ex. 1 at 4. He admitted to consuming four beers prior to his arrest. DOE Ex. 1 at 4. In August 2015, the Individual was arrested for Driving Under the Influence (DUI). DOE Ex. 1 at 3. He admitted to consuming beer prior to the incident and recorded at Blood Alcohol Content (BAC) of .20 on the day of his arrest. DOE Ex. 1 at 3. In September 2015, the Individual tested positive for alcohol during an alcohol screening at work. DOE EX. 1 at 3. He reported consuming five to six beers the night prior to the screening, but still recorded a BAC of .071 at approximately noon. DOE Ex. 1 at 3.

As a result of each of these incidents, the LSO interviewed the Individual. DOE Exs. 17, 18, 19. After the final incident, the LSO requested that he be evaluated by the DOE psychologist. DOE Ex. 4 at 1. The DOE psychologist met with the Individual and reviewed his Personnel Security File. DOE Ex. 4 at 3. In March 2016, the DOE psychologist diagnosed the Individual as suffering from Alcohol Dependence, with Physiological Dependence, in Early Full Remission. DOE Ex. 4 at 11. The DOE psychologist also wanted the Individual to be abstinent for one year before finding that he was rehabilitated or reformed. DOE Ex. 4 at 12.

The Individual and his witnesses testified that he is in much better health now that he has stopped consuming alcohol. Tr. at 22, 23, 32, 37, 39. He stated that he feels great and energetic. Tr. at 39. He does not want to drink again. Tr. at 40. The Individual's supervisor testified that the Individual has changed immensely since he stopped consuming alcohol. Tr. at 22. He appears healthier and is a much improved employee. Tr. at 22. His two co-workers testified that they have seen a big change in the Individual since he became abstinent. Tr. at 28, 32. One of his co-workers testified that he is very positive about his treatment. Tr. at 33.

The Individual testified that he was angry about everything in September 2015. Tr. at 35. He continued that it was a deeper issue--he is also being treated for Post Traumatic Stress Disorder--than his alcohol consumption. Tr. at 35. He attended the Intensive Outpatient Treatment Program (IOP), although he did not want to be there. Tr. at 36. The Individual also became concerned about the cost of the IOP, when it suggested a 12-week inpatient program. Tr. at 37. He chose the Veterans Affairs (VA) program which has been an excellent alternative. He feels better about himself--healthier and more energetic. Tr. at 37. He does not want to consume alcohol again. Tr.

at 40. He does not have any cravings. Tr. at 40. His quality of life is much improved by being abstinent. Tr. at 41.

The EAP counselor testified that when the Individual first started seeing him he was guarded and lacked insight into his problem. Tr. at 11. He continued that the Individual's entire demeanor has changed. Tr. at 12. The Individual is more level-headed and recognizes the improvements in his life with abstinence. Tr. at 12. He continued that the Individual's prognosis and aftercare are good. Tr. at 14. He stated that the Individual is getting excellent care at the VA. Tr. at 10. The EAP counselor concluded that the Individual's risk of relapse is small. Tr. at 14.

The DOE psychologist testified after hearing all the previous testimony. He opined that the Individual wants to live a healthier life and appears more accepting that he had an issue with alcohol than when they met earlier in 2016. Tr. at 46. He stated that the Individual has made a "quantum leap of improvement from what was available . . . when [he] first evaluated him." Tr. at 42. The DOE psychologist found it "very, very positive" to hear that all the Individual's numerous breathalyzer and urinalysis were negative. Tr. at 52. The DOE psychologist continued that there was presently adequate evidence of reformation or rehabilitation and that the Individual's risk of relapse was "considerably lower" than when he met with the Individual for the evaluation. Tr. at 49. He concluded that he did not find relevant the one month remaining until the Individual had one year of sobriety. Tr. at 53.

## **V. Administrative Judge's 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.

As an initial matter, I find that the LSO has properly raised security concerns under Criteria H and J, regarding the Individual's alcohol use and diagnosis. Alcohol-related incidents, such as driving while under the influence and a diagnosis by a duly qualified medical professional of Alcohol Dependence, are specifically mentioned in the Adjudicative Guidelines as a condition that could raise a security concern. Adjudicative Guidelines, ¶ 22(a), (d). The Individual does not dispute the diagnosis or that the three alcohol related incidents occurred.

In considering whether the Individual has mitigated the properly raised security concern, I must look to the Adjudicative Guidelines in evaluating the evidence before me. The relevant paragraph lists conditions that could mitigate this type of security concern, including:

- (b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Adjudicative Guidelines, ¶ 23(a)-(d).

Based on the above factors, I find that the Individual has resolved the security concerns raised by the LSO. With respect to ¶ 23(b), the Individual acknowledges his alcohol dependence. He did not dispute DOE psychologist's diagnosis. He attended the IOP and is now going to counseling sessions at the VA. In addition, he sees the EAP counselor once a month to check on his progress. Similarly, regarding ¶ 23(c), the Individual is a current employee who is presently participating in counseling. He has no history of previous treatment or relapse and according to the DOE psychologist is making excellent progress. Finally in regard to 23(d), according to his EAP counselor, the Individual successfully completed the IOP. Tr. at 11. He has continued his abstinence and attends counseling at the VA. Ind. Exs. A, B. As a final point, I must note that the DOE psychologist opined that the Individual's risk of relapse is very low.

In the instant matter, I find that the Individual's actions have resolved the security concerns raised by his Alcohol Dependence diagnosis and his three alcohol-related incidents.

## **VI. Conclusion**

In the above analysis, I have found that there was derogatory information in the possession of the DOE that was sufficient to raise 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 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. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman  
Administrative Judge  
Office of Hearings and Appeals

Date: September 1, 2016