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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:	April 30, 2012)	Case No.:	PSH-12-0043
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_____)			

Issued: August 29, 2012

Hearing Officer Decision

Richard A. Cronin, Jr., Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (“the Individual”) to possess a Department of Energy (DOE) access authorization.¹ For the reasons detailed below, I find that an access authorization should be granted to the Individual.

I. BACKGROUND

The Individual is a contractor employee at a DOE facility. The Individual’s employer requested that the Individual be granted a security clearance. Exhibit (Ex.) 3 at 1. During an investigation of the Individual, the Local Security Office (LSO) received information that the Individual had engaged in the excessive consumption of alcohol. Ex. 5 at 33. In September 2011, the LSO conducted a personnel security interview (2011 PSI) with the Individual and subsequently referred her for an examination by a DOE Psychologist. Because neither the 2011 PSI or the DOE Psychologist’s examination resolved the security concerns raised by the Individual’s prior excessive alcohol use, the LSO informed the Individual, in a March 2012 notification letter (Notification Letter), that derogatory information existed which raised security concerns under 10 C.F.R. § 710.8 (h) and (j) (Criteria H and J respectively) and that created a substantial doubt as to her eligibility to possess a security clearance. Ex. 1. The Notification Letter also informed the Individual that she was entitled to a hearing before a Hearing Officer in order to resolve the security concerns. *Id.*

¹ Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

The Individual requested a hearing on this matter. At the hearing, the DOE counsel introduced five exhibits into the record (Exs. 1-5) and presented the testimony of the DOE Psychologist. The Individual presented her own testimony, as well as the testimony of her supervisor (Supervisor), the facility's Employee Assistance Program drug and alcohol counselor (Counselor), and a senior employee who informally mentors young professionals at the facility and who is also on the Individual's thesis committee (Mentor). *See* Transcript of Hearing, Case No. PSH-12-0043 (hereinafter cited as "Tr"). The Individual additionally submitted six exhibits (Exs. A-F) into the record.

II. REGULATORY STANDARD

The regulations governing the Individual's eligibility for access authorization are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The regulations identify certain types of derogatory information that may raise a question concerning an individual's access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Hearing Officer considers relevant factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors. *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*).

Ultimately, the decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id*; *see generally Dep't of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (*Egan*) (the "clearly consistent with the interests of national security" test indicates that "security clearance determinations should err, if they must, on the side of denials").

III. FINDINGS OF FACT AND ANALYSIS

A. Whether the LSO Properly Invoked Criteria H and J

1. Excessive Alcohol Use

In the 2011 PSI, the Individual stated that, from 2005 until 2009, while attending college, she would become intoxicated from alcohol one to three times a week. Ex. 5 at 44-45. The Individual also reported that while attending graduate school, from 2009 to 2011, she would become

intoxicated two or three times a month. Ex. 5 at 48. The Individual also reported that the last time she had become intoxicated was on a weekend in September 2011 when she visited various wineries with a friend and had four or five “glasses” of wine. Ex. 5 at 50, 55.

In his evaluative report (Report) regarding his examination of the Individual in October 2011, the DOE Psychologist found that the Individual’s usage of alcohol from 2005 to 2011, while an undergraduate and, later, a graduate student, constituted frequent and excessive alcohol use.² Ex. 4 at 4. He noted that the Individual’s consumption of alcohol while a graduate student decreased during the summers. Ex. 4 at 4. The DOE Psychologist found that the Individual’s judgment and reliability were sound. Ex. 4 at 3. However, given the Individual’s history of heavy alcohol use, as described in the 2011 PSI and his examination, the DOE Psychologist diagnosed her as suffering from Alcohol-Related Disorder, Not Otherwise Specified (NOS). He also found that the Individual was also a user of alcohol habitually to excess. Ex. 4 at 5. Consequently, the DOE Psychologist also found that the Individual suffered from an illness of a nature that could cause a defect in judgment and reliability. Ex. 4 at 5. While he found that the Individual was not dependent on alcohol and did not need any type of formal treatment program, the DOE Psychologist opined that the Individual needed a six-month period of alcohol consumption of no more than three drinks per occasion in order to demonstrate rehabilitation from her alcohol disorder. Ex. 4 at 5.

2. The Associated Security Concerns

In the present case, the Criteria H and J concerns both center on the Individual’s past alcohol usage. Criterion H concerns information that a person has “an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a 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 conduct indicating that the Individual has “been, 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*, Guideline G; *Personnel Security Hearing*, Case No. TSO-0927 (November 30, 2010). Given the DOE Psychologist’s opinion, as stated in the Report, that the Individual suffers from Alcohol-Related Disorder, NOS, and has been a user of alcohol habitually to excess, the LSO had sufficient grounds to invoke Criteria H and J.

² The DOE Psychologist noted that the Individual had first started to consume alcohol in the ninth grade and that through high school she had consumed alcohol on somewhere between five to ten occasions always to excess. Ex. 4 at 2. The DOE Psychologist deemed the Individual’s use of alcohol during her high school years as excessive. Ex. 4 at 2, 4.

B. Whether the Individual Has Mitigated the Security Concerns

The facts in this case are essentially not disputed.³ Tr. at 51. The Individual testified that, with regard to the amount of alcohol she consumed while in college, she had difficulty in providing specific answers. Tr. at 52-53. She believes that her answers during the 2011 PSI indicated higher levels of alcohol consumption than she, in fact, consumed in order to ensure that her answers could not be considered dishonest or contradicted by other interviewees. Tr. at 52.

During her undergraduate college years, the Individual testified that her alcohol consumption was motivated by the social atmosphere at her university but that she did not consume alcohol just to “fit-in.” Tr. at 53. During the summers, where she would typically be employed at the facility, she rarely consumed alcohol. Tr. at 54. When the Individual began graduate study at another university, her alcohol consumption reduced significantly to two or three drinks over one or two hours at an occasional “happy hour” with friends. Tr. at 55. The Individual testified that in the 2011 PSI, she miscommunicated her alcohol consumption at graduate school. Tr. at 58. To support her claim of moderate alcohol consumption, the Individual submitted six statements (five of which were sworn) attesting to her moderate alcohol consumption during her studies in graduate school and her recent employment at the facility.⁴ Ex. A-F.

After receiving the DOE Psychologist’s Report, the Individual immediately complied with his recommendation to limit her alcohol consumption and had no problems in doing so. Tr. at 65. The Individual testified that, when she first saw the Counselor in May 2012, he asked her to be abstinent. She experienced no problems in maintaining abstinence. Tr. at 62-63, 65. Through an alcohol awareness course, she has learned that if alcohol starts causing a problem in your life, then you need to stay away from alcohol. Tr. at 66.

The Individual’s past two years at the facility have been difficult for her. Because of funding issues at the facility, the Individual has not been able to make additional progress on her thesis research. This problem could force her to begin a new thesis research project, thus negating five summers of research. Tr. at 68. In spite of these problems, she has not “resorted to alcohol” to deal with these problems. Tr. at 66.

The Counselor testified that he began to see the Individual in May 2012 and has seen her professionally on eight occasions. Tr. at 10. The Counselor interviewed the Individual and reviewed the Report. Tr. at 11. The Individual communicated to him that she had not experienced any problems in complying with the DOE Psychologist’s recommendation that she consume no more than three alcoholic drinks at any one event. Tr. at 12. In order to get additional information as to whether the Individual was preoccupied with alcohol consumption, the Counselor asked the Individual to abstain completely from alcohol for one month. Tr. at 12. The Individual told the Counselor that she would have no problem in abstaining from alcohol and the Counselor believes that the Individual has maintained her abstinence. Tr. at 13, 19. The

³ The relevant testimony regarding mitigation is summarized in the discussion below.

⁴ The Individual has completed her graduate course work and is working at the facility to perform research and complete her thesis. Tr. at 67.

Counselor also supervised the Individual's alcohol awareness course that he typically provides to those that seek his help. Tr. at 13. The Individual successfully completed the course and the Counselor believes that the Individual has learned a great deal from it. Tr. at 13. Overall, the Counselor believes that the Individual's judgment and reliability are sound. Tr. at 14, 15.

The Counselor believes that the Individual is now in a transition phase in her life where she is maturing and now assuming the behavior of a responsible professional. Tr. at 14. With regard to the Individual's consumption of alcohol as an undergraduate, the Counselor noted that, for most students, this is the first time that they are away from home and that these students typically consume increased amounts of alcohol. Tr. at 15. Typically, these students do not think about the consequences of heavy alcohol consumption. Tr. at 15. As for the Individual's level of consumption as a graduate student, the Counselor believes that the Individual somewhat overstated her alcohol consumption during the 2011 PSI in an effort to insure the validity of her answers. Tr. at 16. The Counselor noted that the Individual's alcohol consumption during undergraduate and graduate schools did not produce any negative consequences such as lower grades or arrests for Driving Under the Influence. Tr. at 16. However, the Counselor testified as to his belief that the Individual did not have a full appreciation of the problems that excessive alcohol use could create until she discovered the scrutiny that potential clearance holders undergo. Tr. at 17. Her awareness of the potential problems resulting from excessive alcohol consumption was also increased upon her completion of the alcohol awareness course. Tr. at 17.

The Counselor testified that, in his opinion, the Individual will not be a person who will experience an alcohol problem in the future. Tr. at 18. In forming this opinion, the Counselor related that the Individual has been fully compliant with any request he has made. Tr. at 18-19. The Counselor also believes that the Individual's integrity and self-control are good and she now has an appreciation of the dangers of excessive alcohol consumption. Tr. at 21-22, 24. As an additional factor supporting his opinion, the Counselor noted that the Individual has been abstinent from alcohol for the past two months prior to the hearing. Tr. at 19. Further, the Individual's move to the facility, her lack of a security clearance, and an error resulting in her not being paid, have increased the Individual's stress but she has dealt with the situations in a mature manner and has not exhibited any desire to consume alcohol to cope. Tr. at 22-23. For the future, the Counselor sees no problem with the Individual consuming alcohol as long as she consumes two or three drinks per occasion. Tr. at 19.

The Mentor is a 39-year employee at the facility and has been on the thesis committee of the Supervisor and the Individual. Tr. at 27. As an unofficial duty, the Mentor "watches" over the young professionals that work at the facility. Tr. at 28. The Mentor has attended over 20 social events with the Individual and the Individual has visited him at his house twice. Tr. at 29. The Mentor has never observed the Individual consume more than one alcoholic drink on any occasion. Tr. at 29. The Mentor believes the Individual possesses strength of character that allows her to overcome adversity. Tr. at 30. Additionally, the Individual receives a great deal of support from her mother. Tr. at 32. Overall, the Mentor believes the Individual's intelligence ensures that the Individual is sufficiently trustworthy to deserve a clearance. Tr. at 39.

The Supervisor testified that he has worked for the facility for approximately 18 years and has worked with the Individual beginning in the summer of 2008 as an undergraduate student intern.

Tr. at 45. The Supervisor also testified that the Individual lived with him for one month during the summer of 2009 and lived in his house for the entire summer of 2010. Tr. at 46. During the entire time the Supervisor has observed the Individual, he has not seen her consume more than two beers total during those periods. Tr. at 46.

After listening to all of the testimony, the DOE Psychologist testified that he believes the Individual is making the transition from college student to professional and is now more aware of the higher standard that is required of security clearance holders. Tr. at 95. He believes that the Individual's character is good and reaffirmed the findings in his report that the Individual has good judgment and reliability and does not suffer from any psychopathology apart from the alcohol issue. Tr. at 95-96. In his opinion, the Individual is now drinking in a responsible manner. The Individual has also met his recommendation with regard to demonstrating adequate evidence of rehabilitation. Tr. at 94, 96. Consequently, the DOE Psychologist testified that he no longer has any concerns about her judgment or reliability.⁵ Tr. at 96.

Among the factors that may serve to mitigate security concerns raised by an individual's alcohol use are that "the individual acknowledges his or her ... 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)," and that "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*, Guideline G, ¶ 23.

After reviewing the evidence before me, I find that the Individual has resolved the Criteria H and J concerns raised by her past alcohol consumption. After reviewing the testimony presented by her Mentor and Supervisor, it is clear that the Individual, away from college, does not consume alcohol to excess. This is also confirmed by the detailed sworn statements submitted by the Individual. All of this evidence is consistent with the Counselor's and the DOE Psychologist's overall assessment of the Individual as a person evolving from college student to adult professional. Significantly, I find the Counselor's and the DOE Psychologist's testimony regarding their current clinical assessment of the Individual to be convincing. Both testified that the Individual is at low risk to return to potential problematic consumption of alcohol. I find the testimony of the Individual, the Counselor, the Supervisor, and the Mentor convincing as to the Individual's compliance with the DOE Psychologist's recommendation as to rehabilitation from the DOE Psychologist's diagnosis of Alcohol-Related Disorder, NOS. Given the weight of testimony before me, I conclude that the Criteria H and J concerns have been resolved.

⁵ The DOE Psychologist, with regard to the Individual's "miscommunication" as to her past alcohol consumption pattern, found that the Individual has a degree of minimization and has a tendency to characterize issues in a positive light. Nonetheless, this finding did not affect his opinion that there are no concerns regarding the Individual's consumption of alcohol. Tr. at 95-96.

IV. CONCLUSION

Upon consideration of the entire record in this case, I find that there was sufficient evidence to raise doubts regarding the Individual's eligibility for a security clearance under Criteria H and J of the Part 710 regulations. I also find that the Individual has presented sufficient information to resolve the concerns raised by the Criteria H and J derogatory information. Therefore, I conclude that granting the Individual an access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should grant the Individual an access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: August 29, 2012