



The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on November 15, 2012.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, a coworker, his supervisor, his spouse, his treating counselor (the Counselor), and a DOE consultant psychologist (the Psychologist). *See* Transcript of Hearing, Case No. PSH-12-0131 (hereinafter cited as "Tr."). The LSO submitted 24 exhibits, marked as Exhibits 1 through 24, while the Individual submitted no exhibits.

## II. FINDINGS OF FACT

The Individual has a history of two alcohol-related arrests or citations. On November 19, 2005, he was charged with Public Intoxication. Exhibit 21 at 136-138. On February 2006, he was cited for having an Open Container in a motor vehicle. *Id.* On June 26, 2012, the Individual's employer administered a random breath alcohol test to the Individual at his workplace. That test, and a repeat test administered shortly after the initial test, revealed that the Individual had blood alcohol level readings of .074 and .069 respectively. Exhibit 15 at 7.

At the request of the LSO, the Psychologist evaluated the Individual on September 10, 2012. Exhibit 13 at 2. After completing his evaluation of the Individual, the Psychologist issued a report in which he found that the Individual did not meet the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revised (DSM-IV-TR) for any mental condition or disorder.<sup>2</sup> *Id.* at 7. However, the Psychologist, noting that the Individual was consuming alcohol to (or near to) the point of intoxication on a weekly basis, opined that the Individual "has a problem with alcohol that earns consideration in DOE's parlance, of being a user of alcohol habitually to excess and that is a condition that can cause significant defects in his judgment and reliability." *Id.* The Psychologist opined that the Individual was neither reformed nor rehabilitated. *Id.* The Psychologist further opined: "To obtain confidence in his control over his intoxication I would like to have [the Individual] commit to four more months of not drinking to intoxication," and continue seeing the Counselor on a weekly basis during this four month period. *Id.*

## III. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of 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). In rendering this opinion, I have considered the Adjudicative Guidelines and following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the

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<sup>2</sup> A copy of this Report appears in the record as Exhibit 13.

Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

#### **IV. ANALYSIS**

##### **A. Criteria H and J**

The Individual has a history of two alcohol-related arrests and a recent alcohol-related incident at work. These two alcohol-related arrests and alcohol-related incident at his work indicate that his use of alcohol is problematic and therefore raise security concerns about the Individual under Criterion J. In addition, the Psychologist found that the Individual habitually uses alcohol to excess. The Psychologist's finding that the Individual uses alcohol habitually to excess, along with the derogatory information concerning alcohol use discussed above, raises security concerns under Criterion H. 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*, issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines) at ¶ 21. In the present case, an association exists between the Individual's consumption of alcohol and his repeated subsequent failures to exercise good judgment and to control his impulses, as evidenced by his repeated engagement in activities that required the intervention of law enforcement to protect him and those around him.

I find that the Individual has mitigated the security concerns raised by his habitual use of alcohol to excess. The Individual agrees with the Psychologist's conclusions and has acted upon the Psychologist's recommendations. Tr. at 10. In fact, the Individual has exceeded the recommendations of the Psychologist. The Psychologist recommended, in his September 10, 2012, Report, that the Individual "commit to four more months of not drinking to intoxication." The Individual presented convincing evidence (in the form of his own testimony and that of his spouse and the Counselor) that he has abstained from using alcohol since July 2012 (seven months before the hearing). Tr. at 26, 62-63, 96, 99. The Individual further convincingly testified that he intends to permanently abstain from using alcohol. *Id.* at 27, 39, 53. The Psychologist, in his September 10, 2012, Report, recommended that the Individual continue with his individual counseling sessions on a weekly basis for four more months. The Individual complied with this request, and has been receiving individual counseling from the Counselor on a weekly basis since October 2012, a period of four months. *Id.* at 25, 46, 49-50. The Individual's weekly counseling was preceded by his enrollment in an Intensive Outpatient Treatment Program (the IOP) at the recommendation of the Counselor. *Id.* at 89-92. The 100-hour IOP program required that the Individual attend four two and one-half hour sessions a week for a five-week period. *Id.* at 18. After completing the IOP, the Individual began attending aftercare. *Id.* at 22.

The Counselor testified on the Individual's behalf at the hearing. The Counselor testified that

she thought the Individual has an Alcohol-Related Disorder (Not Otherwise Specified) as defined in the DSM-IV-TR. Tr. at 89. After the Individual successfully completed the IOP, he began attending aftercare, on a weekly basis, at her recommendation. *Id.* at 92-93. She testified that the Individual is committed to abstaining from alcohol use and reported to her that he does not miss using alcohol. *Id.* at 96, 99. She further testified that the Individual's prognosis is "good" if he stays with his current program. *Id.* at 97, 100. She further testified that the Individual is responding well to his treatment and that she expects that he will continue his current program. *Id.* at 102-103.

At the hearing, the Psychologist observed the testimony of each of the other witnesses before he testified. The Psychologist testified that the Individual had a "higher than average" chance of sustaining his abstinence from alcohol. *Id.* He further testified that the Individual had fully complied with the treatment recommendations set forth in his Report. *Id.* at 108, 114. The Psychologist described the Individual's character as "genuine, truthful." *Id.* at 113.

Based upon the evidence in the record, including the Psychologist's testimony that the Individual had fully complied with the treatment recommendations set forth in his Report, I find that the Individual has sufficiently mitigated the security concerns raised under Criteria H and J, by the Individual's two alcohol-related arrests, his work-related alcohol incident and the Psychologist's finding that he habitually used alcohol to excess. In addition, I was persuaded by convincing testimony provided by the Counselor that the Individual is reformed and rehabilitated from his habitual use of alcohol to excess.

## **V. CONCLUSION**

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H and J. I find that the Individual has successfully mitigated the security concerns raised under each of these criteria. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be restored at this time. The DOE may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Hearing Officer  
Office of Hearings and Appeals

Date: March 5, 2013