



The Individual requested a hearing on this matter. DOE Ex. 2. The LSO forwarded her request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. At the hearing, the DOE counsel introduced 12 exhibits into the record (DOE Exs. 1-12) and presented the testimony of one witness, the DOE psychiatrist. The Individual, represented by counsel, presented her own testimony, as well as the testimony of three witnesses: her Alcoholics Anonymous (AA) sponsor, her best friend, and her supervisor. *See* Transcript of Hearing, Case No. PSH-11-0034 (hereinafter cited as “Tr.”).

## **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) (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. The Individual’s Alcohol Use and Related Facts**

The Individual began drinking alcohol while in high school in the early 1990s. DOE Ex. 11 at 36-37. She consumed alcohol primarily in social situations, drinking a few drinks on weekends with friends a few times per month. *Id.* at 45, 47. Although the volume of the Individual’s

alcohol consumption – typically, five to six beers on each occasion – remained constant, the frequency of her drinking fluctuated slightly over the years. *Id.* at 56-63. During the 1990s, the Individual reportedly consumed alcohol two to four times per month. *Id.* at 51-56. From 2000 to 2008, the Individual drank one to two times per month. *Id.* at 59-63. From 2008 until August 2011, the Individual’s alcohol consumption decreased to once every two to three months. *Id.* at 65-66.

In August 2011, the Individual attended a professional football game with her father. *Id.* at 10. The Individual consumed approximately five 16-ounce beers during the outing. *Id.* at 12-13. The Individual drove her father home after the game and, while on her way to her home, the Individual was pulled over by a police officer for failing to fully stop at a stop sign. *Id.* at 13, 15-16. During that stop, the police officer administered field sobriety tests, which the Individual did not pass. *Id.* at 17. The Individual was transported to the police station and given a breathalyzer test, on which she registered a 0.2 breath alcohol content, more than twice the legal limit of 0.08. *Id.* at 18-19. The Individual was ultimately placed under arrest for DUI. *Id.* at 19; *see also* DOE Ex. 10.

As noted above, the Individual was evaluated by the DOE psychiatrist. Following the evaluation, the DOE psychiatrist diagnosed the Individual with Alcohol Abuse. DOE Ex. 8 at 10. Noting the Individual’s general ambivalence and lack of insight regarding her alcohol problem, the DOE psychiatrist further opined that the Individual did not demonstrate adequate evidence of rehabilitation and reformation. *Id.* at 10-11. He concluded that in order to demonstrate adequate evidence of rehabilitation and reformation, the Individual should either submit to one year of random blood alcohol screenings, attend AA meetings for one year, or participate in an alcohol abuse treatment program for six months, and establish a minimum of two years of abstinence from alcohol (alternatively, if the Individual did not submit to random blood alcohol screenings, attend AA meetings or complete a treatment program, she must demonstrate three years of abstinence). *Id.*

## **2. The Associated Security Concerns**

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). It is well-established that excessive use of alcohol raises security concerns because “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.” Adjudicative Guidelines, Guideline G, ¶ 21. *See also Personnel Security Hearing, Case No. TSO-0678 (2008).*<sup>2</sup> In light of the DOE psychiatrist’s determination that the Individual met the criteria for Alcohol Abuse, a condition which causes or may cause a

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<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

significant defect in her judgment and reliability, as well as the Individual's August 2011 DUI arrest, the LSO properly invoked Criteria H and J.

## **B. Whether the Individual Has Mitigated the Security Concerns**

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.

At the hearing, the Individual testified candidly regarding her past alcohol consumption and her initial reluctance to admit that she had a problem with alcohol. Tr. at Tr. at 21. The Individual acknowledged that although she did not drink alcohol every day, on the occasions that she did drink, she drank too much, as if she "didn't have an off switch." Tr. at 20. After her August 2011 DUI arrest, the Individual knew she had made a mistake in driving after drinking at the game and she regretted her actions, but she still did not believe she had an alcohol problem at that time. Tr. at 63. According to the Individual, a person who used to be in her life had a serious alcohol problem that interfered with that person's personal and professional life. As a result, the Individual's perception of what constituted an alcohol problem was skewed. Tr. at 33, 64. However, the Individual's evaluation with the DOE psychiatrist was "a wake-up call." Tr. at 20. After the evaluation, she began to realize that she did indeed consume too much alcohol and that her problem would continue to worsen over time if she did not address it. Tr. at 33.

The Individual testified that she has been abstinent from alcohol since October 2011, nearly five months as of the hearing. She took her last drink at a party a few days before meeting with the DOE psychiatrist. Tr. at 42. She no longer has any alcohol in her home and has disassociated herself from the friends with whom she used to go out drinking. Tr. at 47, 49.

Following her evaluation with the DOE psychiatrist, the Individual researched local AA meetings and worked out how to fit the meetings into her schedule. Tr. at 34-35. The Individual began attending a meeting close to her home. *Id.* She initially felt very out of place, but continued to attend. Tr. at 35. According to the Individual, she soon felt at ease at the meeting and realized that AA was a good program for her and that she "needed to be there." Tr. at 36-37. Since attending her first AA meeting in late October 2011, the Individual has become very active in the program. Tr. at 37-39, 53-54. She began working with a sponsor almost immediately after starting in the program. Tr. at 39-40. The Individual testified that just the initial act of contacting her sponsor took a great deal of courage for her because she had never met the sponsor before she called her. Tr. at 40. The Individual's AA meeting is very small and, at that point, the Individual was the only woman in attendance. Tr. at 39-40. The chair of the meeting suggested that the Individual call his wife to discuss whether she would sponsor the Individual

and she did so. *Id.* Since that time, the Individual meets with her sponsor at least once a week, speaks to her on the phone several times per week, and sees her at AA meetings they attend together. Tr. at 41. The Individual's sponsor is helping the Individual work on the twelve steps of the AA program and, as of the hearing, the Individual was on step eight. Tr. at 55. The Individual testified that she enjoys the AA program and looks forward to attending meetings. Tr. at 46. The Individual attends meetings two to three times per week, and she was to begin chairing an additional AA meeting two days after the hearing. *Id.* In addition to supporting her sobriety, AA has helped the Individual in other ways. Tr. at 44-46. She testified that through the work she has done in AA, she has become calmer and handles stress better. As a result, her relationship with her children has gotten stronger and her home life is more peaceful and fulfilling. *Id.* The Individual stated that AA "changed [her] life" and she plans to attend AA meetings indefinitely. Tr. at 47.

Through her participation in AA, the Individual has learned that she cannot drink alcohol in moderation and she intends to remain abstinent from alcohol in the future. Tr. at 67. She has a strong support system to help her maintain that goal. Tr. at 66. For example, the Individual relies on her sponsor and others in her AA meetings when she is under stress or is otherwise faced with situations that might have led her to drink in the past. Tr. at 60-61. In addition, her family and her friends are very supportive of her abstinence and her participation in AA. Tr. at 70.

The Individual's testimony regarding her abstinence and her work in AA was corroborated by her AA sponsor's testimony, as well as that of her best friend. Tr. at 72-100, 112-32. The Individual's sponsor, who has been in AA for nearly 20 years, testified that the Individual is becoming part of "the fellowship of AA" and goes out of her way to participate in the program. Tr. at 75, 77. The sponsor further stated that the Individual is working the 12 steps of the program and is doing well, adding that the Individual is nearly at the point where she can sponsor someone else. Tr. at 78-81. According to the Individual's AA sponsor, the Individual is highly motivated and is utilizing all of the resources that AA has to offer in order to maintain her abstinence. Tr. at 86. The sponsor also noted that the Individual has a good foundation in AA and is likely to remain abstinent from alcohol if she continues with her current efforts. Tr. at 86, 95. The Individual's best friend echoed the sentiments of the Individual's sponsor. He stated that in the past, he had confronted the Individual because he was concerned that she drank too much and placed herself in potentially unsafe situations when she drank. Tr. at 116-19. He stated that the Individual was not receptive to his concerns and continued to drink. Tr. at 119. Now, however, the Individual no longer drinks alcohol, does not have alcohol in her home, and is very active in AA. Tr. at 121. He further stated that the Individual "was proud" of her sobriety and he believes she will remain abstinent in the future. Tr. at 128. According to her best friend, the Individual has been in situations where others were drinking since beginning AA and she did not have any difficulty remaining abstinent. Tr. at 123-25.

After listening to the hearing testimony, the DOE psychiatrist did not change his diagnosis of alcohol abuse. Tr. at 134. As to the Individual's prognosis, he cited as positive factors the Individual's nearly five months of abstinence, as well as her strong support system, her very clear desire to remain abstinent, her recognition that she cannot drink in moderation, and her disassociation from her drinking friends. Tr. at 137-40. The DOE psychiatrist was most

impressed by the Individual's insight into her alcohol problem, particularly since she denied having a problem during his October 2011 evaluation. He stated that he has "rarely seen as sharp a turnaround in recognition of the problem of alcohol from a very striking denial of a problem ... ." Tr. at 136. He noted that the Individual has "embraced her sobriety," adding that he could not think of anything else she should be doing to manage her alcohol problem. Tr. at 135-36. The DOE psychiatrist found most compelling, however, the testimony regarding the Individual's consistent participation in, and strong commitment to, the AA program. Tr. at 134, 137-38, 141-43. The DOE psychiatrist opined that the Individual was unlikely to drink again in the future because "her foundation [in abstinence] is solid." Tr. at 140. Therefore, he determined, based on his prior experience in similar cases, the Individual's risk of relapse was "low." Tr. at 146.

After considering the hearing testimony and evaluating the record as a whole, I find that the Individual has mitigated the security concerns raised by her consumption of alcohol. The Individual has developed extraordinary insight into the problems caused by her past use of alcohol. She has been abstinent from alcohol for nearly five months as of the date of the hearing and intends to remain abstinent indefinitely. She no longer associates with the friends with whom she used to go out drinking and her family and current friends are supportive of her sobriety. In addition, the Individual has committed herself to the AA program and has made considerable progress since she began attending meetings in October 2011. She attends meetings on a regular basis, regularly meets with her sponsor to work on her participation in the program, and is herself now chairing meetings. Both the Individual's AA sponsor, who has nearly two decades of experience in the program, and the DOE psychiatrist believe that a relapse is unlikely. Given these factors, I find that the Individual no longer consumes alcohol, and has demonstrated adequate evidence of rehabilitation and reformation. Accordingly, I conclude, consistent with OHA precedent in alcohol abuse matters, that the Individual has mitigated the Criteria H and J concerns cited in the Notification Letter. *See, e.g., Personnel Security Hearing, Case No., TSO-0853 (2010) (individual who engaged in treatment and five and one-half months of abstinence demonstrated low risk of relapse); Personnel Security Hearing, Case No. TSO-0559 (2007) (concerns raised by alcohol use mitigated by individual's seven months of abstinence, commitment to abstinence, participation in AA, and strong support system); Personnel Security Hearing, Case No. TSO-0064 (2003) (individual who established five months of abstinence, developed exceptional insight into alcohol problem, and actively participated in AA demonstrated adequate evidence of rehabilitation and reformation); Personnel Security Hearing, Case No. TSO-0768 (2009) (concerns raised by individual's alcohol use mitigated where psychiatrists agreed that risk of relapse was low).*

#### **IV. CONCLUSION**

Upon consideration of the entire record in this case, I find that there was evidence that raised 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 fully resolve those concerns. Therefore, I conclude that restoring the Individual's suspended 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 restore the Individual's suspended 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.

Diane DeMoura  
Hearing Officer  
Office of Hearings and Appeals

Date: March 16, 2012