



TR (DSM-IV TR) criteria for Alcohol Abuse, without adequate evidence of rehabilitation or reformation. The Notification Letter finds that this diagnosis and the individual's history of legal problems with alcohol have raised security concerns under the provisions of 10 C.F.R. § 710.8(h) and (j). Enclosure 2, DOE Ex. 1.<sup>1</sup>

The individual requested a hearing (hereinafter "the hearing") to respond to the concerns raised in the Notification Letter. On February 3, 2012, the Office of Hearings and Appeals Director appointed me the Hearing Officer in this case. At the hearing I convened in this matter, I received testimony from nine witnesses. The LSO presented the testimony of the DOE-consultant Psychiatrist. The individual testified and presented the testimony of his Human Reliability Program evaluating psychologist (the HRP psychologist), his Employee Assistance Program counselor (the EAP Counselor), his Substance Abuse Counselor, his supervisor, his half-sister, his long-time friend, and his neighbor. Discussion at the hearing centered on the individual's misuse of alcohol and his past conduct that formed the bases for the LSO's Criteria H and J concerns, whether the individual had a diagnosable alcohol problem, and the individual's recent conduct and efforts at addressing his alcohol related issues.

## II. APPLICABLE STANDARDS

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard reflects a presumption against granting or restoring a security clearance. *See Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of 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).

## III. ANALYSIS OF TESTIMONY AND FINDINGS OF FACT

### A. The Individual's Diagnosis of Alcohol Abuse

The misuse of alcohol to excess is a security concern under Criterion J because it can lead to the exercise of questionable judgment. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, Assistant to the President for National Security

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<sup>1</sup> The LSO invokes Criterion J when an individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or licensed clinical psychologist as suffering from alcohol abuse or dependence without adequate evidence of rehabilitation or reformation. 10 C.F.R. § 710.8 (j). Criterion H concerns are based on a finding that an individual has an illness or mental condition 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).

Affairs (December 29, 2005) (Adjudicative Guidelines), Guideline G, ¶ 21. In his 2011 Report, the DOE-consultant Psychiatrist opined that the individual met the DSM-IV TR criteria for Alcohol Abuse. In his response to the Notification Letter and at the hearing, the individual contested this diagnosis, stating that he has not had the recurrent problems with alcohol within a twelve-month period that are a required basis for this diagnosis. At the hearing, the EAP Counselor and the HRP psychologist testified that they agreed with the individual's position. Hearing Transcript (TR) at 22, 87. The individual's half-sister, long-time friend, neighbor, and his supervisor testified that they had not observed the individual misusing alcohol. TR at 77, 53, 63-64 and 44.

As a basis for his diagnosis of Alcohol Abuse, the DOE-consultant Psychiatrist refers to the individual's arrests for DWI in 2003 and 2011,<sup>2</sup> and to reports that the individual drank to the point of intoxication on other occasions in 2003 and 2004. With respect to the individual's 2011 arrest for Aggravated DWI, the DOE-consultant Psychiatrist noted that the incident occurred after the individual had assured the LSO at a 2006 PSI that he would not drink and drive, and that the individual's blood alcohol level was measured at over three times the legal limit at his 2011 arrest. He also noted that the individual admitted at the 2011 PSI that he felt intoxicated on the evening of his arrest, but still decided to drive, and that, because he was nervous and exercising poor judgment at the time of his 2011 arrest, he told the arresting officer that he had not been drinking. Report at 4, 8. The DOE-consultant Psychiatrist did not accept the individual's assertion at their interview that he had only driven while intoxicated on the two occasions that resulted in his DWI arrests. In his Report, the DOE-consultant Psychiatrist refers to a study based on the number of drivers found to have blood-alcohol levels above the legal limit, which concludes that for every DWI arrest, there are likely to be on the order of 100 episodes in which the person has driven with a blood-alcohol level above the legal limit but was not arrested. *Id.* at 4, *citing* D. Binder, MD; Albuquerque Journal, February 12, 2002. The DOE-consultant Psychiatrist stated that, based on this research, he generally considers that any arrest after the first for DWI constitutes evidence of "recurrent impairment from alcohol use", which is sufficient to meet the DSM-IV criteria for Alcohol Abuse. *Id.* at 8. After listening to the hearing testimony of the individual and his witnesses, the DOE-consultant Psychiatrist testified that he continued to believe that his diagnosis of Alcohol Abuse was technically justified and warranted, but he stated that the individual's problem was "on the borderline or mild segment of alcohol use disorders." TR at 164.

I find that the DOE-consultant Psychiatrist correctly diagnosed the individual. The individual's blood-alcohol measurements and the arresting officer's observations in his arrest report indicate that the individual was highly intoxicated at the time of his 2011 arrest. DOE Exhibit 6 at 1. Moreover, the individual admitted that he exercised poor judgment in making a decision to drive when he was intoxicated and in telling the arresting police officer that he had not consumed any alcohol. Based on this evidence of poor decision-making by the individual after consuming alcohol, I agree that the DOE-consultant Psychiatrist's conclusion that within the twelve months

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<sup>2</sup> Following the Hearing, the individual submitted, through the DOE counsel, a court order indicating that on April 17, 2012, the court dismissed the charges relating to his September 29, 2011, arrest. The court order explains that the dismissal is due to the state's failure to follow its rules for setting the trial date. *See* Court Order attached to DOE Counsel's April 25, 2012, e-mail. This dismissal for technical reasons does not mitigate the security concerns raised by the individual's arrest and by the allegations set forth in the charging document. *See* DOE Ex. 6.

prior to his 2011 arrest, the individual in all likelihood broke the law and endangered himself and others by operating a motor vehicle with blood-alcohol levels above the legal limit. I therefore conclude that the individual was properly diagnosed with Alcohol Abuse by the DOE-consultant Psychiatrist based upon “recurrent impairment from alcohol use.” I will therefore proceed to consider whether the individual has demonstrated rehabilitation and reformation from that diagnosis.

## 2. Whether the Individual Has Resolved the Criteria H and J Concerns

In deciding whether an individual has mitigated a security concern, a Hearing Officer must consider all relevant factors having a bearing on an individual’s fitness to obtain or retain a security clearance. *See* 10 C.F.R. § 710.7(c). According to the Adjudicative Guidelines, among the factors that may serve to mitigate security concerns raised by an individual’s alcohol disorder or excessive use of alcohol are: that the alcohol misuse happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment. Other factors that may mitigate alcohol-related concerns are: that the individual has provided evidence of actions undertaken to overcome an alcohol problem and has established a pattern of abstinence or responsible use; that the individual has completed a treatment program and has demonstrated an established pattern of modified consumption of alcohol or abstinence; or that the individual is a current employee who is participating in a counseling or treatment program without a history of previous treatment or relapse and is making satisfactory progress. Adjudicative Guidelines, Guideline G, ¶ 23; *see, e.g., Personnel Security Hearing*, Case No. TSO-1020 (September 9, 2011) (individual resolved concerns raised by alcohol dependence disorder by proving that he received therapy for alcohol dependence problem and that he had abstained from alcohol for 18 months).<sup>3</sup> As discussed below, I find that the individual has mitigated the LSO’s Criteria J and H concerns.

As an initial matter, I find that the individual’s hearing testimony concerning his 2011 Aggravated DWI arrest indicates that he has been honest about his misuse of alcohol and understands that his excessive drinking led to a serious lapse of judgment. The individual testified that prior to his 2011 arrest, he was drinking to intoxication about one or two times a year. TR at 128. He stated that on the day of his arrest, his neighbor brought over a cooler containing cans of beers left over from a party. The individual stated that he consumed about eight of these beers while doing yard work, and then made “a bad decision to think that it would be all right to drive to [my girlfriend’s] house.” TR at 109-111.

I also find that the individual acted responsibly in responding to the lapse in judgment caused by his misuse of alcohol. The individual testified that he has maintained abstinence from alcohol since his September 2011 arrest, and this sobriety is confirmed by the testimony of his witnesses. TR at 10, 75-76, 49, 58 and 65. In addition, he has actively sought to educate himself concerning the effects of alcohol. He testified that he received no alcohol education after his 2003 DWI, but that following his 2011 arrest he sought counseling from the EAP Counselor in

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<sup>3</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>.

order to “correct this problem.” *Id.* at 111-112, 128. He stated that in his eight sessions with the EAP Counselor, he learned about the different effects of alcohol, and that alcoholism is a disease. TR at 129. The individual’s EAP Counselor testified that the individual took the initiative to seek counseling from him, and demonstrated a genuine desire to deal appropriately with the issues raised by his DWI. TR at 13. He stated that in their sessions, the individual was willing to own up to his alcohol consumption, that he appreciated the seriousness of his lack of judgment that resulted in his 2011 arrest, and that he learned from the information that the EAP Counselor provided to him. TR at 21.

Following this counseling, the individual enrolled in a local alcohol treatment program as a means of following the DOE-consultant Psychiatrist’s recommendations in his Report for demonstrating rehabilitation and reformation. The individual testified that in the treatment program, he is learning a lot about the problems arising from alcohol. TR at 130-131. He stated that he has had five sessions in the treatment program, and plans to continue even if his security clearance is revoked. TR at 131-132. The individual’s Substance Abuse Counselor testified that although the individual is very open in expressing that he is not convinced that he has an alcohol problem, he is also cooperative and accepts treatment to increase his understanding about how he has used alcohol in the past. TR at 152-153.

I find that the individual’s testimony assessing his past use of alcohol was honest and appropriate for someone on the borderline of an alcohol use disorder. He testified that he continues to regard his 2011 Aggravated DWI as an anomalous event, and believes that if he had a serious problem with alcohol, it would have been evident before September 2011. In this regard, he explained that in the last several years, he has been subject to hundreds of random breathalyzer tests in the workplace, and has passed them all. TR at 134. The HRP Psychologist confirmed this assertion. She testified that she is the individual’s evaluating psychologist for the HRP, and that she never had any concerns about his use of alcohol prior to his 2011 DWI. TR at 81-82. Despite having doubts about having an alcohol problem, the individual testified that he appreciated the DOE’s concerns about his future judgment and reliability when consuming alcohol. He stated that he would be willing to continue abstaining from alcohol indefinitely if that is necessary to convince the DOE that he will exercise good judgment. TR at 139-140.

The individual’s counselors and medical professionals who testified in this proceeding uniformly considered the individual to be at low risk for future alcohol problems. The HRP Psychologist stated that she considered the individual’s 2011 DWI arrest to be an anomalous instance of exceptionally poor judgment by the individual, and that the individual was very unlikely to make that mistake again. TR at 81-82, 92. The EAP Counselor testified that he believed that the individual could maintain his current sobriety indefinitely, although he did not believe that the individual fell into the category of people who should never consume alcohol. He opined that the individual’s prognosis is very good that he will have no future problems with alcohol. TR at 23-24. The Substance Abuse Counselor testified that the individual’s prognosis is very good because he has a very positive attitude about not drinking again in order to keep his job. TR at 154-155.

Finally, after listening to the testimony of the individual and his witnesses, the DOE-consultant Psychiatrist testified that the individual has demonstrated adequate evidence of rehabilitation and

reformation from the diagnosis of Alcohol Abuse based on six months of sobriety coupled with EAP counseling and alcohol treatment. He stated that due to the mild nature of the individual's alcohol use disorder, under the facts of this case, the six months of abstinence and treatment are sufficient to demonstrate rehabilitation and reformation from the diagnosis. TR at 164. He also opined that the individual's efforts to voluntarily comply with the recommendations of the Report by seeking EAP counseling and alcohol treatment, the positive prognosis made by the individual's treatment providers, and the individual's commitment to his work indicate that he is at low risk to have future alcohol problems. TR at 165.

Accordingly, based on this evidence, I conclude that the individual has mitigated the LSO's Criteria J and H concerns.

#### IV. CONCLUSION

For the reasons set forth above, I find that the individual was properly found to suffer from Alcohol Abuse, which is derogatory information under Criterion J, and that his Alcohol Abuse caused a significant defect in his judgment and reliability, raising a concern under Criterion H. Further, I find that this derogatory information under Criteria J and H has been mitigated by evidence of rehabilitation and reformation. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods  
Hearing Officer  
Office of Hearings and Appeals

Date: May 3, 2012