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**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of:	Personnel Security Hearing ) )	Case No.:	PSH-12-0014
Filing Date:	February 23, 2012 ) )		

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Issued: June 1, 2012

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**Hearing Officer Decision**  
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Diane DeMoura, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (“the Individual”) to hold a Department of Energy (DOE) access authorization.<sup>1</sup> This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual should be granted DOE access authorization. For the reasons detailed below, I find that the DOE should not grant the Individual access authorization at this time.

**I. BACKGROUND**

The Individual, a 48-year-old employee of a DOE contractor, is an applicant for DOE access authorization. DOE Ex. 3. During the application process, the Individual completed a Questionnaire for National Security Positions (QNSP) in May 2011, and participated in an August 2011 Personnel Security Interview (PSI). DOE Exs. 8, 9. After the PSI, the local security office (LSO) referred the Individual to a DOE consultant-psychiatrist (“the DOE psychiatrist”) for an evaluation. The DOE psychiatrist evaluated the Individual in September 2011 and issued a report. DOE Exs. 6, 7. After reviewing the Individual’s personnel security file, the LSO informed the Individual in a January 2012 Notification Letter that there existed derogatory information that raised security concerns under 10 C.F.R. §§ 710.8 (h) and (j) (Criteria H and J, respectively) (alcohol-related concerns). See Notification Letter, January 24,

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<sup>1</sup> 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.

2012. The Notification Letter also informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the security concerns. *Id.*

The Individual requested a hearing on this matter. DOE Ex. 2. The LSO forwarded his request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. At the hearing, the DOE counsel introduced ten exhibits into the record (DOE Exs. 1-10) and presented the testimony of one witness, the DOE psychiatrist. The Individual presented his own testimony, as well as the testimony of eight witnesses: his wife, his son, his daughter, two friends, his co-worker/team lead, his AA sponsor, and his counselor. *See* Transcript of Hearing, Case No. PSH-12-0014 (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 when he was 18 years old, and continued drinking throughout his adult years. DOE Ex. 7 at 2. The Individual's alcohol consumption increased over time. *Id.* at 3. In September 2005, the Individual was arrested for aggravated Driving While Intoxicated (DWI). *Id.* He was arrested for a second aggravated DWI less than seven months later in April 2006. *Id.* at 4. As a result of the second DWI arrest, the Individual participated in a court-mandated substance abuse treatment program and attended Alcoholics Anonymous (AA) meetings. *Id.* at 5-6. The Individual continued to drink alcohol after the two DWI arrests and subsequent treatment. *Id.* at 6.

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. 7 at 9, 11. The DOE psychiatrist further opined that the Individual did not demonstrate adequate evidence of rehabilitation and reformation. *Id.* at 12. He concluded that in order to demonstrate adequate evidence of rehabilitation and reformation, the Individual should engage in an outpatient treatment program "of moderate intensity," such as participating in an outpatient substance abuse counseling program or attending AA meetings while working with an AA sponsor. *Id.* The DOE psychiatrist also noted that the Individual's treatment program should include complete abstinence from alcohol and should last at least one year. *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 the 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 significant defect in his judgment and reliability, as well as the Individual's prior DWI arrests, 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

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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>.

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 that he has been abstinent from alcohol since July 2011, approximately nine months as of the hearing. Tr. at 124. According to the Individual, he stopped drinking alcohol because he began having health problems, and abstaining from alcohol helped him feel better. *Id.* The Individual stated that the DOE psychiatrist’s report helped him understand the issues he had with alcohol. Tr. at 124. After receiving the DOE psychiatrist’s report approximately two months prior to the hearing, the Individual sought out an intensive outpatient treatment program (IOP), a ten week program that combined individual and group counseling, to address his alcohol problem. Tr. at 126. The Individual found the IOP helpful and planned to continue in the aftercare group after he completed the 10-week program. Tr. at 133. The Individual began attending AA meetings and, with the help of a sponsor, is working the program’s twelve steps. Tr. at 133-34. The Individual intends to continue participating in AA indefinitely. *Id.* Through his work in the IOP and in AA, the Individual learned that he cannot drink alcohol in moderation and he intends to remain abstinent from alcohol in the future. Tr. at 128, 140. The Individual’s testimony regarding his abstinence from alcohol and his intention to remain abstinent in the future was corroborated by his friends and family. 54, 105-06, 117. The Individual’s wife, son, and daughter each testified that the Individual last consumed alcohol in July 2011 during a family vacation. Tr. at 54, 102, 112. They also noted that, since he stopped drinking alcohol, the Individual’s health has improved, and their family relationships have strengthened. Tr. at 56, 105, 113-14.

The Individual’s counselor and AA sponsor each testified that the Individual was reluctant to fully participate in the programs at the beginning, but his attitude quickly changed. Tr. at 16, 67. According to the Individual’s counselor, the Individual is fully involved in the IOP and has complied with all of the program’s requirements. Tr. at 16-17. The Individual attends group counseling sessions three times per week, each session lasting three hours, in addition to a weekly one-hour individual counseling session. Tr. at 14. In addition to his IOP attendance, according to the Individual’s AA sponsor, the Individual attends a minimum of two AA meetings per week and meets with the sponsor for an additional one to three hours per week. Tr. at 64-65. The Individual’s sponsor stated that the Individual is very eager to work the program and feels “a calling” to help others in the program. Tr. at 72, 81. The Individual’s friends and family have noticed that the Individual enjoys both the IOP and AA and has found the programs helpful. Tr. at 55-56, 87-90, 104, 115.

After listening to the hearing testimony, the DOE psychiatrist did not change his diagnosis of alcohol abuse. Tr. at 148.. He cited the Individual’s nine-month period of abstinence and two months of treatment as positive factors, and he also noted that the Individual appeared to have made significant progress in addressing his past issues of denial and minimization of his alcohol problem. Tr. at 143, 145-46. However, the DOE psychiatrist opined that, despite the Individual’s progress, he had not yet established adequate evidence of rehabilitation and reformation from alcohol abuse, and the Individual’s risk of relapse remained at a moderate

level. Tr. at 148-49. In this regard, the DOE psychiatrist noted that the Individual had taken all of the necessary steps to address his alcohol problem, but needed additional time in order to be fully rehabilitated and reformed. Tr. at 152.

Based on the foregoing, it is clear that the Individual has begun taking important steps to treat his alcohol problem. He has acknowledged his alcohol problem, regularly attends substance abuse counseling sessions, and actively participates in AA meetings. However, although the Individual has remained abstinent for approximately nine months as of the hearing, and has engaged in two months of treatment, he has a history of significant alcohol consumption throughout his adulthood that includes two alcohol-related arrests. In light of these factors, I find that the Individual is in the early stages of his recovery. In this regard, I found compelling the testimony of the DOE psychiatrist that the Individual's current period of abstinence is not sufficient to establish adequate evidence of rehabilitation and reformation, and that his current risk of relapse remains at a moderate level. Given these facts, I cannot conclude at this time that the Individual has adequately mitigated the Criteria H and J concerns raised by his past alcohol use. *See Personnel Security Hearing, Case No. TSO-1087, (2011); Personnel Security Hearing, Case No. TSO-0888 (2010); Personnel Security Hearing, Case No. TSO-876 (2010).*

#### **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 not presented sufficient information to fully resolve those concerns. Therefore, I cannot conclude that granting the Individual 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 not grant the Individual access authorization at this time.

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: June 1, 2012