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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:	September 2, 2011)	Case No.:	TSO-1106
)		

Issued: December 21, 2011

Hearing Officer Decision

Diane DeMoura, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (“the Individual”) to hold a Department of Energy (DOE) access authorization.¹ This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual should be granted a 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 is an applicant for a DOE access authorization in connection with his employment with a DOE contractor. DOE Ex. 3. During the application process, the Individual completed a Questionnaire for National Security Positions (QNSP) in June 2010, and participated in an October 2010 Personnel Security Interview (PSI). DOE Exs. 7, 8. After the PSI, the local security office (LSO) referred the Individual to a DOE consultant-psychologist (“the DOE psychologist”) for an evaluation. The DOE psychologist evaluated the Individual in February 2011 and issued a report. DOE Ex. 10. After reviewing the Individual’s personnel security file, the LSO informed the Individual in a June 2011 Notification Letter that there existed derogatory information that raised security concerns under 10 C.F.R. § 710.8 (j) (Criterion J) (alcohol-related concerns). *See* Notification Letter, June 30, 2011. 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.*

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. DOE Ex. 4. 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 psychologist. The Individual presented his own testimony, as well as the testimony of nine witnesses: his wife, his mother, his brother, two friends, and four coworkers. *See* Transcript of Hearing, Case No. TSO-1106 (hereinafter cited as “Tr.”). The Individual also tendered one exhibit. Individ. Ex. A.

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) (the 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 Criterion J

1. The Individual’s Alcohol Use and Related Facts

The Individual began drinking alcohol over 30 years ago, at age 18. DOE Ex. 8 at 7. His heaviest period of alcohol use occurred during his mid-20s to mid-30s, when he often socialized at bars. *Id.* at 8. The Individual had two alcohol-related arrests in the 1980s, the second of

which resulted in a sentence of 28 days of house arrest, nine months of probation, and community service. DOE Ex. 9 at 53. The Individual continued to drink in social settings, although the frequency of his alcohol consumption decreased when he married his second wife in 1993. DOE Ex. 8 at 8-10. In a February 2008 incident, the Individual, returning from working out of town for an extended period, stopped to see his wife at the local bar where she worked before he went home. DOE Ex. 8 at 4. The Individual consumed five beers and two shots over a two-hour period before driving home. *Id.*; DOE Ex. 10 at 3. He was pulled over by a police officer for speeding. During that stop, the police officer administered field sobriety tests, including a breathalyzer test on which the Individual registered a 0.16 breath alcohol content, twice than the legal limit of 0.08. The Individual was arrested for DUI at the scene. *Id.*

The Individual disclosed the February 2008 arrest on his June 2010 QNSP and discussed the arrest during his October 2010 PSI. DOE Exs. 7, 8. The LSO subsequently referred the Individual to the DOE psychologist for an evaluation. DOE Ex. 10. Following the February 2011 evaluation, the DOE psychologist diagnosed the Individual with Alcohol Abuse. DOE Ex. 10 at 4. The DOE psychologist further opined that the Individual did not demonstrate adequate evidence of rehabilitation and reformation. *Id.* He concluded that in order to do so, the Individual should participate in an intensive outpatient treatment program during which he would attain necessary alcohol awareness education, develop a plan to either maintain abstinence or “a cognitive behavioral treatment of controlled drinking [with] absolute limits on [his] alcohol consumption,” and demonstrate adherence to that plan for a period of at least one year. *Id.*

2. The Associated Security Concerns

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.” 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) (the Adjudicative Guidelines), Guideline G, ¶ 21. *See also Personnel Security Hearing*, Case No. TSO-0678 (2008). 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 pattern of alcohol-related arrests, the LSO properly invoked Criterion 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 ... 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 ... 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.” Guideline G, ¶ 23.

At the hearing, the Individual testified that he has been abstinent from alcohol since he received a copy of the DOE psychologist’s report in July 2011, approximately three months as of the hearing. Tr. at 97. According to the Individual, the 2008 DUI arrest caused him to decrease his drinking. Tr. at 97-99. He participated in a court-ordered alcohol assessment following the 2008 DUI arrest, but did not undergo any substance abuse treatment or participate in alcohol awareness education courses. Tr. at 112-13. The Individual currently intends to remain abstinent from alcohol, but has not ruled out consuming alcohol in moderation in the future. Tr. at 105-06. The Individual’s wife, mother, and brother corroborated the Individual’s testimony that he used to drink alcohol more frequently, and in greater amounts, when he was younger. Tr. at 60, 71, 79-80. They also testified that his alcohol consumption decreased after the 2008 DUI and stopped altogether several months prior to the hearing. Tr. at 62, 73, 84-85. The Individual’s friends and co-workers testified that they have never known the Individual to have any alcohol-related problems. Tr. at 16, 23, 28, 37, 49, 92.

After listening to the hearing testimony, the DOE psychologist did not change his diagnosis of alcohol abuse. Tr. at 137-38. He opined that, although the Individual had not experienced any alcohol-related personal or professional problems since the 2008 DUI arrest, the Individual remained vulnerable to a return to problem drinking. Tr. at 139-40. The DOE psychologist noted that the Individual’s alcohol-related arrests each occurred following social outings where the Individual drank more than intended prior to driving. Tr. at 125-26. The DOE psychologist remained concerned that the Individual did not fully appreciate his vulnerability to problem drinking or drinking to excess, particularly in social situations. Tr. at 140, 144. The DOE psychologist stated that, in order to strengthen his prognosis, the Individual should participate in alcohol awareness education or counseling. Tr. at 142-43. He concluded that, without such education or counseling, the Individual’s current risk of relapse was “low to moderate.” Tr. at 143.

Based on the foregoing, I cannot conclude that the Individual has mitigated the security concerns raised by his consumption of alcohol. The Individual’s purported three-month period of abstinence from alcohol is a positive factor. However, he has a history of significant alcohol use spanning over 30 years that includes several alcohol-related arrests. In addition, the Individual has taken no steps to address the concerns regarding his lack of insight into his use of alcohol to excess, particularly in social situations. This is of particular concern given the Individual’s own statement that, while he is currently abstinent from alcohol, he may resume consuming alcohol in the future. In light of these factors, I agree with the DOE psychiatrist that the Individual’s current risk of relapse remains elevated. Consistent with OHA precedent in alcohol-related cases, I find that risk is unacceptably high. *See Personnel Security Hearing*, Case No. TSO-0888 (2010); *Personnel Security Hearing*, Case No. TSO-876 (2010); *Personnel Security Hearing*, Case No. TSO-768 (2009).

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 Criterion 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: December 21, 2011