

LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. The LSO informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. Exhibit 4. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a hearing officer in order to resolve the substantial doubt concerning his eligibility for an access authorization.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and I was appointed the hearing officer. The DOE introduced eleven exhibits into the record of this proceeding. The individual introduced three exhibits, and presented the testimony of four witnesses, in addition to his own testimony.

II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

The Notification Letter cited information pertaining to paragraph (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. *Id.* at 3.³ Under this criterion, the LSO cited (1) the individual's history of prior alcohol treatment followed by resumption of alcohol use; (2) an October 1, 2007 workplace blood alcohol test given the individual which indicated his blood alcohol content was 0.04%; and (3) a December 2010 report of the DOE psychiatrist, including a diagnosis that the individual suffered from Alcohol Abuse. *Id.* at 3-4.

This undisputed information adequately justifies the DOE's invocation of criterion (j), as it raises significant security concerns related to excessive alcohol consumption, which often leads to the exercise of questionable judgment or the failure to control impulses, and calls into question the individual's future reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Adjudicative Guidelines)*, The White House (December 19, 2005), Guideline G.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a hearing officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether restoring the individual's security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

³ Criterion (j) defines as derogatory information that an individual has "[b]een, 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. § 708.8(j).

A DOE administrative proceeding under 10 C.F.R. Part 710 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). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. ANALYSIS

The individual has not disputed the diagnosis of Alcohol Abuse in the DOE psychiatrist’s December 2010 report. However, the individual testified that he has abstained from consuming alcohol since June 3, 2010, and he has presented evidence that he completed a treatment program on July 16, 2010, as noted above, and thereafter participated in an aftercare program through January 2011. Hearing Transcript (Tr.) at 31; Exhibit B. The individual further testified that he has “participated heavily” in Alcoholics Anonymous (AA) and has had a sponsor for 15 months. Tr. at 26. More specifically, he stated that until March 2011, he attended four or five times per week. *Id.* at 64. He acknowledged that he stopped attending AA in March 2011, but began attending again in September 2011, and at the time of the hearing was attending two to three meetings a week and talking to his sponsor at least three times a week. *Id.* at 64-65.

The DOE psychiatrist was present for the entire hearing and testified last. He stated that he found no indication that the individual “was distorting or not being forthright” regarding his history of alcohol use, and that it “is pretty clear and it’s undisputed by him or anyone that he has a fairly serious and longstanding history of alcohol abuse, which changed, as has been indicated today, as of June 2010.” *Id.* at 95-96. He noted that, while the individual had only been sober for six months at the time he evaluated the individual, “we now have 17 months of absolute sobriety and we usually use a twelve-month period to say now we have passed a juncture where we have some great confidence.” *Id.* at 104. According to the psychiatrist, the length of the individual’s period of sobriety gave him a “chance to develop new coping strategies, if you will, with stressful situations.” *Id.*

The psychiatrist testified that the individual had “done everything that I expected him to do in the report,” though he did recommend continued monitoring of the individual through, for example, monthly visits to an employee assistance counselor. *Id.* at 103. Regarding the individual’s “support system,” the psychiatrist noted the “poignant testimony from [the individual’s wife] that she has regained trust and confidence in him and that they have a loving relationship. And I think that is really critical.” *Id.* at 100. He found that the individual also had support at work, citing the testimony of the individual’s co-workers. *Id.* at 100-01.

In his questioning of the psychiatrist, the DOE counsel noted that the individual had been counseled regarding his alcohol use by at least two prior treatment professionals and nonetheless had thereafter continued to abuse alcohol. Asked why one should not expect the same outcome after the individual’s most recent treatment, the DOE psychiatrist stated that he did not think the individual “had the kind of extensive or intensive rehabilitative efforts” in the earlier instances, and “the other thing, which is perhaps most critical, is that I think he knows he will lose his marriage and his family if he slips again. And I don’t think that is something he is going to risk.” *Id.* at 106. Thus, the

psychiatrist concluded that the individual's "prognosis is good" and that his risk of relapse is low. *Id.* at 108-09.⁴

There is no dispute in this case that the individual's past history of excessive alcohol use provided legitimate cause for concern from the point of view of the national security. Were that pattern of use to have continued, the risk caused by the regular compromise of the individual's judgment and reliability clearly would have been too high to allow him to hold a security clearance. However, it is apparent to me that the individual recognizes this, has received appropriate education and treatment, and has adapted his behavior accordingly. Based upon my review of the entire record, and in particular the hearing testimony of the DOE psychiatrist, I am convinced that the risk of the individual using alcohol to excess in the future is now low enough that the security concerns raised in this case have been resolved.

V. CONCLUSION

For the reasons set forth above, I conclude that the individual has resolved the DOE's security concerns under criterion (j). Therefore, the individual has demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should restore the individual's security clearance. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: January 17, 2012

⁴The DOE psychiatrist testified that it would be "helpful" to have "documentation and/or even a letter in lieu of testimony from the people who treated him and, even possibly his AA sponsor, to verify that the kind of reports that we are hearing today are confirmed by professionals." Tr. at 99. After the hearing, the individual submitted a letter from his treatment provider confirming his completion of the treatment program and aftercare. Exhibit B. The individual did not produce a statement from his AA sponsor. This is not necessarily surprising, given that, as the individual pointed out at the hearing, for the sponsor to identify himself "kind of contradicts the whole point of AA, . . ." Tr. at 111. Thus, though we have, in prior cases, heard testimony from AA sponsors who have been willing to forgo their anonymity, *see, e.g., Personnel Security Hearing*, Case No. TSO-0591 (2008), I will not draw a negative inference from the lack of such testimony in this case.