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

In the Matter of Personnel Security)
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Filing Date: August 8, 2012) Case No. PSH-12-0104
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_____)

Issued: December 13, 2012

Decision and Order

Kimberly Jenkins-Chapman, Hearing Officer:

This Decision concerns the eligibility of xxxxxxxxxxxxxxxx hereinafter referred to as “the individual”) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual’s access authorization should not be granted.

I. Background

The individual is an applicant for a DOE security clearance. In April 2012, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address his alcohol use. In addition to the PSI, the LSO requested the individual’s medical records and recommended a psychiatric evaluation of the individual by a DOE consultant psychiatrist (DOE psychiatrist). The DOE psychiatrist examined the individual in May 2012 and memorialized his findings in a report (Psychiatric Report). According to the DOE psychiatrist, the individual suffers from Alcohol Dependence. The DOE psychiatrist further concluded that the individual’s Alcohol Dependence is a mental illness that causes or may cause a significant defect in his judgment and reliability.

^{1/} Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a).

In July 2012, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, notably subsections (h) and (j) (hereinafter referred to as Criterion H and Criterion J, respectively).²

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the DOE Counsel called one witness, the DOE psychiatrist. The individual presented the testimony of two witnesses, a nurse practitioner and his wife. He also testified on his own behalf. The DOE and the individual submitted a number of written exhibits prior to the hearing.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting his 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 individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

^{2/} Criterion H relates to information that a person has "[a]n illness or mental condition of a nature 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). Criterion J relates to information that a person 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. § 710.8(j).

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As stated above, the LSO cites two criteria as bases for denying the individual's security clearance: Criteria H and J. To support Criterion H, the LSO relies on the diagnosis of the DOE psychiatrist that the individual suffers from Alcohol Dependence.

As for Criterion J, the LSO cites the DOE psychiatrist's opinion and the following additional information: (1) the individual admitted that he drinks too much and maybe addicted; (2) the individual admitted that in 2009, his wife and children expressed concern regarding his health due to his consumption of alcohol. Also, in 2009, during a marriage counseling session, the individual's wife stated that the individual "is in his own little world when he drinks." Despite these expressed concerns, the individual continued to consume alcohol; (3) the individual admitted that in 2009, his consumption of alcohol increased due to stress. During that time, he would consume eight beers and three shots of tequila on weekends; and (4) the individual admitted that in 1984, his wife told him that he was drinking too much. During that time, he was consuming five beers and a Jack Daniels Manhattan each evening. In response to his wife's concerns, he stopped drinking the Manhattan, but continued consuming five beers each evening. *See* DOE Exh. 1.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under both Criteria H and J. First, a mental condition such as Alcohol Dependence can impair a person's judgment, reliability and trustworthiness. *See* Guideline I of the *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*). Second, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G.

IV. Findings of Fact

By his own account, the individual has been drinking alcohol since the age of 16. DOE Exh. 3. By the age of 18, he would drink up to four beers on occasion and would drink to intoxication once or twice a year. *Id.* While in college, the individual drank every couple of weeks at parties. *Id.* After college, he got married in 1969, and began to consume two to three beers a few days a week. *Id.* His drinking gradually increased so that by 1984, the individual was consuming up to five beers, on average, four days a week. *Id.*

For one year, in 1984, the individual would consume a Manhattan (whiskey and another alcohol). *Id.* His wife expressed concern for his health and he decreased his alcohol consumption by eliminating the Manhattans. *Id.*

In 1989, the individual moved to another state and his alcohol consumption increased. He started to drink three to four 12-ounce beers each weeknight and seven to eight beers each weekend. *Id.* According to the individual, he typically drank until he was “tipsy” on the weekends. *Id.* In 1990, the individual purchased a tap and converted a refrigerator into a system for refrigerated draft beer. *Id.* His alcohol consumption continued to gradually increase. By 2009, he was consuming eight to nine 12-ounce beers a day, to the point where he felt “tipsy.” *Id.* His wife expressed concern again about his drinking while they were in a marital counseling session, so the individual sought treatment to reduce his consumption. *Id.* During treatment, the individual managed to reduce his consumption to his goal of two beers each night. However, he did not remain at that rate long and increased his consumption to five beers almost every night. The individual admits that in 2009, he drank the most and that his consumption increased due to stress. During that time, he admitted to consuming eight beers and three shots of tequila on weekends. *Id.*

V. Analysis

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).³ After due deliberation, I have determined that the individual’s access authorization should not be granted. I cannot find that granting the individual’s security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. The Diagnosis of Alcohol Dependence

The DOE psychiatrist explained in detail in the Psychiatric Report and at the hearing how the individual met the diagnostic criteria set forth in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, Text Revision (DSM-IV-TR) for Alcohol Dependence. DOE Exh. 4, Transcript of Hearing (Tr.) at 98-111. The individual does not dispute the DOE psychiatrist’s diagnosis of Alcohol Dependence. Therefore, the focus of the analysis will be on whether the individual has demonstrated adequate evidence of rehabilitation or reformation from Alcohol Dependence.

^{3/} Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

B. Evidence of Rehabilitation and Reformation from Alcohol Dependence

During the hearing, the individual testified that he had no idea that his level of alcohol consumption was a problem. Tr. at 80. According to the individual, at the time of his evaluation with the DOE psychiatrist, he was consuming four to five beers a night and did not believe he was intoxicated. When questioned about his future intentions regarding his alcohol consumption, the individual testified that he would prefer not to abstain completely from alcohol. He stated that he enjoys drinking beer, but would reduce his consumption. *Id.* at 86. The individual further testified that in the preceding month, he had reduced his consumption to two beers a day and had abstained from alcohol for a total of seven days (non-consecutive). *Id.*

During the hearing, the individual offered the testimony of a psychiatric/mental health nurse practitioner who testified that he has been seeing the individual since September 2012 and the individual is being treated for Alcohol Abuse. *Id.* at 13. He testified that individual initially met with a board-certified psychiatrist, who recommended that the individual adjust his consumption, a harm reduction strategy, and follow-up with the nurse practitioner. *Id.* at 14. During the course of his treatment, the individual successfully managed to reduce his consumption. He testified that as of the date of the individual's last follow-up, October 2012, the individual was able to abstain from alcohol for seven days and did not exhibit any withdrawal symptoms. *Id.* According to the nurse practitioner, initially the individual's treatment goal was to reduce his alcohol consumption to one to two drinks daily. *Id.* at 16. He testified that he now recommends that the individual abstain from alcohol to preserve his overall physical health due to concerns of high blood pressure and potential for liver disease. Finally, the nurse practitioner testified that the individual's prognosis is fairly good, but noted that he is only in the beginning stages of treatment. *Id.* at 24.

The individual's wife testified that she is proud that the individual has taken his alcohol reduction seriously. *Id.* at 44. She added that the individual has followed through with the motivation to reduce his consumption of beer. The wife testified that the most she has seen her husband drink is seven to eight beers on a weekend. She noted that the individual was raised in a dysfunctional, alcoholic family, and that he listened to her concern with his drinking and took it seriously. According to the wife, she never sensed that the individual was trying to escape a problem through his drinking, but rather just liked the taste of beer. *Id.* at 50. Although she believes her husband is only a social drinker, she testified that he has had a number of physical benefits due to his decreased consumption, including lower blood pressure. *Id.* at 51. Finally, the wife corroborated the individual's testimony that he has been abstinent from alcohol for about seven days.

The DOE psychiatrist listened to all the testimony at the hearing before testifying himself. He noted that the individual has only abstained for seven days, although he recommended in his report that the individual abstain for one year. *Id.* at 101. The DOE psychiatrist testified that he has not changed his opinion and still believes that the individual should be abstinent for one year, a recognized standard for Alcohol Dependence, to achieve adequate evidence of rehabilitation. He noted that the individual has not been able to control his abstinence for more than seven days.

Id. at 103. He further testified that while he prefers that the individual enter an intensive outpatient treatment program, he would exchange this requirement for the individual's participation in Alcoholics Anonymous. According to the DOE psychiatrist, the individual's prognosis in the short term is not good, but if the individual abstains for one year, his risk of relapse is low. *Id.*

C. Hearing Officer's Evaluation of the Evidence

In the administrative process, Hearing Officers accord deference to the expert opinions of psychiatrists, psychologists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing*, Case No. TSO-0728 (2009).⁴ The DOE psychiatrist convinced me that the individual needs at least one year of abstinence to be considered adequately rehabilitated. Although the individual has stated that he has reduced his alcohol consumption, it is clear that the individual is only in the very early stages of recovery. During the hearing, the individual acknowledged that he would prefer not to abstain and still enjoys drinking beer. As of the date of hearing, he has only abstained from alcohol for a period of seven, non-consecutive days. Therefore, the individual has not yet established a pattern of abstinence. *See Adjudicative Guidelines* at Guideline G ¶ 23(b). Based on the foregoing, I find that the individual has not demonstrated adequate evidence of rehabilitation at this time. For this reason, I find that he has not mitigated the security concerns under Criteria H and J.

D. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H and J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the individual has not brought forth convincing evidence to mitigate the security concerns associated with Criteria H and J. I therefore cannot find that granting the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: December 13, 2012

^{4/} Decisions issued by 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>.