



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 the OHA Director appointed me as the Hearing Officer. The DOE introduced 18 exhibits into the record of this proceeding and presented the testimony of the DOE Psychologist. The Individual introduced one exhibit and presented the testimony of two witnesses in addition to his own testimony. *See* Transcript of Hearing, Case No. PSH-12-0145 (hereinafter cited as “Tr”).

## **II. FACTUAL FINDINGS AND THE ASSOCIATED SECURITY CONCERNS**

The Part 710 regulations require that I “make specific findings based upon the record as to the validity of each of the allegations” in the Notification Letter. 10 C.F.R. § 710.27(c). In this case, the Notification Letter cites paragraphs (h) and (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8 (Criteria H and J, respectively). Ex. 1.<sup>2</sup> The Individual does not dispute the factual accuracy of the Criteria H and J derogatory information described in the Notification Letter. I record my factual findings below.

In July 2004, local police arrested the Individual for being a minor in possession of alcohol. Ex. 17 at 62-63, 101-02, 105; Ex. 14. The Individual had consumed alcohol prior to the arrest. Ex. 17 at 102; Ex. 18 at 91. In July 2005, pursuant to an incident where the Individual was a passenger in a vehicle that was involved in a “hit and run” accident, the Individual was detained by local police for alcohol detoxification. Ex. 17 at 61-63, 101-02, 105; Ex. 14; Ex. 16 at 12.

The Individual was arrested in July 2012 for DWI. Ex. 13. At the time of the arrest, the Individual had a breath alcohol content of 0.111 and 0.107 percent, both of which were over the legal limit for operating a motor vehicle. Ex. 17 at 30. Prior to the arrest the Individual had consumed seven 12-ounce containers of beer and one shot of hard alcohol. Ex. 17 at 30-31. During the 2012 PSI, the Individual admitted that he had driven under the influence of alcohol three to four times in the prior year. Ex. 17, 58. Shortly after the DWI arrest, the Individual entered an intensive outpatient treatment program (IOP) for his alcohol issues. Ex. 11.

After examining the Individual, the DOE Psychologist, in October 2012, issued a report diagnosing the Individual as suffering from Alcohol Abuse and finding that the Individual had not demonstrated adequate evidence of rehabilitation or reformation. Ex. 10 at 5-6. Additionally,

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<sup>2</sup> Criterion H refers to information indicating that an individual suffers from “[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 describes information showing 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. § 710.8 (j).

The Notification Letter also described derogatory information under 10 C.F.R. § 710.8 (l) (Criterion L) pertaining to the Individual. At the hearing, the DOE Counsel stipulated that none of the Criterion L derogatory information raised a security concern and that the Individual’s alcohol problem was the only security concern at issue in the present case. Tr. at 30.

the DOE Psychologist determined that the Individual's illness was a condition that could cause a significant defect in the Individual's judgment and reliability. Ex. 10 at 5. In making this diagnosis, the DOE Psychologist cited the Individual's prior admission that he had driven under the influence of alcohol on three or four occasions in the past year. Ex. 10 at 5. As further support for his diagnosis, the DOE Psychologist noted that, based upon the Individual's admissions during the examination, the Individual had driven under the influence of alcohol at least 20 times during his lifetime. Ex. 10 at 5. To show adequate evidence of rehabilitation, the DOE Psychologist opined that the Individual should complete the IOP and maintain abstinence from alcohol for nine months after his completion date of the IOP. Ex. 10 at 5.

Excessive alcohol consumption raises a security concern because it can lead to questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued by the Assistant to the President for National Security Affairs*, The White House (December 29, 2005) (*Adjudicative Guidelines*), Guideline G; *Personnel Security Hearing*, Case No. TSO-0927 (2010). Given the DOE Psychologist's opinion indicating that the Individual suffers from Alcohol Abuse, a disorder that could cause a significant defect in judgment or reliability, the LSO had sufficient grounds to invoke Criteria H and J.

### **III. REGULATORY STANDARDS**

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictates 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 granting the individual a 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). In considering these factors, the Hearing Officer also consults the *Adjudicative Guidelines* that set forth a more comprehensive listing of relevant factors.

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 presented witnesses to support his claim that he has undergone successful treatment with his participation in the IOP and that he is now rehabilitated from his Alcohol Abuse problem.

A co-worker (Co-Worker) with the Individual testified that he has known the Individual for approximately two years. Tr. at 9, 13. The Co-Worker trained with the Individual in preparation for their employment at the DOE facility. Tr. at 14. During the time they trained, the Co-Worker never observed the Individual wanting to go to bars or to parties. Tr. at 12. At work, the Individual always followed employer rules. Tr. at 14. The Co-Worker testified that the Individual, before he stopped consuming alcohol, would occasionally consume a few beers with his friends but never consumed alcohol the day prior to a workday at the facility. Tr. at 15.

The Co-Worker participated in the IOP with the Individual and described the IOP as consisting of classes four times a week for five weeks. Tr. at 16, 20. The Co-Worker testified that, at first, the Individual “felt sorry for himself” but as the Individual progressed in the IOP, his attitude changed and the Individual realized that he had an alcohol problem. Tr. at 11, 14. The Co-Worker noted that the Individual began to realize that, if he abstained from alcohol he would not get into trouble. Tr. at 14, 15. The Co-Worker believes that the Individual now does not ever want to consume alcohol in the future because of the effect alcohol misuse might have on his employment and his ability to support his daughter. Tr. at 15.

The Co-Worker also testified that the Individual now focuses on stress reduction without using alcohol. Tr. at 17. Additionally, the Individual has been undergoing instruction to prepare him to join a church. Tr. at 17. In this regard, the Individual has sought the help of another co-worker to mentor him during this process. Tr. at 18. The Individual also spends time in working out and exercising. Tr. at 17. The Co-Worker believes the Individual to be honest and to have excellent judgment and reliability. Tr. at 23.

A friend of the Individual (Friend) testified that he has known the Individual for two years and spends most weekends with the Individual. Tr. at 52, 54. Since the Individual’s DWI, the Individual has not consumed alcohol and acts as the “designated driver” when they go to social events. Tr. at 53. Since the Individual’s participation in the IOP, the Individual attitude towards alcohol has changed and the Individual has spoken to the Friend regarding the Friend’s alcohol consumption. Tr. at 54-55. Because of the Individual, the Friend has reduced his own consumption of alcohol and now realizes that he does not need alcohol to enjoy the weekends. Tr. at 53.

The Individual testified that he exercised poor judgment in the events that led to his DWI arrest. Tr. at 39. The Individual entered the IOP program two days after this arrest. Tr. at 31. He completed the program in August 2012. Tr. at 31. After completing the IOP, the Individual began to attend the voluntary weekly aftercare program. Tr. at 32. In the aftercare program, the

Individual continued to increase his knowledge as to how to prevent future problems with alcohol. Tr. at 32. Additionally, the Individual is seeing a counselor. Tr. at 42. Because of insurance requirements, the Individual has now reduced his visits to the counselor to once a month. Tr. at 42. The Individual discusses with the counselor various issues in his life. Tr. at 42. The counselor has been very willing to talk to the Individual by telephone if he needs immediate help. Tr. at 42-43. The Individual also submitted a letter from his counselor confirming the Individual's completion of the IOP and his participation in aftercare. Ex. A. The counselor states that the Individual is stable and is now capable of performing sensitive duties. Ex. A.

The Individual initially did not believe that he had a problem with alcohol. Tr. at 33. However, his counselor explained that his alcohol consumption was related to various cultural aspects of his life – the region where he grew up and his military service. Tr. at 33-34. The Individual now does not want ever to consume alcohol. Tr. at 34. He realizes that if he had not been forced to come to terms with his alcohol problem, it could have escalated to chemical dependence. Tr. at 43. The Individual's desire to keep his employment and his need to care for his daughter are important parts of his decision never to consume alcohol again. Tr. at 34.

The Individual also testified that he has spent significant time attending weekly classes preparing him to become a member of a church as well as a church-sponsored men's group. Tr. at 32. The Individual attends church on most Sundays. Tr. at 32. He believes that he is significantly more informed and mature because of his participation in the IOP. Tr. at 39. His plans are to continue to refrain from alcohol and to continue therapy with his counselor as long as she believes it is necessary. Tr. at 40.

The DOE Psychologist testified that, in his professional opinion, at the time of his examination, the Individual "barely" met the criteria for a diagnosis of Alcohol Abuse and did not meet any criteria for personality disorder. Tr. at 58. Consequently, he recommended that the Individual complete his IOP and nine months of sobriety in order to demonstrate rehabilitation from his alcohol problem. Tr. at 58-59.

After listening to all of the hearing testimony, the DOE Psychologist testified that the Individual has demonstrated adequate evidence of rehabilitation from his Alcohol Abuse disorder. Tr. at 60-61. While, as of the date of the hearing, the Individual had demonstrated only seven of the recommended nine months of sobriety, the DOE Psychologist opined, nevertheless, that the Individual has now demonstrated a sufficient period of sobriety to establish rehabilitation. Tr. at 60. The DOE Psychologist testified that his conclusion was supported by the quality of the Individual's total rehabilitative program. Tr. at 60. Overall, the DOE Psychologist believes that the risk of the Individual engaging in problematic alcohol consumption in the future is "very low." Tr. at 61.

In reviewing the testimony and evidence before me, I find that the Individual has resolved the Criteria H and J concerns raised by the Individual's diagnosis of Alcohol Abuse. I find the Co-Worker's, the Friend's and the Individual's testimony convincing with regard to the quality of the Individual's efforts in the IOP, his current period of sobriety, and his participation in the aftercare program. The written report from the counselor affirming that the Individual successfully completed the IOP and has been participating in the aftercare program supports my

finding on this issue. Ind. A. My finding is also supported by the expert testimony of the DOE Psychologist. In sum, I find that the Criteria H and J derogatory information has been resolved.

## **V. CONCLUSION**

For the reasons set forth above, I conclude that the Individual has resolved the DOE's security concerns under Criteria H and 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 access authorization. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.  
Hearing Officer  
Office of Hearings and Appeals

Date: April 16, 2013