

After the 2012 PSIs and the psychological examinations, the LSO determined that derogatory information existed that cast into doubt the Individual's eligibility for access authorization. The LSO informed the Individual of its determination in a November 2012 letter (Notification Letter). The Notification Letter also informed the Individual that his security clearance was suspended and 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 30 exhibits into the record of this proceeding and presented the testimony of the DOE Psychiatrist. The Individual introduced 12 exhibits and presented the testimony of two witnesses in addition to his own testimony. *See* Transcript of Hearing, Case No. PSH-13-0007 (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), (j), and (l) 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, J, and L, respectively). Exhibit 1.³ I address below the validity of the allegations set forth in the Notification Letter in support of the cited criteria. The Individual does not dispute, for the most part, the factual accuracy of the Criteria H, J, and L derogatory information described in the Notification Letter. I record my factual findings below.

A. Criterion H and J

In January 2012, the Individual underwent a psychological examination as a part of his participation in the HRP and, as a result of the examination, the Individual's HRP certification was removed. Ex. 16 at 2; Ex. 21. The Individual was referred to the DOE facility's psychologist. Ex. 16 at 1-2. The psychologist diagnosed the Individual as suffering from depression and recommended that the Individual consult with his family physician for treatment. Ex. 16 at 2.

In the April 2012 PSI, the Individual admitted that he took Lortab with alcohol several times a week despite the fact that the medication bottles contained warnings not to consume alcohol while taking this medication. Ex. 29 at 99-100, 103-07, 110-12, 135. During this PSI, the Individual stated that in the previous year he had quit taking Lortab with alcohol. Ex. 29 at 112.

³ 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). Criterion L references information indicating that an individual has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility" 10 C.F.R. § 710.8 (l).

In the subsequent August 2012 PSI, the Individual revealed that he had taken Lortab with alcohol since the April 2012 PSI and that he would consume up to two shots of alcohol four times a week. Ex. 28 at 161-62, 169, 208. The Individual also admitted that he consumed alcohol to cope with his emotions. Ex. 28 at 207-209.

The LSO referred the Individual to the DOE Psychiatrist in June 2012. Ex. 17. In his June 2012 report regarding the Individual, the DOE Psychiatrist found that the Individual suffered from MDD and recommended that the Individual follow up with his future appointments with a psychiatrist and a counselor. Ex. 16 at 8-9.⁴ The DOE Psychiatrist noted that the Individual had admitted to taking Lortab together with alcohol once or twice a week but as of the time of the interview, he was no longer taking Lortab with alcohol. Ex. 16 at 6.

The Individual was again referred to the DOE Psychiatrist in October 2012. In his October 2012 report, the DOE Psychiatrist affirmed his previous MDD diagnosis and determined that the Individual's MDD was now a mental illness that could cause a significant defect in judgment and reliability. Ex. 15 at 10. In making this diagnosis, the DOE Psychiatrist found that the Individual met seven of the MDD diagnostic criteria contained in the Diagnostic and Statistical Manual, 4th Edition Text Revision. Ex. 15 at 10. Significantly, the Individual's illness had been a factor in his continued failure to address significant issues in his life. Ex. 15 at 11. The DOE Psychiatrist also noted that the Individual had continued to take Lortab and his anti-depression medication together with alcohol despite several security interviews where he was warned that such conduct was of concern to the DOE. Ex. 15 at 10. The DOE Psychiatrist found that the Individual was using alcohol and Lortab to self-medicate his depression. Ex. 15 at 10-11. The DOE Psychiatrist asserted that during his June 2012 examination of the Individual, the Individual had resolved not to consume alcohol while taking these medications. Ex. 15 at 10.

An opinion by a duly qualified mental health professional that an individual has a condition, such as Major Depressive Disorder, that may impair judgment, reliability or trustworthiness can raise concerns about an individual's ability to protect classified material. *See Adjudicative Guidelines, Guideline I; Personnel Security Hearing, Case No. PSH-12-0010 (2012) (diagnosis of Depressive Disorder, Not Otherwise Specified (NOS) and Anxiety Disorder, NOS)*. Given the DOE Psychiatrist's opinion indicating that the Individual suffers from MDD, a disorder that could cause a significant defect in the Individual's judgment or reliability, the LSO had sufficient grounds to invoke Criterion H.

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 Adjudicative Guidelines, Guideline G; Personnel Security Hearing, Case No. TSO-0927 (2010)*. The present case is different from the majority of alcohol-related cases that come to OHA in that the concern, the habitual use of alcohol to excess, is primarily centered on the Individual's inappropriate use of alcohol (along with Lortab) to self-medicate his MDD and not on bouts of alcohol intoxication. Nonetheless, I find that Criterion J is applicable to the derogatory information. Warnings about concurrent use of alcohol and narcotics such as Lortab are clearly marked on prescription bottles and therefore such use is therefore excessive and raises a concern about the possible enhanced impairment of the

⁴ In his June 2012 report, the DOE Psychiatrist found that, at the time of the report, the Individual's MDD was not a disorder that could cause a significant defect in judgment and reliability. Ex. 16 at 8.

Individual. I therefore find that the LSO had sufficient justification to invoke Criterion J in the present case.

B. Criterion L

In 2000, a background investigation indicated that the Individual had a judgment filed against him for a \$1,725 debt. Ex. 25 at 1. As a result the LSO asked the Individual to complete a Letter of Interrogatory (March 2000 LOI). Ex. 25. In the completed March/2000 LOI, the Individual certified that he understood that clearance holders must be financially responsible and that they must attempt to pay all of their incurred debts. Ex. 25 at 5. The Individual also completed and signed another LOI in February 2011 (February 2011 LOI) where he again acknowledged that clearance holders must be financially responsible and that they must attempt to pay all of their incurred debts. Ex. 19 at 6.

In February and October 2012, The LSO obtained credit reports indicating that the Individual, as of October 2012, had three accounts in collection with debts ranging from \$2,700 to \$9,000. Ex. 18 at 1-2; Ex. 20. Additionally the report indicated that the Individual had four accounts where debts ranging from \$1,200 to \$15,000 had been charged off. Ex. 18 at 2; Ex. 20. The February 2012 credit report indicated that the Individual, in total, owed approximately \$11,000 in accounts that were transferred to collection and owed approximately \$29,000 to accounts that had been charged off. Ex. 18; Ex. 20.

During the April 2012 PSI, the Individual stated that he was aware of his collection accounts and admitted to receiving calls from creditors and not opening collection letters for the past year. Ex. 29 at 139-40. The Individual admitted that his failure to attend to these matters resulted from his lethargy caused by his depression. Ex. 29 at 138, 142. Further, the Individual admitted that he understood DOE concerns with excessive indebtedness and asserted that he would contact his creditors to resolve the debts. Ex. 29 at 138-46, 150-59, 172-75. The Individual also admitted that he had not filed tax returns for the years 2010 and 2011. Ex. 29 at 167-68.

In the subsequent August 2012 PSI, the Individual admitted that despite his prior intentions, he had not contacted any of his creditors to resolve his indebtedness nor filed his 2010 and 2011 federal tax returns. Ex. 28 at 43, 75, 83-84, 87-88. The Individual also stated that his financial problems, in part, were the result of his prior compulsive spending and living beyond his means. Ex. 28 at 100-01.

Criterion L concerns conduct tending to show that the Individual was “not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.” 10 C.F.R. § 710.8(l). In this regard, failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. *See Adjudicative Guidelines*, Guideline F, ¶ 18; *see also Personnel Security Hearing*, Case No. PSH-12-0101 (2012). Further, unwillingness to abide by rules and regulations, such as the requirement to file income tax returns, can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. *Adjudicative Guideline F*, ¶ 19(g); *Personnel Security Hearing*, Case No. PSH-12-0044 (2012). Given the

Individual's past due debts and his admitted failure to timely file federal income tax returns, the LSO had sufficient grounds to invoke Criterion L.

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 granting an 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 an 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 an individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. ANALYSIS

A. Criterion H

The Individual asserts that he has received effective treatment for his MDD and the concerns raised by his illness have been resolved.

At the hearing, the Individual testified that his MDD was brought on by stress triggered by his now-deceased mother and his family as well as feelings of self-worthlessness. Tr. at 82. When his depression was at its worst, the Individual had energy only to go to work and then go to bed. Tr. at 123. Between the first and second examinations by the DOE Psychiatrist in 2012, the Individual experienced "serious" suicidal thoughts. Tr. at 119. After October 2012 examination by the DOE Psychiatrist, his suicidal thoughts began to decrease. Tr. at 120. His last suicidal thought occurred around January 2013. Tr. at 121. As of the date of the hearing, the Individual feels much better and has significantly more energy. Tr. at 123.

He currently sees a psychiatrist to receive medication for his depression. Tr. at 76-77, 82. He also sees a counselor every other week. Tr. at 82. He discusses with his counselor his relationship with his family and the stress he is currently experiencing. Tr. at 83. He faithfully takes his antidepressant medication every day. Tr. at 77.

The Individual also submitted a letter from his counselor attesting that the Individual has been in counseling since June 2012. Ex. C. The counselor stated that the Individual's depressive symptoms were severe and included suicidal ideation. During the time that the Individual has been in counseling, the Individual suffered the loss of his father and his 86-year old mother, for which he had been the principal caregiver for over 10 years. The death of the Individual's parents left him without a sense of purpose and identity which has contributed to his depression. The counselor noted that the Individual is open to therapeutic recommendations and has made significant progress. The Individual has improved sufficiently to where the counselor now sees the Individual every other week instead of every week. Ex. C.

The DOE Psychiatrist testified that he was satisfied with the Individual's efforts in working with a psychiatrist and a counselor. Tr. at 136, 138. While the DOE Psychiatrist reviewed the Individual's counselor's letter, the DOE Psychiatrist believes that the Individual is not "out of the woods" and will need continued treatment especially since not much time has elapsed from the Individual's disclosure during the October 2012 examination that he had "measured" a shotgun to his chest and that the Individual has experienced suicidal thoughts in January 2013. Tr. at 136. To demonstrate adequate evidence of rehabilitation, the DOE Psychiatrist recommended that the Individual continue his anti-depressant medication and continue meeting with his counselor until his mental health has remained stable for one year. Tr. at 152.

Based upon the evidence presented at the hearing, I find that the Individual has not fully resolved the concerns raised by the DOE Psychiatrist's diagnosis of Major Depressive Disorder. I note that the Individual has complied with all suggestions regarding the treatment of his illness. Nonetheless, the Individual's counselor has found that the Individual's MDD is severe. This assessment is confirmed by the Individual's admitted thoughts of suicide, the last of which occurred two months prior to the hearing (January 2013). Further, I find the DOE Psychiatrist's recommendation to be supported by the facts. As of the date of the hearing, the Individual has not yet met the recommended length of treatment suggested by the DOE Psychiatrist. Given the evidence before me, I find that the Individual has not fully resolved the Criterion H concerns raised by his Major Depressive Disorder.

B. Criterion J

The Individual's sister (Sister) testified that she would come to the Individual's house almost every day. Tr. at 43. The Sister also testified that the Individual consumed alcohol infrequently in the past and she has not seen the Individual intoxicated from alcohol. Tr. at 32, 46. The Individual would occasionally have a beer when they went out to dinner. Tr. at 32.

The Individual testified that he typically consumed alcohol after work but always observed the eight-hour rule concerning reporting to work. Tr. at 84. The Individual would take his Lortab with a glass of vodka and whiskey. Tr. at 84. The Individual stated that he was advised by the DOE Psychiatrist that it was not a "good idea" to consuming Lortab and alcohol together during the June 2012 and October 2012 examinations. Tr. at 84-85. After his October 2012 examination by the DOE Psychiatrist and a discussion with a LSO security official, the Individual began to realize that he should stop consuming alcohol. His last alcohol consumption occurred in August 2012. Tr. at 90. He intends never to consume alcohol in the future. Tr. at 96. He believes that in the past he "might" have abused alcohol. Tr. at 86. He also believes that he now has a problem with alcohol and "it's being addressed." Tr. at 94. The Individual is no longer taking Lortab tablets for pain and plans never to mix prescription medications with alcohol again. Tr. at 94.

After speaking to the facility's Employee Assistance Program psychologist, the Individual enrolled in an intensive outpatient alcohol treatment program (IOP) in February 2013.⁵ Tr. at 86, 94-95. The Individual started the IOP four or five weeks prior to the hearing and anticipates completing the program approximately three weeks after the hearing.⁶ Tr. at 87. The Individual also plans to go to the aftercare component of the IOP after he completes the program. Tr. at 87. The IOP consists of educational programs regarding alcohol problems. Tr. at 88. The Individual plans to try to attend an Alcoholics Anonymous meeting in the future. Tr. at 92-93. He recognizes his triggers for alcohol use – stress and being around individuals who use alcohol. Tr. at 88. Nonetheless, the Individual now feels he is strong enough to say “no” when offered alcohol. Tr. at 89.

The Individual submitted a letter from one of the counselors at the IOP facility. Ex. D. The counselor states that the Individual has progressed well in the IOP and has been cooperative with all the IOP's recommendations. Ex. D. The counselor stated that the Individual is expected to complete the IOP in the later part of March 2013. Ex. D. She finds that the Individual's prognosis is good if the Individual continues to comply in abstaining from all mood altering substances including alcohol. Ex. D.

After listening to all of the testimony, the DOE Psychiatrist affirmed the conclusions in his October 2012 report indicating that the Individual consumed alcohol habitually to excess and that in order for the Individual to demonstrate adequate evidence of rehabilitation, the Individual needed to abstain from alcohol for a period of one year and participate in outpatient counseling that addressed his use of alcohol to cope with his depression. Tr. at 139. The DOE Psychiatrist went on to note that the Individual had just started the IOP three weeks prior to the hearing and that the Individual has a history of relapse – the Individual's admission in the October 2012 examination that he had “relapsed” in taking Lortab with alcohol after their prior examination in June 2012. Tr. at 141. Given these facts, the DOE Psychiatrist opined that the Individual's prognosis, as of the date of the hearing was “fair.” Tr. at 141.

Given my review of the evidence, I cannot find that the Individual has resolved the security concerns raised by the DOE Psychiatrist's determination that the Individual was a habitual user of alcohol to excess. The Individual admits his prior misuse of alcohol and the now believes that he has an alcohol problem. However, I find the DOE Psychiatrist's testimony and opinion regarding the status of the Individual recovery from his alcohol problem to be convincing and supported by the facts of this case. As of the date of the hearing, the Individual is still in an early stage of his treatment program and has at best seven months of abstinence from alcohol. The Individual's problem with alcohol use is also entwined with his underlying MDD from which the

⁵ The Individual testified that he was unaware until four to six weeks ago that he needed treatment for Alcohol Abuse. The Individual stated that did not receive a copy of Exhibit 15, the DOE Psychiatrist's October 2012 evaluative report, containing the DOE Psychiatrist's recommendations for treatment. The DOE Psychiatrist October 2012 report specified that the report should only be released to a mental health professional who could then release the report to the Individual. Ex. 15. The DOE Counsel sent the report to the psychiatrist treating the Individual for depression. However, the psychiatrist did not share the report with the Individual since he was treating the Individual for depression and not an alcohol use disorder. In light of these disclosures, the record was held open for two weeks after the hearing for the Individual to submit additional evidence regarding Exhibit 15. See Exs. E-L.

⁶ In a submission after the hearing, the Individual has stated that he has completed the IOP program and intends to begin participation in a 12-step program. Ex. E.

Individual is still recovering. Given these facts, I find that the Individual has not resolved the security concerns raised by the Criterion J derogatory information.

C. Criterion L

The Criterion L concerns center around the Individual's history of financial irresponsibility and his failure to file federal income tax returns for the years 2010 and 2011. To establish his overall judgment and reliability, the Individual presented two witnesses, his former and current supervisors to attest to the Individual's good work performance and his ability to follow directions and comply with rules and regulations. Tr. at 14-15, 25-26.

The Individual's Sister testified that, earlier in his life, the Individual may have overspent on clothes and lived beyond his means. Tr. at 48-49, 52. However, in 1999, the Individual moved into his parent's house to help his mother care for their father and to reduce his expenses. At this time, the Individual also began to reduce his spending. Tr. at 49, 71. Additionally, the Individual, when he began to care for his father and eventually his mother, would spend money for their care. Tr. at 60, 72. When the Individual's military unit was called up for nine months' service in 2002, the Sister was responsible for paying the Individual's bills, a task that she "didn't do . . . very well." Tr. at 71-72. However, she eventually paid the Individual's bills. Tr. at 72.

The Individual testified that with regard to the debts noted on the LSO credit reports, he is in the process of sorting through the debts and has paid off two of the charged-off accounts. Tr. at 99, 101; Ex. H; Ex. I.⁷ With regard to several of the accounts, he had not contacted the debt holders at the time of the hearing. Tr. at 102-03. The Individual also testified that he has filed federal tax returns for the years 2010 and 2011. Tr. at 96-97.

The Individual testified that the reason he has not been more diligent regarding his debts, which were previously pointed out to him in the 2012 PSIs, is that, in October 2012, his security clearance was suspended and he therefore believed that he was going to be fired before Thanksgiving 2012. Tr. at 103. Therefore, given his impending unemployment, the Individual didn't think that he would have the financial resources to address these debts. Tr. at 103.

After the hearing, the Individual submitted a letter from a facility that offers financial counseling. Ex. G. The facility's financial counselor stated that the Individual's initial session focused on obtaining the documents the Individual will need and answering questions regarding his current financial status. He also stated that the Individual has agreed to attend financial counseling sessions on an "as-needed" basis and is seeking to get his finances under control. Ex. G. Additionally, the Individual has also submitted an offer from a buyer to purchase an automobile from the Individual for \$5,000. Ex. F.

Given the evidence before me, I cannot find that the Individual has totally resolved the Criterion L concerns raised in the Notification Letter with regard to his financial irresponsibility. As an initial matter I commend the Individual for the positive steps he has taken to resolve his financial problems – obtaining credit counseling and beginning the process of paying off of past due accounts. Nonetheless, the Individual has just begun the process of contacting his creditors. Additionally, the Individual still has significant debt before him, including a new \$11,000 tax debt to the IRS from his recently filed 2010 and 2011 income tax returns. Ex. K; Ex. L. In light

⁷ The Individual has also submitted evidence, since the hearing, indicating he has paid off another charged-off account. Ex. J.

of the recency of his reformed financial conduct, I find that the Individual needs to demonstrate a longer period of demonstrating financial responsibility to support a finding that the Individual's Criterion L financial concerns have been resolved. *See Personnel Security Hearing, Case No. PSH-12-0069* (2012) (individuals need to demonstrate a sustained pattern of financial responsibility to mitigate a concern raised under Criterion L for financial irregularities). This is especially so since the Individual's MDD and resulting lethargy played a role in contributing to the Individual's recent financial irresponsibility. Tr. at 98; Ex. 29 at 92-93, 143-44; Ex. 28 at 93-94.

I find that the Individual's failure to file tax returns represents a serious incident of poor judgment and reliability and a significant failure to comply with law. The Individual has only recently begun to resolve his tax issues. As for the Individual's failure to file tax returns, I find that the Individual's failure to file was caused in part by the Individual's MDD. Nonetheless, absent a longer period where the Individual demonstrates compliance with his legal and financial responsibilities, I cannot find, as of the date of the hearing, that the Criterion L concerns arising from his failure to file tax returns have been resolved. *See Personnel Security Hearing, Case No. PSH-12-0139* (2013). As discussed above, this is especially so given the early stage of the Individual's recovery from his MDD.

In sum, the Individual has not presented sufficient evidence for me to find that the Criterion L concerns raised in the Notification Letter have been resolved. In making this determination, I listened to compelling testimony regarding the Individual's devoted effort to care by himself for his incapacitated mother and father as well as a brother with mental health issues. These efforts indicate that the Individual is a devoted and caring person. I commend the Individual for his faithfulness in caring for his family. Nevertheless, the Individual's devotion to his family cannot overcome the serious concerns raised by the Individual's mental health and alcohol issues and his failure to pay his outstanding debts or to timely file federal income tax returns.

V. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not resolved the DOE's security concerns under Criteria H, J, and L. Therefore, the Individual has failed to demonstrate 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, at this time, should not 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 23, 2013

