

Exhibit 3. 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 1 (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 the OHA Director appointed me the Hearing Officer in this case. The DOE introduced 13 exhibits into the record of this proceeding, and called the DOE psychiatrist as a witness. The individual introduced four exhibits, and presented the testimony of one witness, in addition to his own testimony.

II. 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).

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).

III. NOTIFICATION LETTER AND ASSOCIATED SECURITY CONCERNS

The Notification Letter cited derogatory information within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j) (hereinafter referred to as Criteria H and J, respectively). Exhibit 1.³ Under both criteria, the LSO cited (1) the report of the DOE psychiatrist, in which he diagnosed the individual as suffering from Alcohol Abuse, stating that the disorder is an illness or condition, which causes, or may cause, a

³ Criterion H relates to information indicating that the individual has an "illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychiatrist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Under Criterion J, information is derogatory if it indicates that the individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychiatrist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

significant defect in judgment or reliability; (2) the individual's September 25, 2012, positive testing on a blood alcohol test at work, resulting in a measured blood alcohol concentration of 0.034 at 8:45 a.m.; (3) his admission that, the evening before the test, he consumed approximately three Jack Daniels and three beers; (4) his admission that from 2009 to September 2012, he drank to the point of intoxication every weekend; (5) his December 31, 2005, arrest for Driving Under the Influence (DUI), at which time his blood alcohol content was measured at 0.14, and his admission that prior to his arrest that night, he consumed two scotches, each containing approximately two to three shots, during a one-hour period; and (6) his June 21, 1989, DUI arrest and admission that prior to his arrest, he consumed one to two pitchers of beer in a two-hour period.

The individual does not dispute any of the allegations in the Notification Letter, and I find that each of these allegations is valid and well supported by the record in this case. *See* Exhibit 2 (Response to Notification Letter); 10 C.F.R. § 710.27(c) (requiring Hearing Officer to "make specific findings based upon the record as to the validity of each of the allegations contained in the notification letter"). I further find that this information adequately justifies the DOE's invocation of Criteria J and H, 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*, The White House (December 19, 2005) (Adjudicative Guidelines) at ¶ 21 (Guideline G).

IV. FINDINGS OF FACT AND ANALYSIS

The individual is 56 years old, and has worked for a DOE contractor since 1994. Exhibit 4 (Report of DOE Psychiatrist) at 2.⁴ He had his first drink when he was 13 years old, and did not drink regularly until he went to college, where he became intoxicated once or twice a month. He drank during weekend parties after college, and then occasionally during graduate school. *Id.* The individual had his first arrest for Driving While Intoxicated (DWI) on June 21, 1989, after he drank approximately five or six beers during a softball game. *Id.* at 3. During a March 5, 1993, PSI, he stated that he "won't drink and drive anymore." Exhibit 13 at 24.

Several years later, on June 16, 2005, during an interview with an Office of Personnel Management investigator, the individual again stated that he will not drive even if he had one beer. Exhibit 4 at 3. However, just a few months later, on December 31, 2005, the individual was arrested for DWI, when he was driving after consuming two scotches, each containing approximately 2-3 shots. *Id.* at 4. Furthermore, the individual "blacked out" sometime around 2006-2008 from consuming alcohol, and he started drinking more in 2009, when his son was diagnosed with cancer. *Id.* at 5.

From January through September 2012, the individual became intoxicated approximately nine times. *Id.* On September 25, 2012, the individual took a random breath alcohol tests at work between 8:00 a.m. and 9:00 a.m, by which his blood alcohol content was measured at 0.036 and 0.034, over the limit of 0.02 set for employees subject to the DOE's Human Reliability Program (HRP). *Id.*⁵

⁴The individual does not contest the findings of the DOE psychiatrist's report. Tr. at 47.

⁵The HRP is a security and safety reliability program designed to ensure that individuals who occupy positions affording access to certain materials, nuclear explosive devices, facilities, and programs meet the highest standards of reliability and physical and mental suitability. *See* 10 C.F.R. § 712.1. Among the numerous requirements for participation

Though he was asked to refrain from drinking alcohol, the individual admitted that on the night of September 29, 2012, just a few days after the positive BAC, he drank two glasses of wine. *Id.* at 7.

In October 2012, the individual began substance abuse counseling, but after a few sessions, decided to discontinue counseling because he did not believe it was helpful, and complained that his counselor did not follow up with him concerning future appointments. *Id.* at 8. During his interview with the DOE psychiatrist, the individual revealed that he drank two glasses of wine on the night of December 13, 2012, even though he stated in his PSI on November 6, 2012, that his intent was to stay “sober for quite a while, maybe all the way for the rest of my life.” *Id.*; Exhibit 11 at 56.

In his response to Notification Letter, the individual stated that he was “working hard to rehabilitate” himself, and that he had not had a drink since December 2012. Exhibit 2. In his hearing testimony, however, the individual acknowledged that he consumed alcohol on the following occasions: (1) during the holidays in late December 2012; (2) on the night of February 26, 2013, when he shared two bottles of wine with his wife; and (3) in early March 2013 when he visited Florida, where he consumed beer with his daughter during lunch on four days and Jack Daniels with his father-in-law on three separate nights. Tr. at 37-38, 45-46, 64. The individual reported in his testimony that he had his last drink on March 10, 2013, just six weeks before his hearing on April 23, 2013. *Id.*

The individual provided a report, dated April 19, 2013, by an alcohol abuse counselor who assessed and evaluated the individual on October 18, 2012, and October 31, 2012. Exhibit B. In addition to conducting a clinical interview, the counselor administered two assessments on the individual, a Substance Abuse Subtle Screening Inventory and the Addiction Severity Index. *Id.* Based on these assessments, the alcohol abuse counselor concluded that the individual met the criteria for a diagnosis of Alcohol Dependence with physiological dependence. *Id.* He stated that the individual returned to A.D.A.P.T. & Recover on March 22, 2013, and has been participating in weekly psychotherapy sessions, has been abstinent from alcohol and completing a detoxification program, has accepted the fact that alcohol has been a problem in his life, and has attended AA meetings weekly. *Id.*

In addition, the individual provided copies of Alcohol Testing Forms, the majority of which are dated from January 8, 2013 through April 9, 2013.⁶ He had a BAC of “0” for all of the tests, except on February 27, 2013, where his BAC was 0.009. *See* Exhibit A. Moreover, the individual submitted letters from sponsors at his Alcoholics Anonymous (AA) meetings, stating that he started attending AA meetings in October 2012, stopped attending the meetings for a period of time, and then returned to the meetings regularly sometime in March 2013. *See* Exhibits C, D.

In his report dated December 28, 2012, the DOE psychiatrist initially concluded that the individual met the criteria for Alcohol Abuse without adequate evidence of rehabilitation or reformation. Exhibit 4. However, after hearing the individual’s testimony at the hearing, the DOE psychiatrist changed his diagnosis of the individual from Alcohol Abuse to Alcohol Dependence with physiological dependence. Tr. at 105. He concluded that the individual’s “disorder has been worse

in the HRP are random alcohol tests. *See* 10 C.F.R. § 712.15(c) (mandating alcohol testing and setting limit of 0.02 percent blood alcohol concentration).

⁶The following are the dates of the Alcohol Testing Forms provided by the individual: 1/8/13, 1/10/13, 1/15/13, 1/16/13, 1/22/13, 1/24/13, 1/28/13, 1/30/13, 2/7/13, 2/12/13, 2/19/13, 2/21/13, 2/27/13, 3/11/13, 3/13/13, 3/19/13, 3/20/13, 3/25/13, 3/27/13, 4/2/13, 4/3/13, 4/8/13, and 4/9/13.

since [he] saw him.” *Id.* He further stated that the individual was “still in early recovery,” *id.* at 112, and that his risk of relapse was medium to high as of the date of the hearing. *Id.* at 123. The Adjudicative Guidelines set forth the following conditions that “could mitigate security concerns” arising from excessive alcohol consumption.

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or her alcoholism or 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);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;

(d) 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, such as participation in meetings of Alcoholics Anonymous or a similar organization 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.

Adjudicative Guidelines at ¶ 23 (Guideline G).

As noted above, both experts who have evaluated the individual now conclude that he suffers from Alcohol Dependence, rather than Alcohol Abuse. Thus, application of the Adjudicative Guideline would require the individual to establish a pattern of abstinence (as opposed to alcohol abuse). *Id.* at ¶ 23(b) and (d). Here, I cannot find that the individual's six weeks of sobriety would constitute a sufficient pattern of abstinence to mitigate the concerns in this case. *See Personnel Security Hearing*, Case No. PSH 12-0100 (2012) (concluding that seven months of sobriety of an individual who was diagnosed as alcohol dependent was insufficient for resolving concerns under Criterion J); *Personnel Security Hearing*, Case No. PSH-12-0077 (2012) (eight months insufficient to resolve concerns raised by alcohol dependence); *Personnel Security Hearing*, Case No. PSH-11-0013 (2012) (seven months insufficient to resolve concerns raised by alcohol dependence).

Further, as the individual admitted consuming alcohol on several occasions after his most recent evaluation by the DOE psychiatrist in December 2012, I cannot find that the individual's excessive use of alcohol was “infrequent” or happened under “unusual circumstances,” or that he does not have a history of previous relapse. Adjudicative Guidelines at ¶ 23(a), 23(c) (Guideline G). Even more, the individual has not received a favorable prognosis by a duly qualified medical professional or another professional who is an expert with alcohol abuse and dependence. *Id.* at ¶ 23(d). Finally, regarding whether the individual “is making satisfactory progress in his counseling or treatment program,” *id.* at 23(b), there is some evidence of progress in the testimony provided by the

individual and his wife, and in the documents provided by the individual; yet, it is still insufficient to mitigate the security concerns raised above. Exhibit A, C, D.

In the end, the decision as to whether the risk of future behavior presenting a security concern is low enough to warrant the grant or restoration a clearance is based on a common-sense determination. *Personnel Security Hearing*, Case No. TSO-0209 (2006) (citing 10 C.F.R. 710.7(c)). Considering all of the evidence in the record, particularly the diagnoses of Alcohol Dependence by two experts and the individual's very recent relapse, I am persuaded by the testimony of the DOE psychiatrist that the individual was, as of the time of the hearing in this matter, still at a medium to high risk of relapsing into excessive alcohol use in the future. Under these circumstances, given that I am to resolve "any doubts concerning the individual's eligibility for access authorization in favor of the national security," I cannot find that the individual has resolved the concerns related to his use of alcohol under Criteria H and J.

V. CONCLUSION

For the reasons set forth above, I conclude that the individual has not resolved the DOE's security concerns raised in this case. Therefore, the individual has not 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 not restore the individual's security clearance at this time. 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: May 30, 2013