

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 nine exhibits into the record of this proceeding. The individual introduced one exhibit, 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 not endanger the common defense and be clearly consistent with the national interest. 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 Criterion J, the LSO cited the report of the DOE psychologist, in which he concluded that the individual has been a user of alcohol habitually to excess, as well as the individual’s history of alcohol use and alcohol-related incidents. *Id.* To support Criterion H, the LSO cited the DOE psychologist’s finding that the individual met criteria found in the Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV-TR) for Posttraumatic Stress Disorder (PTSD), and that this disorder and the individual’s use of alcohol habitually to excess are illnesses or mental conditions that cause or may cause a significant defect in judgment and reliability. *Id.* (citing Exhibit 4 at 5).

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).

The above information adequately justifies the DOE's invocation of Criteria H and J, and raises significant security concerns. Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness, in this case both PTSD and the individual's use of alcohol habitually to excess being of concern under Criterion H. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Adjudicative Guidelines)*, The White House (December 19, 2005) at Guideline I; *see also Personnel Security Hearing*, Case No. PSH-11-0003 (2012) (use of alcohol habitually to excess raised concern under Criterion H in light of opinion of DOE psychiatrist). Moreover, apart from whether it is considered a mental condition under Criterion H, excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and thus raises questions about an individual's reliability and trustworthiness under Criterion J. *See id* at Guideline G.

IV. FINDINGS OF FACT AND ANALYSIS

The individual is 26 years old, and has worked for a DOE contractor since May 2011. In April 2006, when he was 18 years old, the individual was cited for Minor in Possession of Alcohol. Exhibit 8 at 46-48. From August 2005 to June 2010, the individual served in the military, during which time he received a written warning after consuming alcohol while underage and lighting off fireworks too close to a barracks (in September 2006), and a non-judicial punishment for underage drinking (in February 2007). Exhibit 7 at 5-6; Exhibit 8 at 40-43; 44-45. The DOE psychologist's report relates that, while the individual was serving in the military, he "was the victim of hits from 7 Improvised Explosive Devices and 4 Rocket Propelled Grenades. Four of his team members have been killed in combat. According to [the individual's] account, but not independently corroborated, he was diagnosed with traumatic brain injury." Exhibit 4 at 4.

During his military service, the individual drank "1 to 3 beers every 1 to 2 months or longer, over an evening." *Id.* at 2; Hearing Transcript (Tr.) at 19-20. After his discharge from the military, in June 2010, the individual began to drink more and with greater frequency, having five beers over the course of an evening, twice a week. Exhibit 7 at 5; Tr. at 19-20. In August 2011, his then-wife left him, taking his 4-year-old son, after which his "drinking increased to 7 beers over a similar period but with an additional 'couple of shots of whiskey,' on a sporadic basis." Exhibit 4 at 2; Tr. at 19-20. In his hearing testimony, the individual stated that, in the "few months" leading up to his October 2012 arrest, he was drinking "quite a bit" and usually to intoxication. Tr. at 30.

A criminal complaint filed by local police with regard to the individual's October 1, 2012, arrest records statements of several witnesses to the events leading to the arrest. Exhibit 6. The manager of the bar where the incident took place stated that the individual "pushed his girlfriend . . . into a wall several times before she got away and went into the bathroom." *Id.* at 1. The manager stated that the individual followed his girlfriend "into the bathroom and choked her before going outside." *Id.* The individual's girlfriend stated that, while she was in a bathroom stall with her friend, the individual kicked the door open and it hit her and her friend in the face. *Id.* at 1-2. She said that the individual "grabbed her around the throat with one hand and choked her for about 3 seconds." *Id.* at 2. The statement of the friend of the individual's girlfriend corroborates the girlfriend's account. *Id.* at 1.

The complaint also notes a statement by the individual's girlfriend that the individual "is not supposed to have shots of hard alcohol because he gets violent," though also noted is a statement by the individual that his girlfriend "had a few drinks and she could not hold her liquor well" and that she "slapped him in the face." *Id.* At the hearing, the individual stated that he did not "remember much of that night." Tr. at 29. He testified that he remembered watching a football game, and his next memory was "[w]aking up in handcuffs." *Id.*

The individual testified that he has not “touched a sip of alcohol since that day.” *Id.* His girlfriend testified that she has not seen the individual consume alcohol since the incident. *Id.* at 43. The individual stated that he was required to “get treatment for anger management and alcohol, you know, usage, I guess. So I went to the [Veterans Administration (VA)] and got assistance there.” *Id.* He described treatment lasting for “eight weeks for four days a week for three hours a day, . . .” *Id.* at 60. A court record submitted by the DOE Counsel prior to the hearing reflects the individual’s successful completion of an Early Intervention Program and a Domestic Violence Program, and the dismissal of the criminal charge against the individual on May 8, 2013. Exhibit 9.

The DOE psychologist was present for the entire hearing and testified last. Regarding his diagnosis of PTSD, the DOE psychologist reviewed the criteria for the disorder set forth in the DSM-IV-TR. He testified that, from the individual’s own report, “he met all the standards.” Tr. at 49. Specifically, he noted the individual’s traumatic combat experience, which left him as the only surviving member of his team, his “intrusive memories,” emotional and physiological reactions, avoidance of “aggressive stimuli,” inconsistent ability to recall his battlefield experience, reduced interest in certain activities, sleep difficulties, increased irritability, difficulty with concentration, hypervigilance, and heightened startle reaction. *Id.* at 49-51.

The individual disputes the PTSD diagnosis. He submitted a letter signed by a VA social worker stating that the social worker had “reviewed your VA medical records. As I advised you when we spoke, in your VA medical records there is no PTSD diagnosis.” Exhibit A. The DOE psychologist noted that this document does not “indicate you don't have PTSD; they indicate when they look at the record, they do not find PTSD. That's very different.” Tr. at 54. The individual testified, however, that veterans seeking VA benefits “have to go talk to the doctors and whatnot to get cleared” and that “you actually have to go through that whole screening and assessment in order to complete your VA sign-up for benefits.” *Id.* at 24.

I find that the lack of a recorded diagnosis of PTSD in the individual’s VA records in no way invalidates the DOE psychologist’s diagnosis, particularly given the lack of evidence in the record as to the nature of any assessment the VA may have performed. That diagnosis, and the opinion of the DOE psychologist that the individual’s PTSD, considered in conjunction with his history of alcohol use habitually to excess, causes or may cause a significant defect in the individual’s judgment or reliability, clearly raises legitimate security concerns under Criterion H, as noted above.

The *Adjudicative Guidelines* list the following conditions that could mitigate security concerns raised under Guideline I (Psychological Conditions):

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) the past emotional instability was a temporary condition (e.g., one caused by a death, illness, or marital breakup), the situation has been resolved, and the individual no longer shows indications of emotional instability;

(e) there is no indication of a current problem.

Adjudicative Guidelines at ¶ 29.

First, regarding appropriate treatment, I note that the DOE psychologist, the only expert to testify at the hearing in this matter, recommended in his report that in

order to have a reasonable chance to recover from his psychological symptoms he should participate in one of the VA group therapy programs for veterans with PTSD, for at least a year, and have at least a year of individual therapy with, a professional who has specialized training in work with victims of trauma. During that full year he should continue a regimen of complete abstinence.

Exhibit 4 at 5.

At the hearing, after hearing the testimony of the individual and his girlfriend, the DOE psychologist opined that “there is a very high probability that PTSD will result in instances of poor judgment and increased anger” in the individual. Tr. at 61.

Thus, as for condition (a) above, while it appears that the individual’s condition is amenable to treatment, there is no evidence that he has complied with any treatment plan specifically designed to address a diagnosis of PTSD. Regarding the other relevant conditions, I find that none of them can be met so long as there continues to be a reasonable prognosis of a “very high probability” of future instances of poor judgment.

Regarding the individual’s use of alcohol, the *Adjudicative Guidelines* list the following conditions that could mitigate security concerns raised under Guideline G (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.

As for the treatment received by the individual, the DOE psychologist testified that

given the history of how long he had a habit of using alcohol, how often he used it -- not used it, but used it to excess, according to his own accounts, and the fact that his treatment was so superficial as to almost be trivial, I don't think there is anyone who works in the treatment of alcohol that thinks that his -- his treatment that he had for those few weeks was going to be enough to really take care of anything.

Tr. at 59. According to the DOE psychologist, “the most reasonable prediction, is that he will again use alcohol [to excess] unless he gets further treatment.” *Id.* at 61.

Considering the potential mitigating conditions set forth in the *Adjudicative Guidelines* in light of the opinions expressed by the DOE psychologist, which I found to be reasonable, I cannot find that the individual's use of alcohol is unlikely to recur (condition (a)). Moreover, there is clearly no favorable prognosis in the record by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program (condition (d)). Although the individual appears, given his decision to abstain from the use of alcohol, to have recognized his issues stemming from that use, I cannot find sufficient evidence of actions he has taken to overcome this problem (condition (b)), given the opinion of the DOE psychologist as to the insufficiency of the individual's treatment program. For the same reason, while recognizing that the individual did complete an alcohol treatment program required as a condition of the dismissal of the criminal charge against him, I cannot find that the application of condition (c) above is sufficient to resolve the concern raised by the individual's past problematic use of alcohol.

Finally, I found significant the opinion of the DOE psychologist that “if one is carrying around the residue of the trauma that [the individual] unfortunately is carrying around with him, and you also have reduced impulse control because you're drinking, those two are explosive. It may only happen once every couple of years, but that's enough.” *Id.* at 62. The DOE psychologist explained that “[t]hose two things interact in very important ways,” such that “under certain episodes of stress, or under reduced impulse control, for example, if he's had a drink or two, that will put him at danger for doing things that will put himself and other people at risk, and so they both have to be taken care of.” *Id.* at 63.

In sum, the overriding concern in this case is raised by a credible diagnosis of PTSD, further complicated by the individual's history of excessive use of alcohol. As noted above, the individual disagrees with the DOE psychologist's diagnosis of PTSD. *Id.* at 33. In addition, the individual testified that 15 percent of local police officers “have PTSD of some sort, and . . . we all trust in them So I don't think that PTSD is something that . . . should negatively impact me on my job situation.” *Id.* at 65-66. Ultimately, so long as the individual is credibly diagnosed with PTSD but does not recognize it, and/or does not recognize the implications of such a diagnosis, and therefore does not receive appropriate treatment for this disorder, there will remain serious questions as to his eligibility for access authorization.

V. 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 have found that the individual has not

brought forth sufficient evidence to mitigate the security concerns at issue. I therefore cannot find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: September 27, 2013