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

In the matter of Personnel Security Hearing )  
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Filing Date: September 18, 2013 ) Case No.: PSH-13-0107  
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Issued: November 29, 2013

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**Hearing Officer Decision**  
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Steven J. Goering, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1</sup> For the reasons set forth below, I conclude that the DOE should not restore the individual's access authorization at this time.<sup>2</sup>

**I. BACKGROUND**

The individual is an employee of a DOE contractor and holds a suspended access authorization. A Local Security Office (LSO) summoned the individual for an interview (PSI) with a personnel security specialist on May 14, 2013, Exhibit 8, after the individual tested positive on a random breath alcohol test at work on April 16, 2013. Exhibit 7. After the PSI, the LSO referred the individual to a local psychiatrist (hereinafter referred to as "the DOE psychiatrist") for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report, setting forth the results of that evaluation, and sent it to the LSO. Exhibit 4. Based on this report and the rest of the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. The LSO informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those

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<sup>1</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.energy.gov/oha>.

concerns. Exhibit 1. 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 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 eight exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist. The individual introduced three exhibits, and presented the testimony of eight witnesses 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.<sup>3</sup> Under Criterion J, the LSO cited the report of the DOE psychiatrist, in which he concluded that the individual has been a user of alcohol habitually to excess, as well as statements the individual made during the April 2013 PSI and the June 2013 psychiatric evaluation regarding his use of alcohol. *Id.* To support Criterion H, the

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<sup>3</sup> 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).

LSO cited the DOE psychiatrist's finding that the individual's use of alcohol habitually to excess is an illness or mental conditions that causes or may cause a significant defect in judgment and reliability. *Id.* (citing Exhibit 4 at 7-9).

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 the individual's use of alcohol habitually to excess being of concern under Criterion H. *See, e.g., Personnel Security Hearing*, Case No. PSH-13-0073 (2013) (use of alcohol habitually to excess raised concern as a mental condition 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 Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Adjudicative Guidelines)*, The White House (December 19, 2005) at Guideline G.

#### IV. FINDINGS OF FACT AND ANALYSIS

The individual is 39 years old, and has worked for a DOE contractor since 2000. Exhibit 8 at 7, 42. The individual reported in his psychiatric interview that he began drinking in high school on an occasional basis. Exhibit 4 at 3. His consumption increased and became more regular while in college from 1993 to 1999. *Id.* After graduating college in 1999, until 2005, the individual drank less, consuming approximately two beers each weekend. *Id.* From 2005 to 2008, the individual's consumption increased somewhat, and he would drink three to four beers on alternate weekends. *Id.* The individual reported drinking a bottle of wine or six-pack of beer every two days from 2008 to 2011. *Id.* at 4. From 2011 until April 2013, the individual's consumption appears to have decreased. "[M]aybe five nights out of the week, we'd have -- split a bottle of wine. So I'd have two glasses, my wife would have one, maybe one-and-a-half. That would be a typical night." Hearing Transcript (Tr.) at 12.

The individual testified that, on the evening of Monday, April 15, 2013, he prepared himself a "beerita, at least what I thought was a beerita. It had beer, tequila and lime juice. . . . And then afterwards, my wife came home. We had some dinner, split a bottle of wine. I had most of it. She had a glass, I had the rest." Hearing Transcript (Tr.) at 12. The individual reported to work the following day, April 16, 2013, where he was called for a random breath alcohol screen. The individual's breath alcohol content was measured at 0.051 (g/210L) at 9:09 a.m. and 0.045 at 9:26 a.m., in both cases above his employer's acceptable limit of 0.020. Exhibit 6 at 3; Exhibit 7 at 4.

On the same day, the individual met with the designated psychologist at his workplace, who referred the individual to an Employee Assistance Program (EAP) counselor. At his May 14, 2013, PSI, the individual stated that he had not yet been able to meet with the EAP counselor, but had discussed his drinking with his wife and they agreed that he would not have anything to drink if he would be going to work the following day. Exhibit 8 at 17-19. The individual testified at the hearing that he last consumed alcohol on June 23, 2013, five days before his evaluation by the DOE psychologist. Tr. at 23. Beginning on July 23, 2013, the individual participated in an Intensive Outpatient Program, consisting of 20 sessions, which he completed on August 29, 2013. Exhibits A and C.

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.

With respect to condition (b) above, even though the individual has not been diagnosed as alcohol dependent, the DOE psychiatrist, as well as two psychologists (the designated psychologist at the individual's workplace and a treating psychologist) and an EAP counselor, all of whom testified at the hearing in this matter, agreed with the recommendation that the individual abstain completely from consuming alcohol. Tr. at 67-68, 85-86, 131.<sup>4</sup> As of the date of the hearing in this matter, the individual had abstained from the use of alcohol for four months and six days.

In this context, each of the listed conditions must be evaluated with respect to whether enough "time has passed" (condition (a)), and whether approximately four months constitutes a clear and established "pattern" of abstinence (conditions (b) and (d)) or "satisfactory progress" (condition (c)). While each such case must be judged on its own merits, it would be unusual, as compared with prior cases, to find that a concern raised by past excessive use of alcohol has been sufficiently resolved after a little over four months of abstinence. See, e.g. *Personnel Security Hearing*, Case No. PSH-11-0003 (2012) (concern unresolved after three months abstinence); *Personnel Security Hearing*, Case No. PSH-12-0047 (2012) (concern resolved after six months abstinence).

This would not necessarily preclude finding that the concern in the present case has been resolved, particularly if the professionals who testified at the hearing shared a high degree of confidence in a

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<sup>4</sup> While not addressing specifically in his testimony the issue of abstinence versus responsible use, the workplace psychologist reviewed the report of the DOE psychiatrist, which included a recommendation that the individual abstain from drinking alcohol for at least six months, and testified that, "[i]n general, I would agree with everything that he wrote there. I think it's an accurate assessment of his alcohol issues. So I -- I have no -- no quarrel with that." *Id.* at 131.

favorable prognosis for the individual. However, only the EAP counselor could offer such confidence that the individual's risk of relapse is low going forward. Tr. at 79. By contrast, the individual's treating psychologist, although characterizing the individual's risk of relapse as being "in the rather low range," could not express "really high confidence, just because there has just not been enough time. . . . [H]e's on a path for a really low risk of relapse. I just don't have enough information to make a confident point." *Id.* at 72, 73. The DOE psychiatrist agreed with this assessment, *id.* at 171, and added, "I can put it in terms of one to ten, one being the lowest risk, ten being the highest, and he might be three-and-a-half today, and in six more weeks, he might be a two and, you know, a two is a lot better than three-and-a-half." *Id.* at 171-72.

Taking this testimony into account, while the individual appears to be taking the necessary steps to decrease his risk of relapse, I cannot confidently find that this risk was, at the time of the hearing in this matter, low enough to warrant the restoration of his access authorization. *See* 10 C.F.R. § 710.7(a) (requiring that any doubts concerning the individual's eligibility for access authorization be resolved in favor of the national security).

There are, in addition, issues of credibility that must be taken into account, given that the assessment of risk here is very much dependent on the accuracy of the information provided by the individual and his wife. First, the individual maintained in his hearing testimony that his typical pattern of alcohol consumption was "two glasses [of wine] five nights a week," *id.* at 157, and that the amount he drank the day before he was randomly tested in the workplace was something he did not "normally do. I'd never made a beerita before. And I overdrank. That's not something that I normally did." *Id.* at 158.

I take the individual's self-report with a certain amount of skepticism, given the unlikelihood that such a rare instance of overdrinking would happen to occur the evening prior to a random workplace breath alcohol test, which according to the workplace psychologist would be given at least once a year, but no more than three or four times annually. *Id.* at 138-39. As the workplace psychologist testified, "I tend to believe that if they are positive here, then that's more habitual behavior. . . . [I]t's rare that you would -- the one day that you decide to go out and party that you got pulled for a BAT the next morning." *Id.* at 138; *see also id.* at 142 (testimony of DOE psychiatrist that "the chances of that, you know, one in 365, and that's the only day you're drinking, it's -- you know, there is probably more than one event where you were drinking too much that year"); *id.* at 60-61 (testimony of treating psychologist that "I think this was more than normal, but not something that hasn't occurred probably every few months").<sup>5</sup>

Considering all of the above, and based upon my review of the entire record in this proceeding, I cannot find that the concern raised by the individual's use of alcohol has been sufficiently resolved in this case, at least not at the time of the hearing in this matter, given the relatively short duration of his abstinence from drinking.

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<sup>5</sup> The individual's wife characterized the individual's consumption on the evening in question as "out of the ordinary. That's not something that he normally does." *Id.* at 94. However, she also testified that she was playing tennis that evening and was not aware that the individual had made himself a "beerita," only that he had drunk wine. *Id.* at 96, 106-07. It is, therefore, not clear that the individual's wife would necessarily be fully aware of the extent of the individual's alcohol consumption on a regular basis. In addition, the credibility of the testimony of the individual and/or his wife was undermined by an unexplained discrepancy between the testimony of the individual, who stated that his wife still drank, and the wife's testimony that she no longer did. *See, e.g., id.* at 103-04.

## V. CONCLUSION

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises 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: November 29, 2013