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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: March 12, 2014 ) Case No.: PSH-14-0024  
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Issued: August 1, 2014

**Administrative Judge Decision**

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should be restored.

**I. Background**

The individual is employed by a DOE contractor in a position that requires her to hold a DOE security clearance. In November 2012, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address concerns about her alcohol use. In addition to the PSI, the LSO requested the individual’s medical records and recommended a psychological evaluation of the individual by a DOE consultant psychologist (DOE psychologist). The DOE psychologist examined the individual in April 2013 and memorialized his findings in a report (Psychological Report). According to the DOE psychologist, the individual has been user of alcohol habitually to excess, and has engaged

<sup>1</sup> Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

in a pattern of alcohol abuse. The DOE psychologist further concluded that the individual has not demonstrated adequate evidence of rehabilitation or reformation.

In January 2014 the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created substantial doubt regarding her eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (j) (hereinafter referred to as Criterion J).<sup>2</sup>

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Administrative Judge in this case. At the hearing that I convened, the individual presented her own testimony and that of six witnesses. The DOE Counsel called one witness, the DOE psychologist. Both the LSO and the individual submitted a number of written exhibits prior to the hearing.

## **II. Regulatory Standard**

### **A. Individual's Burden**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring her 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 individual is afforded a full opportunity to present evidence supporting her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **B. Basis for Administrative Judge's Decision**

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<sup>2</sup> Criterion J relates to information that a person 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).

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization in favor of the national security. *Id.*

### **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, the LSO cites one criterion as a basis for suspending the individual's security clearance: Criterion J. To support Criterion J, the LSO cites the DOE psychologist's opinion that the individual has been a user of alcohol habitually to excess, and has engaged in a pattern of alcohol abuse, as well as her history of alcohol consumption and treatment. *See* DOE Exh. 1.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under Criterion J. The excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See* Guideline G of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines).

### **IV. Findings of Fact**

On September 26, 2012, the individual reported by e-mail to the LSO that she was seeking counseling through her Employee Assistance Program (EAP) for alcohol issues. She stated that over the preceding year, alcohol had had a negative impact on her personal life and affected a family relationship. DOE Exh. 1. According to the individual, while attending her niece's wedding, she had too much to drink while spending the day at the pool. Although she could not recall exactly how many drinks she had, the individual believes she had approximately four or five vodkas mixed with a Crystal Light drink. *Id.* The individual stated that her sister confronted her about her alcohol use. This angered the individual who then rescheduled her flight to return home early. *Id.* When she returned home, she contacted the EAP and, on September 25, 2012, she sought treatment with a behavioral health therapist through EAP. Based on her treatment of the individual and counseling, the therapist diagnosed the individual with Alcohol Abuse and Alcohol Dependency, in early remission. *Id.* The therapist recommended additional treatment for the individual. On October 22, 2012, the individual entered into an intensive outpatient treatment program (IOP). She has also participated in Alcoholics Anonymous (AA) and an online support group for women. *Id.*

During her November 2012 PSI, the individual reported that she first began consuming alcohol at age 14 or 15, while in middle school, and that she usually consumed beer. She further reported that she only drank "off and on" at parties in high school due to her extracurricular activities. *Id.* The individual recalled drinking to intoxication twice while in college, consuming

9-10 beers on each occasion. She further reported that during her 20s her drinking increased. The individual stated that her tolerance increased to 4-6 drinks to get intoxicated and her alcohol use stayed the same throughout her 20s and early 30s. *Id.* The individual further reported that her alcohol consumption decreased in her late 30s and 40s due to her busy schedule. She described herself as a social drinker during this time, drinking one to two glasses of wine with dinner or at events. She stated that from 2009 to September 2012, her drinking increased from a few times a week to almost daily. *Id.* The individual admitted to blacking out after drinking two to three times a year and that four or five drinks would get her to that point. She advised that on some occasion she reported to work a little “foggy headed” and did not have the focus she should have, but did not come to work intoxicated. During the course of her PSI, the individual also admitted that, since 2001, she has been taking Effexor for depression, and admitted to consuming alcohol while taking it. *Id.*

Based on this information, the individual was referred to the DOE psychologist for an evaluation. During the evaluation, the individual advised that she had been at odds with her IOP treatment counselors because she did not want to attend AA meetings as frequently as they requested. In addition, she admitted to relapsing on January 12, 2013, by having two glasses of wine, stating that she was “testing” herself. The DOE psychologist concluded that the individual has been a user of alcohol habitually to excess, and has engaged in a pattern of alcohol abuse. He further concluded that the individual had not demonstrated adequate evidence of rehabilitation or reformation to that point, and that adequate evidence would be counseling, abstinence from alcohol, and participation in AA over the next two years. DOE Exh. 3.

## **V. Analysis**

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)<sup>3</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the individual’s access authorization should be restored. Based on the facts in this record, I find that restoring the individual’s DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

### **A. Evidence of Rehabilitation and Reformation from Alcohol Abuse**

During the hearing, the individual recounted the incident that she considered the “last straw” before she sought help for her alcohol problem. Transcript of Hearing (Tr.) at 89. She testified that her drinking at her niece’s wedding in September 2012 was “out of control.” *Id.* The individual stated that it was at this point that she realized that she needed help with her drinking

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<sup>3</sup> Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

because she did not want to lose her sister or further negatively impact her life. *Id.* at 90. She testified that her drinking increased as she dealt with the stress of her mother-in-law's declining health. *Id.* at 97. According to the individual, alcohol treatment forced her to accept that she had an alcohol problem and she believes that she has been honest with herself throughout the process of recovery. *Id.* at 115. The individual testified that through her therapy and counseling sessions, she learned about alcoholism and accepted the fact that she is an alcoholic. *Id.* at 116. She further testified that she has matured and looks at life in a more positive manner now. *Id.* at 117. The individual testified that she participates in an online alcohol support group for women and believes she has achieved great success through her outpatient counseling sessions. Although she admitted that she did not fully accept AA initially, she now has a sponsor and is successfully working the program.

The individual also admitted that she relapsed in January 2013. According to the individual, she felt like "testing herself" and drank two glasses of wine. *Id.* at 122 and 136. She testified that she has not had a drink since that time. The individual further testified that she does not have cravings and states that she has a good support system. *Id.* at 110. She now recognizes her triggers and has changed her habits, including going to the gym and horseback riding. Finally, the individual testified that her future intention is to completely abstain from alcohol.

During the hearing, the individual also offered the testimony of her therapist, counselor, sponsor, supervisor, husband and sister. The individual's therapist, who is a licensed clinical psychologist, testified that the individual voluntarily met with her in September 2012. *Id.* at 103. She noted that the individual has made a number of positive changes, including an increased understanding of her alcohol problem and her consistent desire and commitment to remain sober. *Id.* Based on her observations, she has not seen any signs that the individual is drinking again. She testified that her current diagnosis of the individual is Alcohol Dependence in Sustained Remission. *Id.* According to the therapist, who now meets with the individual every two months, the individual voluntarily shared her relapse with her. The therapist stated that relapses are common within three to four months of sobriety. She reiterated that the individual is seriously committed to her sobriety. Likewise, the individual's counselor, who is the Director of Alcohol Dependency in the individual's outpatient treatment program, testified that the individual attended three counseling sessions a week during her six-month treatment and was an engaged and active participant. *Id.* at 76 and 77. She now attends one weekly session in aftercare. The counselor opined that the individual's Alcohol Dependence is in full remission and that the individual is committed to a sober life. The individual's sponsor, who first met with the individual in January 2014, testified that the individual is currently working on Step 4 of AA's 12 Step process and that the individual has made significant positive changes. *Id.* at 57 and 58. She noted that the individual has learned how to live life sober, is utilizing the tools she has learned through AA and has improved her relationship with her family.<sup>4</sup>

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<sup>4</sup> The individual's husband testified that the individual's drinking changed around 2008 when his mother became ill. He believes that both he and his wife both came to the realization that they were drinking too much as a means of dealing with the stress of his mother's health. The individual's husband stated that the individual is committed to remaining sober. Tr. at 14 and 16. Likewise, the individual's sister testified that she believes the individual is committed to a sober life. She testified that she observed positive changes in the individual. According to the sister, the individual no longer displays angry outbursts and has been open and honest with her alcohol problem. She has not noticed any signs that her sister has resumed drinking. *Id.* at 28 and 29. Finally, the individual's former supervisor testified that the individual worked with him for 10 years and that he never observed any "erratic

The DOE psychologist listened to all the testimony at the hearing before testifying himself. He testified that after evaluating the individual in April 2013, he diagnosed her with alcohol abuse based on the fact that she was a binge drinker as opposed to a continual drinker. *Id.* at 152. He testified that the individual met the fourth criteria of Alcohol Abuse under the Diagnostic and Statistical Manual of Mental Disorders, DSM-IV-TR, which refers to continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance. *Id.* at 153. He further testified that, at the time of his evaluation, he concluded that the individual was still in treatment and not “reliably committed to the treatment process.” The DOE psychologist noted that, at the time of his evaluation, he recommended that the individual abstain from alcohol and participate in AA and counseling for the next two years. However, during the hearing, he explained that this is not a fixed requirement, but that some individuals require monitoring for longer than a year to establish that they are consistent and committed to abstinence. *Id.* at 154. He testified, however, that he believes that the individual has currently achieved adequate evidence of rehabilitation. He noted that he is impressed with her husband’s emotional support of her as well as the fact that the individual has secured a good sponsor. *Id.* at 154-156. He further testified that the individual has an excellent prognosis and has the tools in place to address any possible alcohol triggers. *Id.* at 159.

### **B. Administrative Judge’s Evaluation of the Evidence**

In the administrative process, Administrative Judges accord deference to the expert opinion of psychiatrists, psychologists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing*, Case No. TSO-0728 (2009).<sup>5</sup> At the outset, I am persuaded by the testimony of the DOE psychologist that the individual achieved adequate evidence of rehabilitation. Moreover, the Adjudicative Guidelines describe factors that could mitigate security concerns involving psychological conditions and alcohol consumption. *See Adjudicative Guideline, Guidelines G*. In this case, the individual has satisfied the following mitigating factors: (1) the individual has acknowledged her alcohol problem, provided evidence of actions taken to address her problem and has established a pattern of responsible use; (2) the individual has successfully completed an IOP with required aftercare, has demonstrated a clear and established pattern of abstinence in accordance with her treatment recommendations, i.e., her participation in therapy, and has received a favorable prognosis by a duly qualified medical professional; and (3) the DOE psychologist has opined that the individual’s condition has a low probability of recurrence and that she has an excellent prognosis. *Id.* For these reasons, I find that the individual has sufficiently mitigated the DOE’s security concerns under Criterion J.

## **VI. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Criterion J. After considering

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behavior” or signs of drinking. He testified that the individual told him that she had a drinking problem and shared with him that she had a relapse. The supervisor testified that the individual is honest and reliable. *Id.* at 47-50.

<sup>5</sup> Decisions issued by OHA are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

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 find that the individual has brought forth convincing evidence to mitigate the security concerns associated with Criterion J. I therefore find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should 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.

Kimberly Jenkins-Chapman  
Administrative Judge  
Officer of Hearings and Appeals

Date: August 1, 2014