

The Notification Letter informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The Individual requested a hearing, and the LSO forwarded his request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on April 9, 2012.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his daughter, and a personnel security specialist. *See* Transcript of Hearing, Case No. PSH-12-0033 (hereinafter cited as “Tr.”). The LSO submitted 10 exhibits, marked as Exhibits 1 through 10, and the Individual submitted seven exhibits, marked as Exhibits A through G.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of 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 have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's 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. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.31. 10 C.F.R. § 710.8(f) (Criterion F);

(2) Been, 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 J); and

(3) Engaged 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, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility. 10 C.F.R. § 710.8(l) (Criterion L).

III. FINDINGS OF FACT

The Individual has a longstanding pattern of criminal activity which began in his juvenile years. Exhibit 2 at 4-8. The Individual has been arrested on no fewer than nine occasions as an adult. Seven of these nine charges have a common denominator: they have been alcohol-related. On April 24, 2010, the Individual was cited for Battery, for his involvement in an incident that had occurred when he was intoxicated. Exhibit 6 at 5. On February 3, 2008, the Individual was arrested for Driving Under the Influence (DUI) and Open Container. On December 17, 2006, the Individual was charged with DUI. In October 1999, the Individual was charged with Domestic Assault and Resisting or Obstructing an Officer after an incident in which the Individual admits he had been drinking. The Individual was also charged with DUI in March 1998, April 1996, and June 1988. On January 24, 2009, the Individual was arrested for Driving Without Privileges and Failure to Provide Insurance. In March 2008, the Individual was arrested for violating his parole.

On February 28, 2011, the Individual completed and submitted an electronic form of a Questionnaire for National Security Positions (QNSP).² The Question 22 of the QNSP required the Individual to list every criminal charge against him (for fines greater than \$300) during the previous seven years. Exhibit 3 at 30. The Individual omitted his April 24, 2010, citation for Battery, his March 2008 arrest for parole violation, and his February 3, 2008, arrest for DUI and Open Container from his response to Question 22. *Id.* at 30-33. The Individual also denied that he had ever been charged with a felony offense. *Id.* at 30.

The LSO conducted a Personnel Security Interview (PSI) of the Individual on August 25, 2011.³ During this PSI, the Individual initially indicated that that he had been incarcerated because he had committed a felony DUI. Exhibit 2 at 28. However, a few moments later, when the Individual was asked why he had failed to indicate that he had been charged with a felony in his answer to QNSP Question 22c, the Individual responded by claiming that he did not think that he had ever been charged with a felony. *Id.* at 30. The Individual admitted that after he had his driver's license suspended in 2009, he continued to drive. *Id.* at 54. The Individual also admitted that he violated parole by continuing to consume alcohol on occasion. *Id.* at 43.

During the PSI, the Individual was asked to give his account of the events resulting in his being charged with Battery on April 24, 2010. The Individual claimed that his adult son was brandishing a gasoline can and threatening to burn the Individual's house down. Exhibit 2 at 57-62. The Individual stated that he pushed his son in an attempt to get the gasoline can from him. *Id.* at 62. The Individual initially claimed that he was not charged with any crime, but rather, his son was charged with arson as a result of this incident. *Id.* at 57. The Individual then stated that he "might" have received a citation. *Id.* The Individual admitted that he might have had a couple of drinks prior to the incident. *Id.* at 59. The Individual further claimed that his daughter

² A printed copy of the Individual's February 28, 2011, QNSP appears in the record as Exhibit 2.

³ A written summary of the March 26, 1982, PSI appears in the record as Exhibit 13.

was not present during the incident. *Id.* at 62.

The record contains a copy of an incident report (the Report) prepared by the local police as a result of the April 24, 2010, incident.⁴ The Report's description of the April 24, 2010, incident is not consistent with the Individual's account provided during the PSI. The Report indicates that the Individual's son (the son) had summoned police from a neighbor's house. Exhibit 6 at 3. The son told police that he had tried to intervene on his sister's behalf because the Individual was yelling obscenities at his sister (the Individual's daughter). *Id.* The son further claimed that the Individual, was intoxicated at the time. *Id.* According to the son, the Individual had grabbed him by the shirt and shoved him into a wall. *Id.* at 4. The Individual, the son claimed, then punched the son several times. *Id.* The Individual's daughter (the daughter) was questioned by police. The daughter told the police that her father was an alcoholic and that he was particularly intoxicated. *Id.* at 4. The daughter reported that the Individual had shouted obscenities at her, when her brother tried to intervene on her behalf. *Id.* She then heard a scuffle between her father and brother. *Id.* The officer reported that he observed that the Individual appeared to be "highly intoxicated." *Id.* at 5. The Report further states that the Individual was cited for battery. *Id.* at 6. The Report does not mention a gas can or allegations of attempted arson.

IV. ANALYSIS

A. Criterion F

The evidence discussed above indicates that the Individual repeatedly and intentionally provided false or misleading information about his arrest record and criminal conduct. The Individual intentionally provided this false information to government security officials in order to conceal the recency of his criminal activity and to minimize the extent of his problematic conduct while under the influence of alcohol for the purpose of maintaining his security clearance. The Individual's deliberate failure to provide accurate information in his QNSP and PSI, raises doubts under Criterion F about his candor, honesty, and willingness to comply with rules. "Conduct involving . . . lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process." *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Revised Guidelines), Guideline E at ¶ 15.*

At the hearing, the Individual continued with his pattern of prevarication. During his testimony, he continued his pattern of repeatedly contradicting himself and other sources. For example, the Individual testified that he had overstated the frequency in which he would drive without a license during the PSI. Tr. at 63-66. The Individual continued to maintain that the April 24, 2010, incident occurred as a result of his attempts to prevent his son from setting his home on

⁴ A copy of the Report appears in the record as Exhibit 6.

fire with gasoline.⁵ *Id.* at 67-68. The Individual proceeded to testify that his son was arrested for arson as a result of the April 24, 2010, incident.⁶ *Id.* at 79.

Based on the foregoing, I find that the Individual has not mitigated the serious security concerns raised by his repeated provision of false information to DOE security officials. Therefore, the security concerns associated with the Individual's falsifications remain unresolved.

B. Criterion J

The Individual has a history of seven alcohol-related arrests, including five DUIs. These seven alcohol-related arrests raise security concerns about the Individual under Criterion J. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. *Adjudicative Guidelines* at ¶ 21. In the present case, an association exists between the Individual's consumption of alcohol and his subsequent failure to exercise good judgment and to control his impulses, as evidenced by his repeated engagement in activities that required the intervention of law enforcement to protect those around him.

I find that the Individual has not mitigated the security concerns raised by his problematic alcohol use and use of alcohol habitually to excess. The Individual accepts that his alcohol use has caused serious problems in his life. To this end, the Individual has testified that he has stopped using alcohol. *Tr.* at 55-56. The Individual has testified that he has used alcohol on only one occasion during the past two years. *Id.* at 56. The Individual has presented no corroborative testimony in support of his claim, other than his daughter. I give little weight to his daughter's testimony, however. She no longer lives with him, and much of her testimony at the hearing contradicted her previous statements recorded in the Report. Because the Individual has not been diagnosed with any alcohol-related disorder, had I not found that the Individual's credibility was suspect, I might have been inclined to find that the Individual had mitigated the security concerns raised by his problematic alcohol use and use of alcohol habitually to excess by abstaining from alcohol use. However, because of my concerns about the Individual's credibility, I am not sufficiently convinced by the testimony of the Individual, and his daughter, that the Individual is actually abstaining from alcohol. Accordingly, I find that the Individual has not sufficiently mitigated the security concerns raised under Criterion J by the Individual's seven alcohol-related arrests.

C. Criterion L

The Individual's nine arrests constitute a longstanding and substantial pattern of criminal conduct which raises security concerns under Criterion L. "Conduct involving questionable

⁵ The Individual attempted to contradict the Report by presenting the testimony of his daughter, whom the Individual claimed, at the PSI, was not present during the April 24, 2010, incident. Exhibit 2 at 62.

⁶ Exhibit 10 is a copy of the son's police record, which shows that the son was not charged with arson during 2010. The son, however, had been charged and convicted of arson for an incident that had occurred in 2008.

judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.” Adjudicative Guidelines at ¶ 15. “Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.” *Id.* at ¶ 30. The Individual has not offered any evidence or provided any compelling argument showing mitigation of the security concerns arising from his longstanding and substantial pattern of criminal conduct. Accordingly, I find that he has not resolved those security concerns arising from his criminal conduct and behavior cited in the Notification Letter under Criterion L.

V. CONCLUSION

For the reasons set forth above, after carefully considering the evidence before me, I find that the Individual has not resolved the security concerns raised under Criteria F, J, and L. Therefore, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the Individual's security clearance should not be granted. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. Part 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: June 27, 2012