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

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	May 3, 2012)	
)	Case No.: PSH-12-0048
)	

Issued: August 17, 2012

Hearing Officer Decision

William M. Schwartz, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (“the individual”) to hold a Department of Energy (DOE) access authorization.¹ This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual’s suspended DOE access authorization should be restored. For the reasons detailed below, I find that the DOE should not restore the individual’s access authorization.

I. BACKGROUND

The individual is employed by a DOE contractor and has held a DOE access authorization for many years. In the course of a routine reinvestigation, the individual informed the local security office (LSO) that he drinks to intoxication two to four times a month. This admission prompted the LSO to conduct a Personnel Security Interview (PSI) with the individual in January 2012 and to refer the individual for an examination by a DOE-contractor psychologist (DOE psychologist). Exhibit 4. The DOE psychologist examined the individual in March 2012 and issued an evaluative report (Report). Exhibit 8.

Because neither the PSI nor the DOE psychologist’s examination resolved the security concerns raised by the individual’s admissions of habitual intoxication, the LSO informed the individual in a April 2012 notification letter (Notification Letter) that derogatory information existed which

¹ Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

raised security concerns under 10 C.F.R. § 710.8(h) and (j) (Criteria H and J, respectively) and that his security clearance was suspended. 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 security concerns. *Id.*

The individual requested a hearing on this matter. Ex. 2. The LSO forwarded his request to the Office of Hearings and Appeals and I was appointed the Hearing Officer. At the hearing, the DOE counsel introduced 15 numbered exhibits into the record and presented the testimony of one witness, the DOE psychologist. The individual, represented by counsel, presented his own testimony, as well as the testimony of four witnesses: his wife and three long-time business associates who had been both co-workers and supervisors. The individual also submitted 18 exhibits (Exhibits A-R).

II. REGULATORY STANDARD

The regulations governing the individual's eligibility for access authorization are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The regulations identify certain types of derogatory information that may raise a question concerning an individual's access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Hearing Officer considers relevant factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors. *See 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).

Ultimately, the decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id. See generally Dep't of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security" test indicates that "security clearance determinations should err, if they must, on the side of denials").

III. FINDINGS OF FACT AND ANALYSIS

A. Whether the LSO Properly Invoked Criteria J and K

1. Alcohol Use and Psychological Evaluation

The individual has consumed alcohol socially, in varying amounts, for most of his adult life. Following an arrest for Driving Under the Influence (DUI) in 1999, which was ultimately dismissed and expunged from his record, the individual adopted the following drinking pattern, which he maintained until May 2012. Exhibit 15 (Transcript of January 25, 2012, Personnel Security Interview (PSI)) at 30-32. He customarily had two, and occasionally three, mixed drinks at home after each workday, and a similar amount on some Sundays. *Id.* at 7-8, 13. On one weekend evening each week, he would go to a club with long-time friends and drink six to eight mixed drinks over the course of four or five hours. *Id.* at 8, 12-14.

During the PSI, the individual discussed his weekly night at the club. He reported that he feels intoxicated after his fourth drink. Exhibit 15 at 16. He defined intoxication as a reduction in motor skills to the point that he would not drive a car, and “feeling either too good or . . . getting too irritable.” *Id.* at 33-34, 36. By his definition, he was drinking to the point of intoxication once a week. *Id.* at 18. He stated his intention to continue drinking alcohol, but drinking to intoxication less often. *Id.* at 48.

After the PSI, the individual was examined by the DOE psychologist. In his Report, the DOE psychologist described the individual’s weekly drinking pattern, according to the individual, as two mixed drinks four nights a week (Sunday, Monday, Tuesday, and Wednesday) and six or seven drinks over a five-hour period one night a week (either Thursday or Friday). Exhibit 8 at 3. The individual denied having hangovers after drinking and denied having any problems associated with his drinking. He reported averaging 10 to 15 drinks per week and becoming intoxicated once a week after consuming six to seven drinks. *Id.* at 6. During the evaluation, the DOE psychologist explained that commonly accepted medical opinion set limits for healthy alcohol use at three drinks per day, and a total of seven drinks per week, for individuals over 65 years old, such as the individual. *Id.* The individual claimed that his doctors had never discussed reducing his alcohol consumption. *Id.* He stated that he would consult with his doctor, try to cut down on the amount of alcohol he drinks on weekdays, and reduce his consumption by one drink on those nights he traditionally drinks six or seven. *Id.* The DOE psychologist determined that the individual’s current alcohol consumption significantly exceeds commonly accepted standards for healthy or moderate consumption, and that his once-weekly consumption of six or seven drinks constitutes binge drinking. *Id.* at 8. He expressed further concern based on the individual’s long history of significant alcohol consumption, his 1999 arrest for DUI, his intention to continue to drink in significant amounts, and existing medical conditions that could be exacerbated by his current level of alcohol consumption. *Id.* at 8-9. He concluded that, in his opinion, the individual is a user of alcohol habitually to excess without adequate evidence of rehabilitation or reformation. To demonstrate adequate rehabilitation or reformation, the DOE psychologist stated that the individual should cease consuming more than the recommended amount of alcohol for six months, and only under the advice and monitoring of his doctors. *Id.* at 10. Finally, the DOE psychologist concluded that the individual’s use of

alcohol habitually to excess causes or may cause a significant defect in judgment or reliability. *Id.*

2. The Associated Security Concerns

Criterion H concerns information that a person has “an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist causes, or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). It is well established that “certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” Adjudicative Guidelines at Guideline I. Conduct involving such psychological conditions can raise questions about an individual’s ability to protect classified information. *Personnel Security Hearing*, Case No. PSH-11-0010 (March 1, 2012) (Alcohol Related Disorder, NOS, found to raise security concerns under Criterion H).² Criterion J refers to information indicating that an individual 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(h). Excessive alcohol consumption raises a security concern because it can lead to questionable judgment and the failure to control impulses, which in turn can raise questions about a person’s reliability and trustworthiness. *See* Adjudicative Guidelines at Guideline G; *Personnel Security Hearing*, Case No. PSH-11-0035 (April 19, 2012), *slip op.* at 4. In his Report, the DOE psychologist concluded that the individual had used alcohol habitually to excess and suffered from Alcohol Related Disorder, NOS, conditions that could cause a defect in judgment or reliability. Exhibit 8 at 10. In light of these determinations, I find that the LSO properly invoked Criteria H and J.

B. Whether the Individual Has Mitigated the Security Concerns

With regard to the issue of mitigation, I will consider the Criteria H and J concerns together, as both arise from the individual’s misuse of alcohol. At the hearing, the individual presented testimony to mitigate the LSO’s concerns about his alcohol consumption and address any consequences from that consumption. The relevant testimony is summarized below.

The individual testified that after he received the Notification Letter, he conducted extensive online research into the LSO’s concerns. At the hearing, he spoke at length about an online publication authored by a professor of sociology that posited that moderate alcohol consumption has beneficial effects on one’s health and longevity, including cardiac health. Transcript of Hearing (Tr.) at 120-33; Exhibit A. He is being treated for a cardiological condition, and testified that he specifically asked his cardiologist if he should be “making any changes in his alcohol consumption.” Tr. at 132. His doctor responded in a letter, “I did not need to advise [the individual] to abstain from alcohol in relation to” his condition. Exhibit F.

² Decisions issued by the Office of Hearings and Appeals (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>.

The individual further testified that his research led him to a quantifiable definition of binge drinking, in which the pattern of consumption brings blood alcohol concentration (BAC) to 0.08 gram percent or above. The same source, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), defined risky drinking as reaching a BAC of 0.05 and 0.08 gram percent. Tr. at 154; Exhibit E. Using additional online resources, the individual calculated his BAC after drinking five, six, seven, and eight drinks on his night out. These calculations revealed that his BAC would have been below 0.08 gram percent when he drank fewer than eight drinks, and .029 gram percent when he drank only five. Tr. at 157-61; Exhibits M, N, O, P.

The individual conceded that he had occasionally met the definition of binge drinking, though he also maintained that his absence of a history of alcohol-related arrests led him to believe he had been drinking responsibly. Tr. at 135-36. Other than the 1999 DUI arrest, the individual has suffered no legal consequences, nor has his drinking led to any work-related, financial or social repercussions. *Id.* at 23, 25, 34, 42, 47, 60 (testimony of supervisors); 77, 81, 84-85 (testimony of wife); 173-74 (testimony of individual). Both the individual and his wife remarked that the individual could not have been as successful as he had been if he had a serious alcohol problem. *Id.* at 99, 173.

After considering the DOE's stated concerns and consulting online sources, the individual devised a plan for reducing his alcohol intake. He now drinks on only four days of the week, limits his daily maximum to five drinks once a week, and averages 14 or fewer drinks per week. *Id.* at 180-81. The individual considers the plan reasonable as it ensures that his BAC remains well below 0.08 gram percent—in fact, below 0.03 gram percent—at all times. *Id.* at 205. He further produced calendar entries demonstrating that his actual alcohol consumption from May 6, 2012, when he began this plan, through July 8, 2012, complied with the plan. Exhibit S.

After listening to the testimony of the other witnesses, the DOE psychologist offered the following testimony. He questioned the neutrality of the author of the publication on which the individual relied regarding the benefits of moderate alcohol consumption, stating that the author was not a health practitioner and is known as a staunch advocate for liberalizing some alcohol laws. *Id.* at 195. He expressed his concern that neither the individual's cardiologist nor his family physician knew the details of his alcohol consumption. *Id.* at 197, 199. His concern about the individual's alcohol consumption rested not only on the medical recommendations for healthy drinking (measured in total consumption) but also on the frequency of intoxication (measured in consumption over time). *Id.* at 222. He stated that he would have no concerns if the individual drank no more than the accepted standards for a person over 65 years old: no more than three drinks at one time, and no more than seven drinks in a week. *Id.* Consequently, he considered the individual's new plan for drinking to be borderline at best. *Id.* at 240. He felt that the individual's alcohol consumption was simply too great for a person over 65. *Id.* at 226. Despite the BAC levels established in the NIAAA's definitions of binge and risky drinking, he considered consuming five drinks in an evening risky for the individual, given his age and medical health. *Id.* at 227. As a result, he maintained that the individual suffers from Alcohol Disorder, Not Otherwise Specified, which impairs his judgment and reliability when he is intoxicated. *Id.* at 223, 233-34.

I have considered all of the testimony described above, as well as the exhibits in the record, and have reached the following conclusions. As a preliminary matter, I note that the DOE psychologist and the individual focused substantial portions of their respective testimony on the health effects of moderate and immoderate alcohol consumption. Although the importance of those effects cannot be overstated, my decision must be constrained to the security concerns raised by his drinking, which are whether he drinks, or drank, habitually to excess (Criterion J) and whether he has an illness or mental condition that causes, or may cause, a significant defect in judgment or reliability (Criterion H).

The individual drank to intoxication, and likely continues to drink to intoxication, roughly once a week. In his PSI, he provided as his definition of intoxication a reduction of motor skills and an increase in emotions, and he stated that he feels those effects after consuming four mixed drinks. He has consumed six to eight drinks with regularity, once a week, for many years. Since May of this year, he has set a limit of no more than five drinks on a single night once a week; his drinking log records eight days during a nine-week period on which he consumed four or more drinks. Whether his BAC reached 0.08 gram percent on any of those days, or whether his consumption meets a technical definition of binge drinking on those days, his alcohol consumption on that one night each week impairs his function which, in the opinion of the DOE psychologist, includes his judgment and reliability. I recognize that there is no evidence in the record that the individual has ever mishandled classified information, despite his long history of weekly intoxication. Nevertheless, his behavior heightens the risk that he might do so in the future and, as discussed below, I find that the controls he has imposed upon himself do not reduce this risk to an acceptable level.

I applaud the individual for voluntarily undertaking a plan to modify his alcohol consumption. Moreover, there is uncontroverted evidence that he is complying with his self-imposed consumption limits. Nevertheless, I am not convinced that the plan, as devised, goes far enough to resolve the LSO's security concerns. The plan permits him to drink five drinks one day a week which, as stated above, has significant effects on his judgment and reliability. I agree with the DOE psychologist that the efficacy of this plan is borderline at best. Moreover, even if I were to find that the individual's plan sufficiently addressed the LSO's concerns, the individual has been following the plan for only nine weeks, as of the date of the hearing. This is a considerably shorter period than the six-month period the DOE psychologist recommended in his Report as evidence of adequate reformation or rehabilitation from the individual's alcohol disorder.

After reviewing the evidence before me, I find that the individual has not resolved the security concerns raised by the Criteria H and J derogatory information.

IV. CONCLUSION

In the above analysis, I have found that the DOE possessed sufficient derogatory information to raise 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 associated with Criteria H and J. I therefore cannot find that restoring the individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the individual's access authorization should not be restored at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: August 17, 2012