

\* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

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

In the Matter of Personnel Security Hearing    )  
  )  
Filing Date: October 18, 2011                )  
  )  
  )  
\_\_\_\_\_  )

Case No.:           PSH-12-0052

Issued: October 2, 2012

**Hearing Officer Decision**

Steven J. Goering, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXX (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 grant the individual access authorization at this time.<sup>2</sup>

**I. BACKGROUND**

The individual is an employee of a DOE contractor and an applicant for an access authorization. After a background investigation conducted by the Office of Personnel Management (OPM) revealed information of concern to the DOE, a Local Security Office (LSO) summoned the individual for an interview (PSI) with a personnel security specialist on November 2, 2011. Exhibit 5 (DOE Case Evaluation); Exhibit 8 (PSI Transcript). After the PSI, the LSO referred the individual to a local psychologist (hereinafter referred to as “the DOE psychologist”) for an agency-sponsored evaluation. Exhibit 4 (DOE Case Evaluation). The DOE psychologist prepared a written report, setting forth the results of that evaluation, and sent it to the LSO. Exhibit 6 (Psychological Evaluation Report). Based on this report and the rest of the individual’s personnel security file, the LSO determined that derogatory

---

<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.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>.

information existed that cast into doubt the individual's eligibility for access authorization. Exhibit 3 (DOE Case Evaluation). The LSO informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. Letter from LSO to Individual (April 11, 2011) (Notification Letter); Exhibit 1 (Summary of Security Concerns). 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 an access authorization.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and I was appointed the Hearing Officer. The DOE introduced ten exhibits into the record of this proceeding. The individual introduced six exhibits, and presented his own testimony.

## **II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS**

The Notification Letter cited derogatory information within the purview of three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (j), and (l) (hereinafter referred to as Criteria H, J, and L, respectively). Exhibit 1.<sup>3</sup> Under Criteria H and J, the LSO cited (1) the report of the DOE psychologist, in which he diagnosed the individual as suffering from Alcohol Abuse, and that this disorder is an illness or condition, which causes, or may cause, a significant defect in judgment or reliability; and (2) five alcohol-related criminal charges brought against the individual, occurring in 1994, 1996, 2002, 2010, and 2011. Exhibit 1 at 1. Under Criterion L, the LSO cited, in addition to the five alcohol-related criminal charges, prior separate criminal charges that were not alcohol-related, brought against the individual in 1991 (burglary), 1994 (possession of marijuana and driving on a suspended license), and 1995 (shoplifting). Exhibit 1 at 2.

The individual does not dispute any of the allegations in the Notification Letter, and I find that each of these allegations is valid and well supported by the record in this case. *See* Hearing Transcript (Tr.) at 10; Exhibit 2 (Response to Notification Letter); Exhibit 8 at 22-23 (Questionnaire for National Security Positions); Exhibit 9 at 48-49, 52-53 (Report of OPM Background Investigation); 10 C.F.R. § 710.27(c) (requiring Hearing Officer to "make specific findings based upon the record as to the validity of each of the allegations contained in the notification letter").

This undisputed information adequately justifies the DOE's invocation of Criteria J and H, as it raises significant security concerns related to excessive alcohol consumption, which often leads to the exercise of questionable judgment or the failure to control impulses, and calls into question the individual's future reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Adjudicative Guidelines)*, The White House (December 19, 2005), Guideline G. Under Criterion L, the individual's undisputed criminal activity creates doubt about his judgment, reliability and trustworthiness, as it calls into question his ability or willingness to comply with laws, rules and regulations. *Id.* at Guideline J.

## **III. REGULATORY STANDARDS**

---

<sup>3</sup> Criterion H defines as derogatory information indicating that the individual has an "illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, 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 psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). Criterion L defines as derogatory information indicating that the individual has "[e]ngaged 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." 10 C.F.R. § 710.8(l).

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 granting the individual a security clearance would compromise national security concerns. 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).

#### **IV. ANALYSIS**

##### **A. Criterion H and J**

In his response to the Notification Letter, the individual stated that he accepted the findings in the report of the DOE psychologist, though he did take issue with certain of the psychologist’s observations regarding “minimization.” Exhibit 2 at 1-2 (quoting Exhibit 6 at 8, 9). The individual contends that he has “been very upfront and honest throughout this process.” *Id.* at 2. Regarding his use of alcohol, the individual testified that he did not think that he had “a problem. I don’t think that I’m an alcoholic. I would say that I do use alcohol. I do drink. As far as to say on a regular basis, I wouldn’t say that.” Tr. at 12.

In his November 2011 PSI, the individual reported that he drank six to eight beers over the course of a typical week, a pattern he had maintained since 1996. Exhibit 8 at 72-73. In his hearing testimony, the individual stated that he has since reduced his alcohol consumption such that it now ranges from one to three beers per week, and that he “may go seven, eight or nine days, have one and not touch it again for a while. There is no set date.” Tr. at 46. He testified that the last time he drank was four days prior to the hearing. Tr. at 27, 45.

In my observation of his testimony, I found nothing in the individual’s demeanor that would undermine the credibility of his account as to the frequency and amount of his alcohol consumption. It is also clear, however, that the Alcohol Abuse diagnosis rendered by the DOE psychologist was not grounded in the amount of alcohol the individual consumed. In his report, the DOE psychologist states that,

[a]lthough [the individual’s] current reports of his alcohol practices are of relatively moderate amounts and frequencies, he nonetheless fulfills the DSM-IV-TR [Diagnostic and Statistical Manual of the American Psychiatric Association, 4th edition, Text

Revision] criterion #3, establishing the diagnosis of Alcohol Abuse. He has had recurrent (2) substance-related (alcohol) legal problems within 12 months . . . .

It is important to emphasize that the diagnosis of Alcohol Abuse or Dependence is not made on the basis of amount or frequency of consumption *per se*, but in terms of adverse consequences of alcohol consumption. Mr. Condry has incurred multiple adverse consequences associated with alcohol consumption over the years, and this includes two significant legal events within a very recent 12 month period.

Exhibit 6 at 9.

Thus, the DOE psychologist recommended, as evidence of rehabilitation or reformation, that the individual “demonstrate abstinence from alcohol consumption for a period at least 12 months.” He further recommended that the individual receive profession alcohol counseling during this period, and participate in Alcoholics Anonymous, with a sponsor, at least twice a week. *Id.* at 11. In the absence of a formal rehabilitation program, the DOE psychologist opined that the individual should “have 18 months of demonstrated sobriety, documented with periodic random BAC testing.” *Id.*

The individual testified that he started seeing a counselor on June 15, 2012, and has met with her every two weeks since. Tr. at 24. He provided a letter from his counselor documenting his attendance. Exhibit A. While the individual’s counselor did not testify at the hearing, and her letter did not include a diagnosis, the individual testified that his counselor read the report of the DOE psychologist and “didn’t go against anything” stated in the report. Tr. at 39. Further, the individual submitted court records indicating that at least one, and possibly both, of his more recent alcohol-related criminal charges had been dismissed and expunged from his criminal record. Exhibit B; Exhibit E.

The DOE psychologist testified after hearing the testimony of the individual and reviewing the exhibits presented. Regarding the legal disposition of the individual’s two most recent criminal charges, the psychologist testified that this could “make a difference in understanding the meaning of those events in terms of a clinical formulation but they do not necessarily sway a formulation. Fact of the matter is, there were legal problems in which alcohol was involved regardless of whether a case was dismissed or expunged.” *Id.* at 60-61. I note here that the individual acknowledged at hearing that his use of alcohol negatively affected his judgment in both of these recent incidents, *id.* at 15-16, 19-20, 43, and that, absent his use of alcohol, his most recent arrests would not have occurred. *Id.* at 71.

Regarding rehabilitation and reformation, the DOE psychologist stated that he would not change the recommendations set forth in his report, and that a demonstrated period of abstinence would have to begin from the reported date of the individual’s most recent use, four days prior to the hearing. *Id.* at 59-60. Finally, noting that the individual had only recently sought profession counseling and that he continued to consume alcohol, the DOE psychologist testified that the risk of use of alcohol to excess by the individual “would be moderate to high at this point in time. In the future, with appropriate rehabilitation, the statement could be very different.” *Id.* at 64-65.

As described above with reference to the *Adjudicative Guidelines*, the concerns in the present case under Criterion H and J stem from the risk that the individual will consume alcohol to excess in the future, as this would compromise his trustworthiness and reliability. Giving due weight to the expert testimony of the DOE psychologist, and all other relevant evidence in the record, I find that the risk of future excessive use of alcohol by the individual is too high at this time, and that therefore the individual has not resolved the concerns raised under Criterion H and J.

## **B. Criterion L**

Regarding the criminal conduct cited in the Notification Letter under Criterion L, I consider it significant that four of the five most recent criminal charges cited (occurring in 1994, 1996, 2002, 2010, and 2011) are alcohol-related. Had the individual resolved the concerns related to his use of alcohol under Criteria H and J, discussed above, I would necessarily take that into account in determining whether the Criterion L concern related to the same conduct had been resolved. 10 C.F.R. § 710.7(c) (requiring DOE officials to consider, among other things, the “the circumstances surrounding the conduct”).

Moreover, I must consider the fact that the only criminal charges cited in the Notification Letter that are not related to the individual’s use of alcohol occurred in 1991, 1994, and 1995, when the individual was age 15, 18, and 19, respectively, the most recent of these charges having taken place over 17 years ago. 10 C.F.R. § 710.7(c) (requiring consideration of the “recency of the conduct” and “the age and maturity of the individual at the time of the conduct”). In the absence of the individual’s subsequent alcohol-related criminal charges, I would likely find that the concerns raised by these less recent charges had been resolved. At this time, however, given that the concerns raised by the individual’s use of alcohol remain unresolved, I cannot find that the individual has resolved the concerns raised by his prior criminal charges under Criterion L.

## **V. CONCLUSION**

For the reasons set forth above, I conclude that the individual has not resolved the DOE’s security concerns under Criteria H, J, and L. Therefore, the individual has not demonstrated that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not grant the individual a security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Steven J. Goering  
Hearing Officer  
Office of Hearings and Appeals

Date: October 2, 2012