

The Individual requested a hearing on this matter and the OHA Director appointed me as Hearing Officer. At the hearing, the DOE counsel introduced 13 exhibits into the record (Exs. 1-13) and presented the testimony of the DOE Psychologist. The Individual presented his own testimony, as well as the testimony of his fiancée (Fiancée). *See* Transcript of Hearing, Case No. PSH-12-0065 (hereinafter cited as “Tr”). At the hearing, the Individual submitted two exhibits (Exs. A-B).

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) (*Egan*) (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 Criterion J

1. The Individual’s Alcohol Consumption

The facts of this case are essentially undisputed. Tr. at 32.

In September 1994, the Individual was arrested for Driving Under the Influence (DUI). Ex. 13 at 23-26; Ex. 12 at 11-34. Prior to the arrest, the Individual had consumed four or five beers and had fallen asleep at the wheel which resulted in his vehicle colliding with another vehicle. Ex. 12

at 88; Ex. 13 at 24-25. Ten years later, local police arrested the Individual in January 2004 for DUI. Ex. 11 at 7. Prior to the arrest, the Individual consumed four or five beers.

In the 2012 PSI, the Individual reported that during the period, 1984 through September 1994, the Individual consumed 20 to 24 beers per month. Ex. 12 at 74. After the arrest, the Individual stopped consuming alcohol until approximately 2004. Ex. 12 at 35-36. At the time of the 2004 arrest, the Individual was consuming two to four beers nightly and 12 to 18 beers during the weekend. Ex. 12 at 83-84. The Individual also reported that, at the time of the 2012 PSI, his alcohol consumption was two to four beers during the workweek and 10 to 18 beers during the weekend. Ex. 12 at 159.

After her March 2012 examination of the Individual, the DOE Psychologist issued an evaluative report. Ex. 8. In her report (Report), the DOE Psychologist noted that two of the three standardized psychological tests to detect possible alcohol disorders (SASSI-3² and the Michigan Alcohol Screening Test) she administered to the Individual indicated that he had no apparent problems with alcohol consumption. The remaining test (Alcohol Use Disorders Test) indicated the possibility that the Individual was engaging in harmful alcohol consumption. Ex. 8 at 7. Based upon her interview with the Individual and her review of the available records and psychological testing, the DOE Psychologist found that the Individual had engaged in the “imprudent” use of alcohol in the past and was currently engaging in “risk drinking” as defined by the National Institute of Health.³ Ex. 8 at 7. While she found that the Individual did not suffer from an alcohol disorder or suffer from an illness that could cause a significant defect in judgment or reliability, she opined that the Individual “has been and continues to be a user of alcohol habitually to excess without adequate evidence of rehabilitation or reformation.” Ex. 8 at 8. The DOE Psychologist stated that, in order for the Individual to demonstrate adequate evidence of reformation, the Individual would have to reduce his alcohol consumption to less than four alcoholic drinks per day and no more than 13 drinks per week.⁴ Ex. 8 at 8.

2. The Associated Security Concerns

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(j). 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, Guideline G; Personnel Security Hearing, Case No. TSO-0927 (November 30, 2010)*. Given the DOE Psychologist’s opinion, as stated in the Report, that the Individual is a user of alcohol habitually to excess, the LSO had sufficient grounds to invoke Criterion J.

² SASSI is an acronym for Substance Abuse Subtle Screening Inventory.

³ The NIH standard for “risk drinking” for males is consumption of over 14 drinks per week. Ex. 8 at 7.

⁴ In her report, the DOE Psychologist did not specify a minimum period of time that the Individual needed to reduce his alcohol consumption.

B. Whether the Individual Has Mitigated the Security Concerns

At the hearing, the Individual testified that he began to consume alcohol in high school.⁵ Tr. at 12-13. Later, after his 1994 DUI arrest, he stopped consuming alcohol for a period of ten years. Tr. at 13, 15-16, 23. During this period, the Individual also quit smoking without any treatment program. Tr. at 13. The Individual went on to testify that his personal problems from his divorce led to him resume consuming alcohol around 2004. Tr. at 15, 23. After the 2004 DUI arrest, the Individual began to reduce his alcohol consumption. Tr. at 23. The Individual further reduced his alcohol consumption after his interview with the DOE Psychologist. Tr. at 30-31. From April 2012 to the date of the hearing, the Individual's alcohol consumption consisted of three or four beers per day on each of his three-day weekends. Tr. at 23-24. During his four-day workweek, the Individual does not consume alcohol. Tr. at 31.

The Individual testified as to how much his position at the DOE facility means to him and the pride he feels in his work. Tr. at 9-10, 17-18. Prompted by the suspension of his clearance, the Individual completed an on-line alcohol-awareness course where he learned about the effects of alcohol and the problems excessive use may cause. Tr. at 26-28, 44; Ex. A (certificate of completion). Additionally, the Individual obtained an evaluation by a licensed clinical social worker (LCSW). Ex. B. In a written statement submitted by the Individual, the LCSW stated that he assessed the Individual with the purpose of determining whether the Individual required any type of alcohol treatment. Ex. B. The LCSW administered the UNCOPE⁶ screening assessment test for determining alcohol addiction to the Individual. Ex. B at 1. The results of the test indicated that the Individual has abused alcohol at times but that he is not alcohol dependent. Ex. B at 1. Based upon the test results and his interview, the LCSW did not recommend any type of alcohol treatment program for the Individual. Ex. B at 1.

The Fiancée testified that she starting dating the Individual in 2004 and has known him for approximately 30 or 40 years. Tr. at 48. She noted that the Individual had a great deal of pride in working at the DOE facility. Tr. at 50. When the Individual's clearance was suspended, the Individual was shocked and humiliated. Tr. at 51. Upon receiving the Notification Letter, the Individual began to reduce his alcohol usage. Tr. at 51. The Fiancée testified that the Individual's current alcohol usage is one or two beers during the working week and have one or two beers a night during his three-day weekends. Tr. at 48, 52, 58. Occasionally, on hot days during the haying season at their ranch, the Individual might consume as many as six beers during an entire day. Tr. at 58. On the Individual's three-day weekends, the Individual engages in a significant amount of physical labor. Tr. at 65. Socially, the Individual and his Fiancée rarely go to bars. Tr. at 70.

The Fiancée also testified that she and the Individual would go to the Individual's parents' mountain house where the family engaged in consuming "hard alcohol" drinks. Tr. at 53. However, in 2004 or 2005, the Fiancée informed the Individual that she did not approve of his

⁵ The relevant testimony regarding mitigation is summarized in the discussion below.

⁶ UNCOPE is an acronym which refers to aspects of the six questions which comprise the test.

behavior when consuming “hard alcohol” and the Individual promptly quit consuming hard alcoholic drinks. Tr. at 53. The Individual continues to avoid such drinks despite pressure from his parents to continue to consume such drinks. Tr. at 53. The Fiancée believes that this incident demonstrates the Individual’s ability to fulfill commitments. Tr. at 53, 56. In this regard, she noted that she had urged the Individual to quit smoking and, once the Individual made a commitment to quit, he was able to do so. Tr. at 83. The Fiancée also believes that the Individual’s attitude towards alcohol consumption has changed due to the recent loss of his brother and nephew in an automobile accident in which she suspects alcohol may have been a factor. Tr. at 63-64. Despite the increased stress arising from the accident, the Fiancée noted that the Individual’s alcohol consumption remained consistent and did not increase. Tr. at 72.

At the hearing, the DOE Psychologist listened to all of the testimony. The DOE Psychologist expressed her opinion that her finding that the Individual drinks habitually to excess is not a psychological diagnosis but a short hand way of stating that he is engaging in “risky drinking.” Tr. at 75. The DOE Psychologist testified that “risky drinking” is a level of consumption that could lead to problems for the person. Tr. at 75. Further, the DOE Psychologist testified that according to the National Institute of Health (NIH), risky drinking is any level of alcohol consumption that exceeds 14 drinks per week. Tr. at 75.

The DOE Psychologist went on to testify that she now believes that the Individual has reduced his alcohol consumption below the NIH limit since March or early April 2012. Tr. at 76-77, 82. She was convinced, based upon the Individual’s and the Fiancée’s testimony regarding the Individual’s successful effort to stop smoking, that the Individual is the type of person who, once he has made a commitment, will keep the commitment. Tr. at 77. The DOE Psychologist expressed her belief that the Individual has a long-term intention to reduce his alcohol consumption and that the loss of his clearance was of a sufficiently large impact to motivate the Individual to affirmatively reduce his alcohol consumption. Tr. at 78-79.

The DOE Psychologist testified as to her opinion that the Individual did not suffer from any type of psychological illness or need to be abstinent from alcohol use. Tr. at 75, 77. The DOE Psychologist believes that the alcohol education class was helpful to the Individual but that the Individual did not require any type of treatment such as Alcoholics Anonymous or counseling. Tr. at 77. Further, the DOE Psychologist did not believe that the Individual’s occasional consumption of as many as six beers during the course of an entire day working on the ranch raised significant concerns since it appeared that, on those occasions, the Individual still controlled his consumption to a safe limit. Tr. at 76, 81. Given the importance of his security clearance to the Individual, the DOE Psychologist opined that the Individual’s risk to return to problematic drinking is low. Tr. 79-80, 83.

Among the factors that may serve to mitigate security concerns raised by an individual’s alcohol use are that “the individual acknowledges his or her ... 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),” and that “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*, Guideline G, ¶ 23.

After reviewing the evidence, I find that the Individual has resolved the security concerns raised by his past alcohol usage. The Individual does not suffer from a psychological condition that may cause a defect in judgment and reliability. The Individual’s history has shown few alcohol-related incidents. Notwithstanding this, the Individual has admitted that he has had periods of excessive alcohol use. The Individual and his Fiancée’s testimony convince me that the Individual has now changed his alcohol consumption pattern to be within the NIH alcohol consumption standard referenced by the DOE Psychologist.⁷ I believe that the shock of possibly losing his clearance and his job has had a significant impact on the Individual and has motivated him to make a permanent change in his alcohol consumption pattern. Importantly, the DOE Psychologist, after listening to the testimony, has concluded that the Individual is now at low risk to resume problematic alcohol consumption. Consequently, I find that the Individual has resolved the Criterion J concerns raised by the derogatory information contained in the Notification Letter.

IV. CONCLUSION

Upon consideration of the entire record in this case, I find that there was sufficient evidence to raise doubts regarding the Individual’s eligibility for a security clearance under Criterion J of the Part 710 regulations. However, I find that the Individual has presented sufficient information to resolve the concerns raised by the Criterion J derogatory information. Therefore, I conclude that restoring the Individual’s suspended 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 DOE should restore the Individual’s suspended access authorization at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: August 22, 2012

⁷ While the Individual’s and the Fiancée’s testimony differed somewhat concerning when and how many beers the Individual consumed during the week, both accounts gave similar weekly alcohol consumption totals both of which were below the NIH standard.