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

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	May 29, 2012)	
)	Case No.:
)	PSH-12-0066

Issued: September 12, 2012

Hearing Officer Decision

Richard A. Cronin, Jr., Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXX ("the Individual") to possess a Department of Energy (DOE) access authorization.¹ For the reasons detailed below, I find that the Individual's suspended access authorization should not be restored.

I. BACKGROUND

The Individual is a contractor employee at a DOE facility who possessed a security clearance. Exhibit (Ex.) 14 at 24. In November 2011, the Individual reported to the facility's Local Security Office (LSO) that she had been recently arrested for Aggravated Driving Under the Influence (DUI) and Speeding. Ex. 7. Consequently, in January 2012, the LSO conducted a personnel security interview (2012 PSI) with the Individual and subsequently referred her for an examination by a DOE Psychologist. Ex. 6. Because neither the 2012 PSI nor the DOE Psychologist's examination resolved the security concerns raised by the Individual's recent DUI arrest, the LSO informed the Individual, in a May 2012 notification letter (Notification Letter), that derogatory information existed under 10 C.F.R. §§ 710.8 (h) and (j) (Criteria H and J respectively) that created a substantial doubt as to her eligibility to retain a security clearance. Ex. 1. Additionally, because the Individual had provided inconsistent answers in a April 2011 Questionnaire for National Security Positions (April 2011 QNSP), a May 2011 Office of Personnel Management (OPM) background investigation, and the 2012 PSI, the LSO determined that derogatory information existed which raised security concerns under 10 C.F.R. § 710.8 (l)

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.

(Criterion L). Ex. 1. The Notification Letter also informed the Individual that her security clearance was suspended and she 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. At the hearing, the DOE counsel introduced 14 exhibits into the record (Exs. 1-14) and presented the testimony of the DOE Psychologist. The Individual presented her own testimony, as well as the testimony of her spouse (Spouse). *See* Transcript of Hearing, Case No. PSH-12-0066 (hereinafter cited as “Tr”).

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. Criteria H and J Derogatory Information

The underlying facts in this case are not disputed.² In 2007, the Individual was arrested for DUI (alcohol or drugs). Ex. 14 at 43-45. While a blood test taken after the arrest failed to detect alcohol, the test did indicate the presence of Xanax, a prescription anti-anxiety medication, and

² The relevant testimony regarding mitigation is summarized in the discussion below.

marijuana. Ex. 13 at 22, 24. The Individual, earlier in the day of the 2007 DUI arrest, had consumed two beers. Ex. 14 at 45; Ex. 13 at 16. The 2007 DUI charge was subsequently dismissed by the local prosecutor. Ex. 13 at 21.

In November 2011, the Individual was again arrested for DUI. Ex. 8. When tested during the 2011 DUI arrest, the Individual's breath alcohol levels were determined to be 0.18 and 0.17g/210L, both of which were over the legal limit of 0.08g/210L. Ex. 8 at 1-9. During the 2012 PSI, the Individual admitted consuming four mixed drinks with vodka. Ex. 13 at 8. During her subsequent examination by the DOE Psychologist, the Individual admitted consuming three "double" alcoholic drinks prior to the 2011 DUI arrest. Ex. 6 at 4-5.

In her March 2012 evaluative report (Report) regarding the Individual, the DOE Psychologist noted that the Individual had provided varying accounts of her alcohol consumption in the April 2011 QNSP, the 2012 PSI, and during the examination.³ Ex. 6 at 5. Based upon the Individual's most recent account of her alcohol consumption, three or four mixed drinks consumed over two to three hours twice a month, the DOE Psychologist calculated that the Individual would be legally intoxicated (a blood alcohol content of over 0.08g/210ml) once or twice a month. Ex. 6 at 6. While the DOE Psychologist did not believe that the Individual met the criteria to be diagnosed with Alcohol Dependence or Abuse, she found that the Individual was suffering from Alcohol-Related Disorder, Not Otherwise Specified (NOS), a disorder that could cause a significant defect in the Individual's judgment and reliability. Ex. 6 at 6. The DOE Psychologist opined that, for the Individual to show adequate evidence of reformation or rehabilitation, the Individual should be abstinent from alcohol for a period of 12 months and participate in an established alcohol treatment or counseling program. Ex. 6 at 6.

The Criteria H and J concerns in this case both center on the Individual's past alcohol usage and the Individual's 2011 DUI arrest. 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). Criterion J relates to conduct indicating that the Individual has "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). 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).*⁴ Given the DOE Psychologist's opinion, as stated in the Report, that the Individual suffers from an Alcohol-Related Disorder, NOS, a disorder that could cause a significant defect in judgment or reliability, the LSO had sufficient grounds to invoke Criteria H and J.

³ In the 2012 PSI, the Individual reported her then-current consumption as three or four mixed drinks once or twice a month. Ex. 13 at 30-31. During the DOE Psychologist's interview, the Individual initially reported that she would not consume more than two drinks per occasion. Ex. 6 at 2-3.

⁴ Decisions issued by the Office of Hearings and Appeals (OHA) after November 19, 1996, 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>.

At the hearing, the Individual's Spouse testified that the Individual stopped consuming alcohol after the Individual's November 2011 DUI arrest and that the Individual intends never to consume alcohol again. Tr. at 9, 12. She believes that the Individual decided to stop consuming alcohol because it causes too many problems, especially since both the Individual and her Spouse have children. Tr. at 10. The Individual's current abstinence has not caused problems in their social life and they have gone to a number of social events without consuming alcohol. Tr. at 12. The Spouse has been living with the Individual for approximately two years. Tr. at 10. During that period of time, the Spouse has never seen the Individual intoxicated other than when they were both at home.⁵ Tr. at 10. The Spouse does not believe that the Individual has a problem with alcohol because they never consumed much alcohol other than on a very few occasions when they were both at home. Tr. at 11, 18. The fact that both the Individual and the Spouse have children in their home motivates them not to keep any alcohol or consume significant amounts of alcohol at home. Tr. at 11. The Spouse believes that she would know if the Individual ever began to consume alcohol again. Tr. at 15.

The Spouse testified that the Individual considered counseling first after the 2011 DUI arrest and then after receiving the DOE Psychologist's Report. The Individual decided, however, not to enter counseling. Tr. at 14-15. The Spouse believes that counseling would not help the Individual at the present time because the Individual is currently taking two pain medications for a wrist injury which make her somewhat tired and lethargic. Tr. at 15-16.

The Individual testified that she does not believe that she has an alcohol problem. Tr. at 22. She went on to testify that when she was consuming alcohol, she did not consume it very often. Tr. at 22. After her arrest in November 2011, she made a conscious decision to stop using alcohol and she has not consumed alcohol since. Tr. at 22-23. Since abstaining from alcohol, the Individual has not experienced any urges to consume alcohol or had problems in going to places where alcohol is served. Tr. at 22, 33. The Individual's social life has not been affected by her on-going abstinence from alcohol. Tr. at 24. The Individual believes that she is "strong enough" to maintain her abstinence and has additional motivation to remain abstinent because of her children and her desire to keep her position at the facility. Tr. at 24. The Individual's mother and brothers have been supportive of her decision to stop consuming alcohol. Tr. at 25. The Individual testified that she no longer wants alcohol to be part of her life and wants to concentrate her efforts on her job and family. Tr. at 32-33.

The Individual testified that she has not sought counseling because of a wrist injury she suffered when taking a mirror off a wall. Tr. at 23. The Individual's injury required surgery and the Individual has not felt well enough to go to work or drive for a number of months. Tr. at 23. Further, the Individual does not believe counseling would be helpful. Tr. at 23, 33. Nonetheless, the Individual would participate in counseling, if it would help her regain her security clearance. Tr. at 38

⁵ The Spouse testified that early in their relationship, after the children were in bed, they would consume alcohol until they became "buzzed" and then they would go to bed. Tr. at 19. This would occur approximately once or twice a month. Tr. at 19-20.

After listening to the Individual's and the Spouse's testimony, the DOE Psychologist testified that she believes that the Individual has the ability to stop consuming alcohol. Tr. at 44-45. Specifically, she noted that the Individual stopped using marijuana after the 2007 DUI arrest and that her ability to do so indicates that the Individual could stop consuming alcohol. Tr. at 45. Nonetheless, the DOE Psychologist believes that the Individual, as of the date of the hearing, has not demonstrated sufficient evidence of rehabilitation from her alcohol problem. Tr. at 45.

In support for her opinion, the DOE Psychologist testified that the Individual has not sought counseling or another program to address the Individual's alcohol problem. Tr. at 42. Participation in such a program would provide the Individual education as to the risks associated with excessive alcohol consumption and support to bolster her resolve to stop consuming alcohol. Tr. at 42. Further, the Individual's current nine-month period of abstinence is not sufficiently long to provide assurance of her rehabilitation. Tr. at 42-43, 45. The DOE Psychologist testified that adequate evidence of rehabilitation would consist of one year of abstinence along with participation in a treatment or education program. Tr. at 43. Without participation in a program, 18 to 24 months of abstinence would be required to demonstrate rehabilitation. Tr. at 43. While these treatment recommendations are usually required of individuals with diagnosed Alcohol Abuse or Alcohol Dependence, they apply to the Individual (who was diagnosed as suffering from Alcohol-Related Disorder, NOS) because of her history of minimization or, alternately, her failure to be able to accurately track her alcohol usage. Tr. at 43. Additionally, the Individual's 0.17 and 0.18g/210L breath alcohol concentrations, as measured at the time of her 2011 DUI arrest, were dangerously high. Tr. at 43-44. These intoxication levels, along with the Individual informing her that she did believe she was intoxicated at the time of the arrest, argue that, to be confident as to the Individual's rehabilitation, the treatment recommendation usually reserved for those suffering from Alcohol Abuse or Dependence should be completed. Tr. at 44. As of the date of the hearing, the DOE Psychologist opined that the Individual's current risk of relapse was "medium." Tr. at 44.

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. Similarly, factors that may mitigate security concerns raised by psychological conditions are: voluntary participation in a treatment program; a determination that the condition is readily controllable with treatment and the individual has demonstrated compliance with the treatment plan; an opinion by a qualified mental health professional that the individual's condition is under control or in remission; or the emotional condition was temporary (*i.e.*, caused by a life situation) and the situation has been resolved and the individual no longer shows indications of the emotional condition. *See Adjudicatory Guidelines*, Guideline I, ¶ 29.

After considering all of the evidence before me, I find that the Individual has not resolved the security concerns raised by the Criteria H and J information listed in the Notification Letter. As an initial matter, I believe that the Individual suffers from an alcohol disorder that may cause a defect in judgment and reliability. On this issue, I found the DOE Psychologist's testimony convincing and supported by the record. While I am convinced by the Individual's and the Spouse's testimony that, as of the date of the hearing, the Individual had been abstinent for approximately nine months, I also find, based upon the DOE Psychologist's testimony and recommendations, that this period of abstinence is insufficient for me to conclude that the Individual is rehabilitated from her alcohol problem. *See Personnel Security Hearing, Case No. PSH-12-0038 (August 9, 2012) (Hearing Officers accord deference to the expert opinions of psychiatrists, psychologists and other mental health professionals regarding rehabilitation and reformation).* I find additional support for the DOE Psychologist's rehabilitation recommendations in the Individual's lack of belief that she has an alcohol disorder. While I commend the Individual's committed decision to stop consuming alcohol and believe that she has the ability to successfully complete the DOE Psychologist's recommended period of abstinence, I cannot find that the Individual has presented sufficient evidence to resolve the Criteria H and J derogatory information contained in the Notification Letter.

B. Criterion L Derogatory Information

1. Inconsistent Answers Regarding Marijuana Usage

In her April 2011 QNSP, the Individual stated that she used marijuana a few times a month from May 2004 to June 2005. Ex. 12 at 24. Later, during an Office of Personnel Management (OPM) investigation, the Individual stated that she used marijuana "on six or seven occasions" during the May 2004 to June 2005 period and that in June 2005 she stopped using marijuana because she had acquired new friends. Ex. 14 at 46. When asked about marijuana usage during the 2012 PSI, the Individual stated that she had only used marijuana on four occasions, twice in 1995, once in 1999, and once in October 2007. Despite these differing accounts, the Individual, during the DOE Psychologist's examination in March 2012, reported her marijuana use as "probably six times at least, but six to eight would be the most ever." Ex. 6 at 4-5.

2. Inconsistent Answers Regarding DUI Arrests and Drug Tests

During the 2012 PSI, the Individual stated that during the 2011 DUI arrest she was not subjected to a "full" field sobriety test (FST). Ex. 13 at 8-9. Additionally, she initially stated that she did not have any other alcohol-related arrests. Ex. 13 at 14. Other evidence, collected during an investigation of the Individual, indicated that she, in fact, had undergone a "full" FST during the November 2011 DUI arrest and that she had previously been arrested in October 2007 for DUI. Ex. 13 at 14 (2007 arrest); Ex. 7 at 2 (FST).

During the OPM background investigation, the Individual was asked if she had ever had a positive drug test. The Individual stated that she had never had a positive drug test. Ex. 14 at 46. However, during the 2012 PSI the Individual admitted that a blood test taken pursuant to her 2007 DUI arrest indicated that the Individual had tested positive for marijuana and Xanax. Ex. 13 at 24-26.

2. The Associated Security Concerns

Criterion L concerns conduct tending to show that the Individual was “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). Conduct involving questionable 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. Of special interest is any failure to provide truthful and candid answers during the security clearance process. *See Adjudicative Guidelines*, Guideline E, ¶¶ 15, 16(a); *see also, e.g., Personnel Security Hearing*, Case No. PSH-12-0053 (August 3, 2012). In light of the contradictory answers the Individual provided in the April 2011 QNSP, the OPM investigation, and the 2012 PSI, I find that the LSO properly invoked Criterion L.

3. Whether the Individual has mitigated the Criterion L Security Concerns

After reviewing all of the erroneous or contradictory answers described in the Notification Letter, I find that the answers appear to be a product of confusion or a lack of memory. Given this finding and the factual background surrounding the answers in question, I find that the inaccuracies were unintentional and do indicate a lack of honesty or reliability on the Individual's part.

At the hearing, the Individual testified that she did not initially disclose the 2007 DUI as an alcohol-related arrest during the 2012 PSI because, when she was arrested for DUI, an alcohol test taken pursuant to the arrest indicated that the Individual had no measurable alcohol content in her blood. Tr. at 26. Consequently, she did not initially associate the 2007 DUI arrest as an alcohol-related arrest during the 2012 PSI. Tr. at 27.

With regard to the question asked during the 2012 PSI regarding whether she had been subjected to a “full” FST, the Individual testified that she was uncertain what comprised a “full” FST. Because of her uncertainty, the Individual was not trying to be dishonest in her answer regarding the “full” FST. Tr. at 28. The Individual also testified that she was not trying to mislead the OPM interviewer with her response to whether she had ever had a positive drug test. Tr. at 41-42. In her testimony, the Individual asserted that she thought that the OPM investigator's question was referring to positive urine test for employment screening and that she had initially forgotten about the blood test taken in connection with her 2007 DUI arrest. Tr. at 40-41.

The Individual also testified that her varying answers about her marijuana usage given during the OPM investigation, the 2012 PSI and the DOE Psychologist during her examination, were all mistakes. Tr. at 32. In each case, the Individual was “guesstimating” her answer. Tr. at 32. The Individual testified that she trying to be honest regarding her prior marijuana use but she could not remember the exact times and dates of her past marijuana use. Tr. at 32.

With regard to the Individual's answer concerning the 2007 DUI arrest, I find that the Individual's failure in the 2012 PSI to initially recall the 2007 DUI arrest as an alcohol-related offense was not an attempt to mislead the LSO. The Individual's testimony regarding her answer in the 2012 PSI is persuasive in light of the fact that the Individual had no measurable blood alcohol content when tested after the arrest. Additionally, an examination of the April 2011 QNSP, completed before the 2012 PSI, indicates that the Individual listed a 2008 DWI arrest on the form which I believe was meant to reference the 2007 DUI arrest.⁶ Ex. 12 at 23. Consequently, given these facts, I do not believe that the Individual's erroneous answer regarding other alcohol-related arrests was dishonest or indicates a lack of reliability on the part of the Individual.

As to her failing to admit that she underwent a "full" FST during the 2011 DUI arrest, I find the Individual's testimony that she did not know what constituted a "full" FST convincing. Further, the Individual's failure to recall this fact is supported by the fact that, at the time of the arrest, the Individual was significantly impaired by alcohol, as evidenced by her breath alcohol test results. I also find this answer to be related to an immaterial fact regarding the determination of the Individual's fitness for a security clearance and, in itself, does not raise a significant security concern regarding the Individual's honesty or reliability.

I find that the Individual's failure during the OPM investigation to reveal her positive drug test after the 2007 arrest was inadvertent and does not indicate a lack of honesty or reliability. The Individual's testimony, that she did not associate the test after the 2007 DUI arrest to be a drug test, was convincing especially since the arrest centered on an alcohol-related charge and the subsequent test was negative for alcohol. Further, the Individual's disclosure of her 2007 DUI arrest on the earlier April 2011 QNSP, adds additional support to my finding that the Individual's erroneous answer was inadvertent and, as such, does not reflect on the Individual's honesty or reliability.

With regard to the varying answers given by the Individual regarding her prior marijuana usage, I am convinced by the Individual's testimony that she had difficulty in remembering the exact details of her usage. The Individual's last use of marijuana occurred approximately five years ago. Further, the discrepancies in the Individual's accounts of her past marijuana usage are not so large that the Individual could have reasonably believed that her suitability to be granted a security clearance would have been materially increased by the answers she provided. Given the relatively small variation in the accounts, the time that had past since her last use of marijuana, and the fact that the Individual voluntarily admitted using marijuana in each interview and the April 2011 QNSP, I conclude that the Individual's answers do not indicate a problem with honesty or reliability.

Despite the above findings, the Individual's unresolved alcohol problem implies security concerns relating to judgment and reliability. *See supra*. Consequently, I cannot find that the Individual has resolved the Criterion L concerns raised by the Notification Letter. *See Personnel*

⁶ My belief in this regard is supported by the fact that there is no evidence that the Individual was arrested in 2008 and that, during her OPM interview, she gives the date of the 2007 DUI arrest as 2008. Ex. 14 at 45. Additionally, in the discussion of 2007 DUI arrest in the 2012 PSI, the Individual initially remembers that the arrest occurred in 2008. Ex. 13 at 14.

Security Hearing, Case No. TSO-1079 (November 2, 2011) (an individual's unresolved alcohol dependence prevents mitigation of Criterion L concerns).

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 Criteria F, H and J of the Part 710 regulations. Further, I find that the Individual has not presented sufficient evidence to resolve the concerns raised by the Criteria H, J and L derogatory information. Therefore, I cannot conclude 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 DOE, at this time, should not restore the Individual's access authorization.

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: September 12, 2012