



(Criteria H and J, respectively).<sup>2</sup> See DOE Ex. 1 (Notification Letter, August 2, 2012). 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. DOE 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 thirteen exhibits into the record (DOE Exs. 1-13) and presented the testimony of one witness, the DOE psychologist. The Individual submitted three exhibits and presented his own testimony, as well as the testimony of two witnesses: his cousin and his long-time friend. See *Indiv. Exs. A-C; Transcript of Hearing, Case No. PSH-12-0110* (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, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of 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,” 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 made after 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

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<sup>2</sup> 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).

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. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS**

To support its Criteria H and J security concerns, the LSO cites the Individual’s pattern of alcohol consumption, his past DWI arrests, and the DOE psychologist’s opinion that the Individual is a user of alcohol habitually to excess raises security concerns. *Id.* It is well-established that excessive use of alcohol raises security concerns because “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, Guideline G, ¶ 21. See also *Personnel Security Hearing*, Case No. TSO-0678 (2008).<sup>3</sup> In light of the Individual’s admitted pattern of alcohol consumption, including two past alcohol-related arrests, and the DOE psychologist’s determination that the Individual was a user of alcohol habitually to excess, I find that the LSO properly invoked Criteria H and J.

### **IV. FINDINGS OF FACT AND ANALYSIS**

#### **A. The Individual’s Alcohol Use and Related Facts**

The Individual began drinking alcohol at age seventeen, drinking primarily on the weekends. DOE Ex. 6 at 2. The Individual increased his alcohol consumption as he got older, and he drank beer several times per week. *Id.* at 2-3. In October 2001, the Individual consumed several beers at his home before driving. The Individual was pulled over for speeding and was ultimately arrested for DWI after failing field sobriety tests and a breathalyzer test. *Id.* at 3. Over the next several years, the frequency of the Individual’s drinking decreased. Nonetheless, the Individual was arrested again for DWI in April 2010, after failing breathalyzer test administered at a police checkpoint. *Id.*; DOE Ex. 7. The Individual continued to consume alcohol after his 2010 DWI arrest. DOE Ex. 6 at 3-4.

In May 2012, a DOE psychologist determined that the Individual did not meet the diagnostic criteria for an alcohol-related disorder, but he was a user of alcohol habitually to excess, and his pattern of alcohol consumption causes or may cause a significant defect in judgment or reliability. *Id.* at 6. With respect to how the Individual could demonstrate adequate evidence of rehabilitation or reformation, the DOE psychologist stated:

I would like to see [the Individual] stop drinking for a period of three months. This would demonstrate that he in fact does not “need” alcohol. He would then need to drink no more than four beers per occasion and not so quickly as to cause intoxication. This should be the case for three months after his abstention (and should be his discipline afterward).

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<sup>3</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>.

*Id.* at 6. Finally, the DOE psychologist concluded that because the Individual “is not an alcoholic,” he did not need to attend Alcoholics Anonymous meetings or other alcohol education programs. *Id.*

## **B. Whether the Individual Has Mitigated the Security Concerns**

Among the factors that may serve to mitigate security concerns raised by an individual’s alcohol use are that “so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment,” that “the individual acknowledges his or her alcoholism or 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.

### **1. Lay Testimony**

At the hearing, the Individual testified candidly regarding his past alcohol consumption. He stated that prior to meeting with the DOE psychologist, he did not think he had an alcohol problem. Tr. at 33. He testified that his evaluation with the DOE psychologist caused him to realize that he wanted to be more responsible and more aware of his drinking behaviors. Tr. at 34, 50. He recognizes that drinking to excess leads to poor judgment. Tr. at 45. According to the Individual, he has not consumed alcohol since shortly before his meeting with the DOE psychologist in May 2012. Tr. at 33. He has made a conscious decision to not consume alcohol in order to show that he does not need to drink. Tr. at 34. He stated that he used to drink with friends, but he has informed them of his intent to remain abstinent from alcohol and they are supportive. Tr. at 36, 37-38. In addition, the Individual gave away all of the alcohol that he had in his home. Tr. at 37.

The Individual has not found abstaining from alcohol to be difficult. Tr. at 36-37. The Individual was aware that the DOE psychologist recommended only three months of abstinence, followed by moderate drinking, but he did not resume drinking after three months because he felt good and had no desire to drink. Tr. at 44. He stated that he also wanted to demonstrate that he could control his drinking, and could do so for a longer period than was asked of him. Tr. at 84. He indicated that in the nearly six months that he has been abstinent, there have been two occasions on which he considered resuming drinking. Tr. at 35-36. He stated that they were not physical cravings, but rather were social occasions with his friends in which he would have consumed alcohol in the past. Tr. at 35, 38-39, 51. He stated that he discussed with a close friend whether he wanted to resume drinking and ultimately decided to remain abstinent for the time being. Tr. at 39. The Individual has not ruled out the possibility of resuming drinking alcohol in the future. Tr. at 40-41. However, he stated that, if he eventually decides to resume

drinking, he intends to drink “in moderation” and “be responsible.” Tr. at 40-41. The Individual added that he has professional ambitions and wants to “better himself,” and knows that drinking to excess will not help him in that regard. *Id.*

The Individual’s cousin and long-time friend both corroborated the Individual’s testimony that he has been abstinent from alcohol since May 2012. Tr. at 11, 23. Since May 2012, the Individual’s cousin has observed the Individual abstain from alcohol in situations where he used to drink. Tr. at 11-12. They each testified that the Individual is very reliable, and that he follows through when he makes a decision. Tr. at 13-14, 26. Both the Individual’s cousin and his friend believe, based on conversations with the Individual and their own observations, that the Individual intends to remain abstinent from alcohol. Tr. at 13, 24-25

## **2. Expert Testimony**

After listening to the hearing testimony, the DOE psychologist did not change his opinion that the Individual had been a user of alcohol habitually to excess. Tr. at 54. He further testified that he generally recommends at least six months of abstinence, but he recommended three months of abstinence in his May 2012 report “because of the low level or moderate level of intoxication” the Individual had had in the past. Tr. at 55. However, the DOE psychologist testified that, as of the hearing, he did not believe that the Individual had demonstrated adequate evidence of rehabilitation or reformation, despite the fact that the Individual had been abstinent from alcohol for approximately five and one-half months, longer than the three months of abstinence that the DOE psychologist originally recommended. Tr. at 54-55. At the hearing, the DOE psychologist recommended that the Individual establish an additional six months of abstinence from the date of the hearing in order to demonstrate adequate evidence of rehabilitation or reformation. Tr. at 59. He based his changed recommendation on two factors. First, he was troubled that the Individual did not resume drinking alcohol in moderation after his three months of abstinence, despite the DOE psychologist’s recommendation that he do so. Tr. at 55-56, 81. According to the DOE psychologist, because the Individual did not resume drinking alcohol after three months of abstinence, there is no evidence that the Individual is capable of controlling his drinking. Tr. at 66. Therefore, the DOE psychologist was not confident that the Individual can be a responsible drinker in the future. Tr. at 62, 69. Second, the DOE psychologist became concerned at the hearing by what he referred to as the Individual’s “cravings” for alcohol – the two social events about which the Individual testified where he considered resuming drinking. Tr. at 56. According to the DOE psychologist, those two incidents may indicate that the Individual has a greater need for alcohol than was first apparent. Tr. at 56-57.

Despite his testimony that the Individual has not demonstrated adequate evidence of rehabilitation or reformation, the DOE psychologist testified that the Individual does not have the “risk factors” associated with a relapse into problem drinking. Tr. at 61. When asked how likely it is that the Individual will resume drinking to excess, the DOE psychologist testified that the likelihood was “relatively low” in the next six months, and “something close to low” thereafter. Tr. at 63, 70. In addition, despite having earlier characterized the two social occasions on which the Individual considered resuming drinking as “cravings,” the DOE psychologist later testified that he did not believe that the Individual had a “psychological dependency and therefore a craving.” Tr. at 72. Finally, despite his earlier testimony that he was not confident that the

Individual could control his drinking, the DOE psychologist testified that the Individual's "prognosis is very good that [the Individual] will not go back to frequently being intoxicated." Tr. at 63.

### **3. Hearing Officer Evaluation of Evidence**

After considering the hearing testimony and evaluating the record as a whole, I find that the Individual has mitigated the security concerns raised by his consumption of alcohol. The Individual has developed substantial insight into the problems caused by his past use of alcohol. He has been abstinent from alcohol for approximately five and one-half months as of the date of the hearing, longer than the initial period of abstinence that the DOE psychologist recommended, and has demonstrated that he is able to abstain from consuming alcohol in situations that would have prompted him to drink in the past. In addition, the Individual made a conscious decision to remain abstinent, despite knowing he could resume drinking alcohol after three months of abstinence, and he intends to remain abstinent for the foreseeable future.

Moreover, evaluating the evidence in this case, I am unable to give substantial weight to the testimony of the DOE psychologist, who vacillated in his opinion regarding whether the Individual has demonstrated adequate evidence of rehabilitation or reformation. Based on his indecisiveness on that issue, I remain unconvinced by the factors on which the DOE psychologist based his changed recommendation, requiring additional abstinence from the Individual – (1) that the Individual chose not to resume drinking after three months of abstinence and (2) that the Individual considered resuming drinking on two social occasions but ultimately decided not to do so.

First, I was not persuaded by the DOE psychologist's opinion that, because the Individual did not resume drinking in moderation after three months of abstinence, he did not prove that he can control his drinking. To the contrary, I find that the record indicates that the Individual is well able to control his consumption of alcohol. Specifically, the Individual made a conscious decision not to drink even though he was aware that he was "allowed" to do so after three months, per the recommendations that the DOE psychologist made in his May 2012 report, and he has adhered to that decision despite having been in situations where he would have consumed alcohol in the past. Moreover, it defies common sense to conclude that a longer period of demonstrated abstinence is a less reliable indicator of control over one's drinking than a shorter period of abstinence followed by a resumption of alcohol consumption as soon as one believes he is "allowed" to do so.

Second, the DOE psychologist did not convince me that the two times that the Individual briefly considered whether to drink during a social occasion equated to "cravings." The Individual testified that he did not feel a physical urge or need to drink on those occasions. Rather, each of those occasions was an event where he would have consumed alcohol in the past and he considered whether or not he wanted to drink. In fact, the DOE psychologist himself later testified that the Individual did not have "a psychological dependency and therefore a craving" for alcohol. Given these factors, it remains unclear why those two incidents should be considered negative factors with respect to the Individual's prognosis, particularly because he ultimately decided not to drink on each of those occasions. In any event, regardless of his

changed recommendation, the DOE psychologist ultimately opined that the Individual's risk of relapse was "relatively low" and that his prognosis was good. *See, e.g., Personnel Security Hearing*, Case No. PSH-12-0088 (2012).

As noted above, in making a determination regarding an individual's eligibility for access authorization, the regulations direct me to consider a number of relevant factors. *See* 10 C.F.R. § 710.7(c). Although in cases involving mental health conditions that cause or may cause a significant defect in an individual's judgment and reliability OHA hearing officers generally accord deference to the opinion of mental health professional regarding the issue of rehabilitation and reformation, the question of whether evidence of rehabilitation and reformation is adequate to warrant granting a security clearance is "a common-sense determination to be made by DOE officials, including the hearing officer, not by a consultant psychologist or other outside experts." *See Personnel Security Hearing*, Case No. PSH-12-0100 (2012); *Personnel Security Hearing*, Case No. TSO-1057 (2011); *Personnel Security Hearing*, Case No. TSO-0209 (2006) (citing 10 C.F.R. 710.7(c) ("question concerning an individual's eligibility for access authorization" is to be decided by "DOE officials involved in the decision-making process. . . .")); *see also Personnel Security Hearing*, Case No. TSO-0803 (2010) (hearing officer "need not accord deference to [DOE mental health expert's] opinion as to what level of risk is acceptable in order to grant or restore a security clearance"). In this case, considering the entirety of the record before me, it is my common-sense judgment that the Individual no longer consumes alcohol and is unlikely to relapse into problem drinking in the future. Accordingly, I conclude that he has demonstrated adequate evidence of rehabilitation and reformation and, therefore, has mitigated the Criteria H and J concerns cited in the Notification Letter. *See, e.g., Personnel Security Hearing*, Case No. TSO-0853 (2010); *Personnel Security Hearing*, Case No. TSO-0559 (2007); *Personnel Security Hearing*, Case No. TSO-0064 (2003).

#### **IV. CONCLUSION**

Upon consideration of the entire record in this case, I find that there was evidence that raised doubts regarding the Individual's eligibility for a security clearance under Criteria H and J of the Part 710 regulations. I also find that the Individual has presented sufficient information to fully resolve those concerns. Therefore, I conclude that granting the Individual DOE 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 grant the Individual 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.

Diane DeMoura  
Hearing Officer  
Office of Hearings and Appeals

Date: November 16, 2012