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United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing)
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Filing Date: October 18, 2011)
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) Case No.: PSH-11-0002
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Issued: February 14, 2012

Hearing Officer Decision

Steven L. Fine, Hearing Officer:

This Decision concerns the eligibility of XXXX XXXX XXX(hereinafter referred to as “the Individual”) to hold a security clearance under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me in light of the relevant regulations, I conclude that the Individual’s security clearance should not be restored.

I. BACKGROUND

The administrative review proceeding began with the issuance of a Notification Letter to the Individual. See 10 C.F.R. § 710.21. The letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning her eligibility for a security clearance. Specifically, the Local Security Office (LSO) characterized this information as indicating that the Individual had engaged in unusual conduct which brought her honesty, trustworthiness, and reliability into question, and been diagnosed by a psychologist with alcohol abuse.¹

¹ The Notification Letter alleges that the Individual has: (1) “[a]n 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); (2) “[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); and (3) “[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 Notification Letter informed the Individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding her eligibility for a security clearance. The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on October 19, 2011.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, two close friends, her supervisor, her mother, her father, her treating psychologist (the Psychologist), and a DOE consultant psychiatrist (the Psychiatrist). *See* Transcript of Hearing, Case No. PSH-11-0002 (hereinafter cited as "Tr."). The LSO submitted 15 exhibits, marked as Exhibits 1 through 15, while the Individual submitted 9 exhibits, marked as Exhibits A through I.

II. FINDINGS OF FACT

On March 11, 2011, the Individual turned 21. Exhibit 15 at 9. On March 20, 2011, the Individual was involved in a single vehicle accident, which resulted in her hospitalization for a period of five days. *Id.* at 24. Following the accident, medical personnel at the hospital administered a blood test to the Individual which showed a blood alcohol level of .16. *Id.* at 20. Accordingly, law enforcement charged the Individual with Driving Under the Influence of Intoxicating Liquor (DUI), Careless Driving, failure to use her safety belt, and No Insurance. Exhibit I at 1.

On April 20, 2011, the LSO conducted a Personnel Security Interview (PSI) of the Individual.² During this interview, the Individual said that she has only used alcohol "about 5 times." Exhibit 15 at 32. During this PSI, the interviewer asked the Individual about her future intentions concerning alcohol. The Individual responded by noting that she had been traumatized by her accident, and seeing the effects of her accident on her parents. The Individual then stated: "I don't know, I, I feel like, right now I feel like strongly opposed to it because of everything that I'm going through." *Id.* at 44.

On May 29, 2011, 65 days after she came home from the hospital, the Individual again operated a motor vehicle while intoxicated. The Individual was apprehended by police, arrested and charged with aggravated DUI, an equipment violation, and Possession of an Altered, Forged, or Fictitious License. Her blood alcohol level was measured at .16. Exhibit 14 at 26. The police found "what appeared to be a state . . . issued operator's license which had the [Individual's] information and picture displayed on it. Upon a closer examination of the operator's license [the arresting officer] noted several discrepancies as far as the date birth of [the Individual] and that which was displayed on the operator's license." Exhibit I at 1. The hologram was a crude imitation of the official hologram appearing on that state's licenses. *Id.*

² A copy of the transcript of the April 20, 2011, PSI appears in the record as Exhibit 15.

On June 23, 2011, the LSO conducted a second PSI of the Individual.³ During this PSI, the Individual admitted that she had been operating her automobile while intoxicated at the time of the May 29, 2011, arrest. Exhibit 14 at 23. She further admitted that she had been operating her automobile without the head lights on. *Id.* She claimed that the alleged fake driver's license was "a souvenir a card with like my picture and information and so he had to take it in to verify that it wasn't like a falsified like ID card . . . just like something you'd get at like the State Fair or something, like a souvenir card almost." *Id.* at 34. The Individual denied that the alleged fake driver's license was "a fake ID." *Id.* at 35. The Individual stated that her last use of alcohol occurred on May 29, 2011, the date of her second DUI arrest. *Id.* at 62. However, the Individual also indicated that she would not rule out using alcohol again sometime in the future. *Id.* at 92. The Individual indicated that she was being treated by the Psychologist. *Id.* at 67. She further stated that she had experienced panic attacks and had been diagnosed with an eating disorder. *Id.* at 64, 66. The Individual further stated that she had been prescribed an anti-depressant. *Id.* at 68. The Individual admitted to abusing alcohol, but claimed that she did not have an "alcohol problem." *Id.* at 72. The Individual indicated that she had not received any treatment or counseling for alcohol. *Id.* at 93.

At the request of the LSO, the Individual was evaluated by the Psychiatrist on July 27, 2011. Exhibit 7 at 2. The Psychiatrist reviewed selected portions of the Individual's personnel security file, and interviewed the Individual. After completing her evaluation of the Individual, the Psychiatrist issued a report in which she found that the Individual met the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revised (DSM-IV-TR) for "Alcohol Abuse," "Bulimia Nervosa," and "Mood Disorder NOS."⁴ *Id.* at 12. The Psychiatrist further found the Individual's alcohol abuse to be an illness or condition that causes, or may cause, a significant defect in the Individual's judgment and reliability. *Id.* at 12. While the Psychiatrist did not find that the Individual's Bulimia Nervosa and Mood Disorder NOS were causing significant defects to the Individual's judgment and reliability, she found that those diagnoses were significant for two reasons. First, if these conditions did not respond to treatment, they could eventually result in a "significant impairment in judgment." *Id.* Second, the Psychiatrist opined that "Although, mood disorders and eating disorders are both mental conditions that don't necessarily impair judgment and reliability in significant proportion, [in the [Individual's case] these two disorders if untreated, definitely pose added risk factors for relapse of her Alcohol Abuse." *Id.* The Psychiatrist opined that the Individual was neither reformed nor rehabilitated, stating in pertinent part:

At the time of my evaluation [the Individual] did not appreciate the diagnosis of Alcohol Abuse. Although she is in treatment, her alcohol abuse history has not been a focus. While it is true that she had stopped drinking since May 29, 2011, there is no guarantee that this short period of abstinence is permanent change in the individual's behavior. . . . [T]he Individual] needs to have a better understanding of hazardous versus normal social drinking and how other psychological problems play a role in poor judgment with alcohol use.

³ A transcript of the June 23, 2011, PSI appears in the record as Exhibit 14.

⁴ A copy of this Report appears in the record as Exhibit 7.

Id. The Psychiatrist further opined that in order to mitigate the security concerns arising from the Individual's alcohol abuse, the Individual had several options:

As adequate evidence of rehabilitation I recommend that the individual undergo both of the following:

1. Satisfactorily complete a minimum of 50 hours of a professionally led substance abuse treatment program, for minimum of six months, including what is called "aftercare" and be completely abstinent at least for the entire duration of the program.
2. Continue current treatment for bulimia nervosa, and preferably with continuing assessment for other mental conditions. I recommend that she maintains treatment for a minimum of one year.

Any future recurrence of drinking alcohol to excess or alcohol-related incidents will be evidence that the individual is not showing adequate evidence of rehabilitation. Any unilateral decision to discontinue psychological treatment on the part of the individual will be evidence that the individual is not showing adequate rehabilitation.

As adequate evidence of reformation there are two alternatives:

1. If the individual goes through the two rehabilitation programs listed above, **six months** of absolute sobriety, and one year of convincing absence of excessive drinking would be necessary to show adequate evidence of reformation.
2. If the individual does not go through one of the two rehabilitation programs listed above, **1** year of absolute sobriety would be necessary to show adequate evidence of reformation. Any future recurrence of drinking alcohol to excess or alcohol-related incidents will be evidence that the individual is not showing adequate evidence of reformation.

Id. at 12-13.

III. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of 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). In rendering this opinion, I have considered the following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's 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. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. ANALYSIS

A. Criteria H and J

The Individual has a history of two alcohol DUIs in less than three months. Moreover, the Psychiatrist diagnosed the Individual with alcohol abuse. These two alcohol-related arrests and other information indicating that her use of alcohol might be problematic raise security concerns about the Individual under Criterion J. In addition, the alcohol abuse diagnosis by the Psychiatrist, along with the derogatory information concerning alcohol use discussed above, raises security concerns under Criterion H. 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. *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) at ¶ 21. In the present case, an association exists between the Individual's consumption of alcohol and her subsequent failure to exercise good judgment and to control her impulses, as evidenced by her repeated engagement in activities that required the intervention of law enforcement to protect those around her.

I find that the Individual has not mitigated the security concerns raised by her alcohol abuse. The Individual does not dispute the alcohol abuse diagnosis and candidly admits that she needs treatment. She convincingly testified that she has abstained from consuming alcohol since May 29, 2011. The Individual has obtained counseling, and plans to enroll in a group treatment program for alcohol abuse. It is clear that the Individual is doing everything she can be doing in order to address her alcohol abuse and the other disorders which complicate her recovery from alcohol abuse. While these are important and necessary steps for the Individual, I was convinced by the Psychiatrist's testimony that the Individual needs to both abstain from excessive alcohol use for a full year and successfully complete her group alcohol treatment in order to resolve the doubts raised by her alcohol abuse.

The Individual's Psychologist testified on the Individual's behalf at the hearing. The Psychologist testified that she agreed that the Individual was properly diagnosed with alcohol abuse. Tr. at 143-144. She testified that she has been treating the Individual for the past seven months. *Id.* at 144. The Individual has been making excellent progress during her therapy. The Individual has "learned a tremendous amount about the disease and about alcohol abuse and taken a serious look at her behaviors" *Id.* The Psychologist admitted that group therapy would be a very important part of the Individual's recovery process. *Id.* at 145, 149. While the Psychologist conceded that the amount of time in recovery is an important factor to consider in determining whether she is reformed or rehabilitated, the Psychologist further stated "I would rather look at recovery time than abstinence time." *Id.* She further testified that she expected

that the Individual would successfully achieve a one-year period of sobriety. *Id.* at 146. When the Psychologist was asked about the effect that the Individual's eating disorder would have upon the Individual's recovery from alcohol abuse, the Psychologist responded: "I would say her eating disorder was actually disordered eating not otherwise specified, that I think that any time there's addictive behavior they definitely, you know, go hand in hand." *Id.* at 147. She further testified that the Individual's eating disorder was no longer "an active problem" although the Individual would never be cured. *Id.* at 147-148. The Psychologist testified that the one year of abstinence standard was meant for persons with substance dependence and was not meant to be applied in cases of substance abuse. *Id.* at 148. The Psychologist testified that the Individual has a low risk of relapse. *Id.* at 148-149, 162-163. The Psychologist described the Individual's prognosis as "very good." *Id.* at 152. The Psychologist was asked why she believed that the Individual's risk of relapse was low, she stated: "Because her alcohol abuse was very short-term, . . . she had not been a drinking, long-term user even before there was any abuse, and I think she's been very committed to the process of therapy and psychoeducation." *Id.* at 150. The Psychologist testified that "she had not observed any evidence of a mood disorder during the past six months in which she has treated the Individual. *Id.* at 151. The Psychologist testified that the Individual is very committed to her recovery and is motivated by her desire to live a fuller, happier life. *Id.* at 149-150.

At the hearing, the Psychiatrist testified that the Individual is neither reformed nor rehabilitated from her alcohol abuse. *Tr.* at 108-115, 123. The Psychiatrist testified that the Individual's insight has improved since her July 27, 2011, examination and that the Individual now understands alcohol abuse. *Id.* at 105. She noted that the Individual has completed the six months of abstaining from alcohol use that she had recommended, but had not completed one year of abstinence from excessive alcohol use. *Id.* at 105-106. The Psychiatrist testified that the Individual's mood and eating disorders are risk factors which complicate the Individual's recovery from alcohol abuse. *Id.* at 106, 112-113, 117. The Psychiatrist said the Individual has been doing everything she should be doing to facilitate her recovery and is heading in the right direction. *Id.* at 107. However, the Psychiatrist also testified that the Individual needs to complete the group therapy component of her treatment program in order to complete her recovery. *Id.* at 111- 113.

Because the Psychologist's testimony did not convincingly address the effects on the Individual's sobriety raised by her eating and mood disorders, incomplete treatment, and insufficient pattern of avoiding excessive drinking, I do not find that testimony as convincing as the Psychiatrist's testimony. Based upon the Psychiatrist's compelling testimony, I find that the Individual has not sufficiently mitigated the security concerns raised under Criteria H and J, by the Individual's two alcohol-related arrests and alcohol abuse diagnosis.

C. Criterion L

The Individual's two alcohol-related arrests constitute criminal conduct which raises security concerns under Criterion 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.” Adjudicative Guidelines at ¶ 15. “Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.” *Id.* at ¶ 30.

In the present case, all of the criminal conduct and behavior evidencing poor judgment, unreliability and dishonesty cited in the Notification Letter relate to the Individual's alcohol abuse. Clearly, when the Individual uses alcohol, her judgment, reliability, and honesty are significantly impaired. Just as clearly, as long as the unresolved concerns that she may return to alcohol use exist, the concerns that her judgment, reliability, and honesty could be impaired will exist as well. Accordingly, because the Individual has not yet established her reformation or rehabilitation from alcohol abuse, I find that she has not resolved those security concerns arising from her criminal conduct and behavior cited in the Notification Letter under Criterion L.

V. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H, J, and L. I find that unmitigated security concerns remain under each of these criteria. Accordingly, the Individual has not demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: February 14, 2012