

authorization. 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 (September 16, 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 seven exhibits into the record of this proceeding. The individual introduced one exhibit, and presented the testimony of three witnesses, in addition to his own testimony.

II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

The Notification Letter cited information pertaining to paragraphs (h) and (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Exhibit 1.³ Under these criteria, the LSO cited (1) the individual's admission that he drank to intoxication up to four times a month, the last instance being on July 2, 2011, and that his wife and mother had criticized him for drinking and driving on at least one occasion; (2) the individual's admission that his tolerance for alcohol has increased from needing two or three beers to cause intoxication to eight to twelve beers recently; (3) the report of the DOE psychiatrist, in which he concluded that the individual consumed alcohol habitually to excess, and that this pattern of consumption indicated that the individual had an illness or mental condition that causes, or may cause, a significant defect in judgment or reliability. Exhibit 1 at 1-2.

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.

III. REGULATORY STANDARDS

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

³ Paragraph (h) defines as derogatory information that an 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." Under paragraph (j), derogatory information includes information 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. § 708.8(j).

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

The individual has not disputed the allegations set forth in the Notification Letter. Hearing Transcript (Tr.) at 10. The individual further admits that he regularly used alcohol from age 18 to 31, and used at his current, excessive, level for at least the last six years. Exhibit 7 at 23-24. However, the individual testified that he has abstained from consuming alcohol since the first weekend of September 2011, and attended ten meetings of Alcoholics Anonymous (AA) during October, November, and early December 2011. Tr. at 11; Exhibit A (AA attendance record). The individual stated that, since quitting, he has not experienced a desire to drink, Tr. at 15, and that he intends to abstain from using alcohol “[p]robably forever. I don't think I need it. Obviously, it causes more problems than anything.” *Id.* at 18.

The individual presented the testimony of his wife and mother, both of whom stated that the individual had not, to their knowledge, consumed alcohol during the three months preceding the hearing. *Id.* at 32, 45. Neither his wife nor his mother believe that the individual ever had a “problem” related to his use of alcohol, *id.* at 34, 47, though his mother thought he had been “overdoing it,” *id.* at 50, and neither believe he will have problem abstaining from the use of alcohol in the future. *Id.* at 40, 51. Both the individual’s wife and a co-worker who testified on his behalf recounted separate occasions over the past three months where the individual had been offered alcohol, but declined. *Id.* at 36, 55.

The DOE psychiatrist was present for the entire hearing and testified last. He acknowledged that, in his report, he did not find that the individual met the criteria for alcohol abuse set forth in the Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV-TR), but believed that he would have met the criteria “within six months or a year,” as a result of having more problems in his life secondary to drinking. *Id.* at 29. He noted that his report set forth options for rehabilitation and reformation from habitual use of alcohol to excess, one of which involved moderating his alcohol intake, and stated that he was “very pleased” the individual made the “extremely smart decision to abstain versus go to moderation.” Exhibit 6 at 8; Tr. at 38, 73. Further, the psychiatrist found it “very much in [the individual’s] favor that he is insightful enough to realize that that choice would have been very difficult to maintain, to sustain long term.” Tr. at 73. The DOE psychiatrist also found it significant that the individual decided to attend AA “on his own. He didn't have to do that, based on my report.” *Id.* at 88.

Referencing testimony by the individual that, while abstaining, he had frequented the club where he used to drink, the DOE psychiatrist testified that this “shows a level of compliance that is stronger than staying away from alcohol, not being in the same room, not going to a family party where

alcohol might be served. I think that it is an advantage to be able to go, be exposed and turn down.” *Id.* at 75. He additionally cited the fact that the individual, if granted a clearance, would be in an environment where the “DOE owns you 24/7, and that brings an issue of abuse or overuse of alcohol readily to the front, and it is a major support system.” *Id.* at 71.

On the other hand, although the individual now acknowledges the problematic nature of his alcohol use, *e.g.*, *id.* at 11-12, the DOE psychiatrist stated that he would have liked to see the individual be more open with others about his problem, noting the fact that neither his wife nor mother seem to agree that the individual had a drinking problem. *Id.* at 72.

Nonetheless, “even at this early point,” the psychiatrist opined that there was a low risk of the individual returning to excessive use of alcohol in the future. *Id.* at 79; *see also id.* at 88. By contrast, the psychiatrist stated that he would not have reached this same conclusion had the individual met the DSM criteria for alcohol abuse or dependence, acknowledging a correlation between the period of abstinence required and the original severity of the problem. *Id.* at 85-86.

Thus, while at the time of his report, the DOE psychiatrist concluded that there was not “adequate evidence of rehabilitation or reformation,” Exhibit 6 at 8-9,

[a]t this point, there is adequate evidence. I mean, it would be a lot nicer if we were sitting here six or ten months from now, it would be even more evidence, but I remain hopeful that he will remain abstinent and that there are enough factors involved here, some that he has brought upon himself, that will give him the best chance to remain abstinent.

Tr. at 90.

Though taking into account the favorable prognosis of the DOE psychiatrist, I am not convinced that the risk of a relapse by the individual is low enough at this time to warrant granting him access authorization, primarily for the reasons set forth below.

First, while OHA hearing officers generally accord deference to the opinion of mental health professionals regarding the issue of rehabilitation and reformation, *see, e.g., Personnel Security Hearing*, Case No. TSO-1057 (2011), whether evidence of rehabilitation and reformation is adequate to warrant granting a security clearance is a determination “to be made by DOE officials, including the hearing officer, not by a consultant psychiatrist.” *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 consultant psychiatrist’s] opinion as to what level of risk is acceptable in order to grant or restore a security clearance”).

Second, I must view expert testimony in the context of all of the factors I am required, under the regulations and the Adjudicative Guidelines, to consider in reaching my decision. 10 C.F.R. § 710.7(c); *Adjudicative Guidelines* at ¶ 2(a). Consistent with the “whole-person” concept set forth in the Adjudicative Guidelines, both the Guidelines and the Part 710 regulations require me to consider “the nature, extent, and seriousness of the individual’s conduct” and “the frequency and recency of the conduct,” factors particularly relevant to the present case. *Id.* In this regard, I note that the individual’s habitual use of alcohol has spanned a long period of time, from age 18 to 31, Exhibit 6 at 4, a pattern unbroken by anything “more than maybe a week or something, . . .” Tr. at 22. As for the frequency and recency of his excessive alcohol use, the individual testified that, prior to quitting drinking three months prior to the hearing, *id.* at 11, he “probably drank between 12 and 16 [beers] pretty much every Friday night, . . .” *Id.* at 24.

Finally, while no one factor is by itself dispositive, the recency of the problematic behavior in this case gives, in my opinion, particular cause for concern as to the risk of relapse. Under the Adjudicative Guidelines, included among the conditions that could mitigate a security concern arising from excessive alcohol use are whether “so much time has passed” that the behavior “is unlikely to recur,” and whether the individual “has established a pattern” of abstinence or responsible use. *Adjudicative Guidelines* at Guideline G. With this in mind, while I commend the individual for the steps he has taken thus far, I believe that it would defy common sense to find that, after a 13-year drinking habit, three months constitutes an established pattern of abstinence. *See* 10 C.F.R. § 710.7(a) (“decision as to access authorization is a comprehensive, common-sense judgment”); *Personnel Security Hearing*, Case No. TSO-1099 (“insufficient evidence” of reformation and rehabilitation from Alcohol-Related Disorder after seven months of abstinence, despite favorable prognosis of DOE consultant psychologist).

Thus, based upon my review of the entire record, I am not convinced that there is adequate evidence of rehabilitation and reformation in this case, such that the security concern raised under criterion (j) has been resolved. Further, because the criterion (h) security concern relating to the individual’s judgment or reliability stems from his habitual use of alcohol to excess, the concern raised under that criterion has also not been resolved.

V. CONCLUSION

For the reasons set forth above, I conclude that the individual has not resolved the DOE’s security concerns under criterion (h) and (j). 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: February 1, 2012