

\* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

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

In the Matter of:	Personnel Security Hearing	)	
		)	
Filing Date:	October 27, 2011	)	
		)	Case No.: PSH-11-0009
_____			)

Issued: March 1, 2012

\_\_\_\_\_  
**Hearing Officer Decision**  
\_\_\_\_\_

Richard A. Cronin, Jr., Hearing Officer:

This Decision concerns the eligibility of XXXXXXXX (“the Individual”) to hold a Department of Energy (DOE) access authorization.<sup>1</sup> This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual’s suspended DOE access authorization should be restored. For the reasons detailed below, I find that the Individual’s access authorization should not be restored at this time.

**I. BACKGROUND**

The Individual is employed by a DOE contractor and has held a DOE access authorization for approximately one year. Exhibit (Ex.) 10 at 1. The Individual was arrested for Driving While Intoxicated (DWI) in January 2011. Ex. 10 at 1; Ex. 9 at 1. This disclosure prompted the Local Security Office (LSO) to conduct two Personnel Security Interviews with the Individual in March 2011 (03/2011 PSI) and July 2011 (07/2011 PSI). Exs. 19, 20. After the PSIs, the LSO referred the Individual to a DOE consultant-psychologist (“the DOE Psychologist”) for an evaluation. The DOE Psychologist examined the Individual in August 2011 and issued an evaluative report (Report). Ex. 3.

In a September 2011 Notification Letter, the LSO informed the Individual that there existed derogatory information that raised security concerns under 10 C.F.R. § 710.8 (h), (j) and (l)

\_\_\_\_\_  
<sup>1</sup> 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.

(Criteria H, J and L, respectively) and that the Individual's security clearance was being suspended. *See* Ex. 1 (Notification Letter). 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. Ex. 2 at 8. 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 21 exhibits into the record (Exs. 1-21) and presented the testimony of one witness, the DOE Psychologist. The Individual, represented by counsel, presented his own testimony, as well as the testimony of eight other witnesses: a business partner (Business Partner), his wife (Wife), a psychologist (Individual's Psychologist), two co-workers (Co-Workers 1 and 2), his supervisor (Supervisor), a friend (Friend), and a fellow member of Alcoholics Anonymous (AA Member). *See* Transcript of Hearing, Case No. PSH-12-0009 hereinafter cited as "Tr."). The Individual did not submit any exhibits.

## 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) (the 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) (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 Criteria H, J, and L**

##### **1. The Individual's History of Alcohol Misuse and Treatment**

The Individual was arrested in March 2000 for Making Alcohol Available to a Minor. Ex. 18 at 11. In January 2011, the Individual was arrested for Driving While Intoxicated (DWI). Ex. 17 at 2. During the 03/2011 PSI, the Individual admitted that prior to this arrest he had consumed six 12-ounce beers and three or four vodka tonics. Ex. 20 at 10. In July 2011, the Individual signed a probation agreement resolving his January 2011 DWI arrest, where he agreed to abstain from alcohol for the next 18 months. Ex. 15 at 3.

After reporting his arrest and consulting with the DOE facility's Employee Assistance Program, the Individual attended an Intensive Outpatient Program (IOP) at a treatment facility. Ex. 19 at 46-47, 49; Ex. 20 at 40-41. Prior to his attendance at the IOP during March 2011 and April 2011, the Individual signed the IOP Rules Agreement Form (Rules Agreement) where he agreed that he would not possess alcohol or be under the influence of alcohol while in the IOP facility or involved in program activities. Ex. 12. The Individual also signed the IOP Attendance and Graduation Guideline Form (Guideline Form) in which the Individual agreed to abstain from all mood-altering chemicals while enrolled in the IOP. Ex. 13. One day after signing the Rules Agreement and the Guideline Form, the Individual, during the 03/2011 PSI, stated his intention to continue consuming alcohol. Ex. 20 at 44. During the 07/2011 PSI, the Individual admitted that during the period, January 1997 to July 2011, a period which included his participation in the IOP, he would consume five beers over three to four hours every two weeks. Ex. 19 at 84-85.

After his examination of the Individual in August 2011, the DOE Psychologist found that the Individual suffered from Alcohol-Related Disorder, NOS.<sup>2</sup> Ex. 10 at 6-7. The DOE Psychologist calculated that the Individual's typical consumption of five beers over three hours would result in a blood alcohol concentration (BAC) of .08 g/210L, a BAC which would result in intoxication. Ex. 10 at 3-4, 6. Consequently, because the Individual consumed this amount of alcohol twice a month, the DOE Psychologist opined that the Individual used alcohol habitually to excess. Ex. 10 at 6. Additionally, the DOE Psychologist opined that the Individual's illness could cause a significant defect in judgment and reliability. Ex.10 at 6.

##### **b. The Associated Security Concerns**

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). It is well established that "certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness." Adjudicative Guidelines,

---

<sup>2</sup> "NOS" is an acronym in the Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> Edition – Text Revision (DSM-IV-TR) for "Not Otherwise Specified."

Guideline I. Conduct involving such psychological conditions can raise questions about an individual's ability to protect classified information. *Personnel Security Hearing*, Case No. TSO-0927 (November 30, 2010) (Alcohol Abuse found to raise security concerns under Criterion H). 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(h). 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). In light of the DOE Psychologist's determinations that the Individual suffers from Alcohol-Related Disorder NOS, a condition that causes or may cause a significant defect in the Individual's judgment and reliability, and that the Individual has used alcohol habitually to excess, I find that the LSO properly invoked Criteria H and J.

Criterion L concerns circumstances tending 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). Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Adjudicative Guidelines, Guideline E. Given the Individual's statement in the 07/2011 PSI indicating that the Individual consumed alcohol during his participation in the IOP, the LSO had sufficient grounds to invoke Criterion L.

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

To resolve the security concerns raised by the Criteria H, J and L derogatory information, the Individual presented evidence to establish that he has completed an IOP and has been abstinent from alcohol since June 30, 2011. He also presented testimony from his Psychologist and a fellow AA Member to support his assertion that he is at very low risk to resume alcohol misuse. At the hearing, the Individual also presented testimony to prove that, despite his answer in the PSI to the contrary, he did not, in fact, consume alcohol during his participation in the IOP and that he has an exemplary character. The relevant testimony and my analysis of the evidence is summarized below.

### **1. Criteria H and J<sup>3</sup>**

After the 2011 arrest, the Individual, upon reporting to work, was directed to meet with the facility's psychologist, who referred him to the Individual's Psychologist. Tr. at 110-11. The Individual's Psychologist recommended that the Individual attend an IOP at a treatment facility where she is employed. Tr. at 111. The IOP is a five-week, four-day a week program which provides counseling and education regarding substance abuse. Tr. at 111. The Individual began the IOP in March 2011 and completed the program in April 2011. Tr. at 112. Through his participation in the IOP, the Individual learned about the significance of alcohol abuse and how it

---

<sup>3</sup> I will consider the Criterion H and J concerns together because they both concern the Individual's misuse of alcohol.

can change people's lives. Tr. at 139. He now knows that on the night before his 2011 DWI arrest he abused alcohol and made a bad decision to drive. Tr. at 139. The Individual currently attends the IOP aftercare program and has monthly sessions with his Psychologist for individual counseling. Tr. at 121, 138. The Individual also participates in an AA program. Tr. at 120. Nonetheless, the Individual believes that he does not have an alcohol problem. Tr. at 139. The Individual's intention is to abstain from alcohol. Tr. at 126.

At the July 2011 hearing regarding the 2011 DWI, the Court sentenced the Individual to probation with the one of the conditions being that the Individual abstain from alcohol for 18 months. Tr. at 142-42; Ex. 15 at 3. The Individual last consumed alcohol on June 30, 2011, the day before his hearing regarding the 2011 DWI. Tr. at 139. The Business Partner, the Wife, Co-Workers 1 and 2, the Friend, and the Supervisor testified as to the Individual's abstinence from July 2011 to the date of the hearing. Tr. at 21, 27, 47-48, 63, 76-77, 87.

The Individual's Psychologist testified that the Individual "did well" at the IOP and the associated aftercare program. Tr. at 165. The Individual has discussed with her his struggles with the 12 steps of the AA program, especially the step that proclaims that the Individual must admit that he has no control over alcohol. Tr. at 157. The Individual has difficulty with that step because he has a history of being able to function effectively and still consume alcohol. Tr. at 152. The Individual's Psychologist believes that the Individual, at the time of his examination by the DOE Psychologist, suffered from Alcohol Abuse. Tr. at 159. The Individual's Alcohol Abuse may have resulted from his separation from his first wife. Tr. at 159-60.

The Individual's Psychologist opined that, as of the date of the hearing, the Individual no longer suffers from Alcohol Abuse. Tr. at 163. Her opinion was based upon the fact that the incident which led to the diagnosis, the January 2011 DWI arrest, occurred over 12 months ago. Tr. at 163. The Individual's Psychologist believes that the Individual is committed to maintaining abstinence and is capable of accomplishing it. Tr. at 164. However, she does have a concern regarding the closeness in time of the Individual's marriage to his divorce and its potential effect on his sobriety. Tr. at 164-65. This is especially so since the Individual's 2011 DWI arrest occurred approximately when the Individual's first marriage ended.<sup>4</sup> Tr. at 164-65. The Individual's Psychologist believes that the Individual needs support as he adapts to family life and a new child. Tr. at 165. Overall, the Individual's Psychologist believes that the Individual has a low probability of returning to a problematic consumption of alcohol. Tr. at 165.

The AA Member has known the Individual since October 2011 and has observed the Individual's regular attendance at two different AA meeting locations. Tr. at 94. While not the Individual's AA sponsor, the Individual has spoken to him about the possibility of the AA Member becoming his sponsor. Tr. at 95. In December 2011, the AA Member observed the Individual participate in a ceremony where the Individual dedicated his life to his religion. Tr. at 95-96. The AA Member also knows that the Individual regularly attends service at a local church. Tr. at 96.

The AA Member believes that the Individual "wants to change" and is off to a "good start." Tr. at 97. With regard to the 12 steps of the AA program, the AA Member testified that the

---

<sup>4</sup> The Individual's divorce was finalized in June 2011, and he married his current wife in November 2011. Tr. at 33, 125.

Individual has not discussed his progress with the AA Member regarding these steps. Tr. at 100. However, based upon his observation of the Individual, the AA Member believes that the Individual is ready to go beyond the first three steps of the program. Tr. at 100. In going beyond the first three steps, the AA Member recommended that the Individual find a person to work with in addressing these steps. Tr. 100-01. The AA Member's belief is that the Individual intends to stop consuming alcohol indefinitely. Tr. at 104.

The DOE Psychologist believes that the Individual may now finally believe he has a problem with alcohol.<sup>5</sup> Tr. at 193. In the DOE Psychologist's opinion, while the Individual is seeking a sponsor and has had an intense religious emotional experience that will give the Individual a moral structure for living, these measures are not sufficient for him to conclude that the Individual is currently rehabilitated from his alcohol disorder. Tr. at 194. Given the Individual's initial lack of candor and the Individual's initial lack of belief that he had an alcohol problem, the DOE Psychologist believes that rehabilitation requires a longer involvement with AA along with continued therapy with the Individual's Psychologist.<sup>6</sup> Tr. at 194-95. The DOE Psychologist testified that the exact duration of this treatment would depend on the Individual's therapists.<sup>7</sup>

After reviewing the evidence before me, I find that the Individual has not resolved the Criteria H and J concerns arising from his 2011 DWI arrest, his misuse of alcohol and the DOE Psychologist's diagnosis of Alcohol Related Disorder, NOS. To the Individual's credit, he has successfully completed the IOP, has been regularly attending AA, and is seeking continuing counseling with his Psychologist. Further, the Individual, as of the date of the hearing, has abstained from alcohol for approximately seven months. However, while the Individual plans to abstain from alcohol indefinitely, I also note that his abstinence may not be solely the choice of the Individual but also mandated by his current probation status related to the 2011 DWI. I am also concerned about the Individual's attitude as to his alcohol problem. At the hearing and during the 07/2011 PSI, the Individual denied that he had an alcohol problem. Further, I note the Individual's problem with regard to the AA step requiring one to admit that one is powerless over alcohol. Although the DOE Psychologist speculated that the Individual was actually trying to say that he does not *now* have a problem, I am not convinced as to the strength of Individual's belief that he has an alcohol problem that requires treatment. Finally, I find that the DOE

---

<sup>5</sup> At the hearing, the Individual challenged the basis for the DOE Psychologist's conclusion that, based upon the Individual's reported consumption and a web-based BAC calculator, the Individual was repeatedly intoxicated. Tr. at 202-10. The DOE Psychologist testified that the equation used in the web-based BAC calculator was a standard equation referenced by a standard reference to train State prosecutors. Tr. at 209-10. While the DOE Psychologist testified that the equation did not take into account all factors which could affect a person's BAC, this admission is not sufficient to discredit the DOE Psychologist's calculations in the absence of additional expert testimony.

<sup>6</sup> Given the evidence before the DOE Psychologist regarding the Individual's blood alcohol level when arrested, and the Individual's height and weight, the DOE Psychologist concluded that the Individual did not provide a credible account of his alcohol consumption before the 2011 DWI arrest, two mixed drinks, to the IOP. Tr. at 192-93. The DOE Psychologist also recalled that the Individual informed him that he had consumed alcohol during his participation in the IOP. Tr. at 150.

<sup>7</sup> The DOE Psychologist also opined that the Individual should discuss, in therapy, possible issues arising from his recent marriage so as to reduce stress in his life. Tr. at 199.

Psychologist's opinion is more convincing that the Individual's Psychologist's testimony with respect to the status of the Individual's rehabilitation. Consequently, as of the date of the hearing, I find that the Individual has not sufficiently resolved security concerns arising from the Criteria H and J derogatory information. *See Personnel Security Hearing*, Case No. TSO-1068 (September 28, 2011) (individual found not to be sufficiently rehabilitated from Alcohol Abuse despite favorable opinion testimony from individual's treating psychologist).

## 2. Criterion L

With regard to the allegations in the Notification Letter that he was not truthful or he that failed to honor his commitments, the Individual testified that he did not consume alcohol during his participation in the IOP. Tr. At 114. When he stated in the 07/2011 PSI that he was consuming five beers over three to four hours during the period, 1997 to July 2011, he had forgotten about his participation in the IOP where he abstained for the entire duration of the program. Tr. at 114. Further, to the extent he may have given the DOE Psychologist the impression that he consumed alcohol during the IOP, the Individual testified that he made a mistake. Tr. at 149. The Individual's Wife, Co-Workers and Supervisor all testified as to their belief that the Individual was honest and has always fulfilled his commitments. Tr. at 15, 47, 58, 87, 89.

The Individual's Psychologist testified that, in her opinion, the Individual was not intentionally being dishonest. Tr. at 162. She found, however, that the Individual was "lackadaisical" with historical information. Tr. at 162. Specifically, the Individual's Psychologist found that the Individual, unless he is told a task is important, does not pay much attention to historical facts. Tr. at 162. The DOE Psychologist found that the Individual tries to be honest and has high moral values. Tr. at 191. However, the DOE Psychologist believes that when it involves his alcohol consumption, the Individual believes that it is not important to be accurate about facts.<sup>8</sup> Tr. at 191.

The Notification Letter states that the Individual violated commitments he made in the Rules Agreement and the Guidelines Form. As an initial matter, the Rules Agreement only prohibits the Individual from possessing alcohol while on the IOP facility or while involved in IOP activities. Ex. 12 at 1. There has been no evidence presented to me that indicates that the Individual possessed alcohol while at the IOP facilities or while participating at IOP activities. Consequently, this Criterion L allegation has been resolved. The Guidelines Form states that the Individual will abstain from alcohol while enrolled in the five-week IOP. While the Individual stated in the PSI that he consumed alcohol during the period 1997 to July 2011 (which includes the Individual's participation in the IOP), I find that the Individual did not intend to mislead the LSO. I find convincing the Individual's explanation that he made the statement in error because he forgot about his participation in the IOP. Further, the Individual's erroneous answer did not seek to minimize his alcohol consumption or cast him in a favorable light.

---

<sup>8</sup>While not cited in the Notification Letter, several incidents were disclosed at the hearing where the Individual may have been less than candid regarding his alcohol consumption. *See* Tr. at 143 (Individual asserted to the DOE Psychologist that no person informed him that he must abstain from alcohol despite signing probation agreement forbidding his use of alcohol while on probation); Ex. 15; Tr. at 144 (Individual reported in an IOP follow up that he had only consumed alcohol once in the past six months when in reality Individual had been using alcohol every two to three weeks); Ex. 11. The Individual admitted that these two statements were inaccurate. Tr. at 143-144; *see also* footnote 6.

The Notification Letter also alleges that the Individual failed to honor the commitment he made in the Guidelines Form when he admitted in the 07/2011 PSI that he consumed alcohol after the IOP. Again, I cannot find that the Individual failed to abide by this agreement since the Guidelines Form only requires that the Individual “abstain from all mood altering chemicals . . . while you are enrolled in this Intensive Outpatient Program.” Ex. 13 at 1 (emphasis added).

Nonetheless, as detailed above, the record has a number of instances where the Individual’s accounts regarding his alcohol consumption patterns are misleading. I also have the testimony of the two expert witnesses in this case who opined that the Individual has difficulty in providing accurate information regarding his alcohol usage and history. While the Individual’s unreliability is restricted to one area of his life, his alcohol usage, this unreliability is a vulnerability until the Individual’s alcohol problem is resolved. Consequently, as of the date of the hearing, I cannot find that the Criterion L security concerns have been resolved. *See Personnel Security Hearing*, Case No. TSO-0509 (October 29, 2007) (Criterion L concerns related to misrepresentations of alcohol consumption found not to be resolved in part due to their connection to the individual’s unresolved alcohol problem).

#### **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, J and L of the Part 710 regulations. I also find that the Individual has not presented sufficient information to fully resolve those concerns. Therefore, I cannot 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 not 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: March 1, 2012