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**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-11-0010
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Issued: March 5, 2012

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**Hearing Officer Decision**  
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Richard A. Cronin, Jr., Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (“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 DOE should not restore the Individual’s access authorization at this time.

**I. BACKGROUND**

The Individual is employed by a DOE contractor and has held a DOE access authorization for several years. DOE Exhibit (Ex.) 13 at 2. In June 2011, the Individual was cited for Disorderly and Lewd/Immoral Indecent Conduct (Disorderly Conduct). Ex. 9 at 2; Ex. 8 at 1. This disclosure prompted the Local Security Office to conduct a Personnel Security Interview (PSI) with the Individual in July 2011 (07/2011 PSI). Ex. 14. After the PSI, the LSO referred the Individual to a DOE consultant-psychologist (“the DOE Psychologist”) for an evaluation. The DOE Psychologist evaluated the Individual in August 2011 and issued an evaluative report concerning the Individual that included an analysis of the Individual’s use of alcohol. Ex. 8.

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

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<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.

and (I) (Criteria H, J and L, respectively) and that his security clearance was suspended. *See* Ex. 1. 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 16 exhibits into the record (Exs. 1-16) 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 six witnesses: two daughters (Daughters 1 and 2), his sister (Sister), a co-worker (Co-Worker), his supervisor (Supervisor), and a friend (Friend). *See* Transcript of Hearing, Case No. PSH-11-0010 (hereinafter cited as “Tr.”) The Individual submitted one exhibit (Ex. A).

## **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 Arrests**

In November 1984, the Individual was cited for Urinating in Public. Ex. 11; Ex. 14 at 47. The Individual was arrested in March 2001 for Driving While Intoxicated (DWI). Ex. 11; Ex. 13 at 1; Ex. 14 at 45-46; Ex. 15 at 5-6. At the time of the 2001 DWI arrest, the Individual's breath alcohol content (BAC) was measured to be 0.125 and 0.129, both levels exceeding the legal limit for alcohol in the State where he was arrested. Ex. 15 at 18.

In May 2011, one of the Individual's neighbors called the local police to report that the Individual was committing a lewd act in his garage. Ex. 9; Ex. 14 at 11-12, 24-25. The Individual was later charged with Disorderly Conduct. Exs. 8, 9; Ex. 14 at 24-25.

During the July 2011 PSI conducted after the May 2011 arrest, the Individual admitted that, prior to the incident resulting in the 2011 arrest, he had consumed two or three beers. Ex. 14 at 39-41; Ex. 8; Ex. 9. The Individual also revealed during the PSI that for the past ten years, he had consumed four to five beers, five or six days a week. Ex. 14 at 50-51, 67-68.

In an August 2011 report (Report) regarding the Individual, the DOE Psychologist noted that the Individual informed him that he typically consumes four to five beers per evening between 6:00 p.m. and 8:30 p.m.<sup>2</sup> Ex. 7 at 4. The DOE Psychologist found that this level of alcohol consumption would cause intoxication of the Individual on a nightly basis and may have produced a tolerance to alcohol which prevents the Individual from feeling that he is intoxicated. Ex. 7 at 7. Consequently, the DOE Psychologist determined that the Individual drinks alcohol habitually to excess. Ex. 7 at 7. The DOE Psychologist also found that the Individual suffers from an illness, Alcohol-Related Disorder, Not Otherwise Specified (Alcohol-Related Disorder), pursuant to the Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> Edition Text Revision.<sup>3</sup> Finally, the DOE Psychologist found that the Individual's Alcohol-Related Disorder could cause significant defects in his judgment and reliability.<sup>4</sup> Ex. 7 at 8.

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<sup>2</sup> The DOE Psychologist also noted that the Individual, in the 07/2011 PSI, stated that his consumption of alcohol would help him sleep. Ex. 7 at 4; Ex. 14 at 51. At the hearing, the Individual denied using alcohol to help him sleep. Tr. at 87.

<sup>3</sup> In his Report, the DOE Psychologist opined that, for the Individual to demonstrate sufficient evidence of rehabilitation, the Individual should abstain from alcohol for 12 months and participate in Alcoholics Anonymous (AA) or an intensive outpatient program at a treatment facility. Ex. 7 at 8.

<sup>4</sup> The DOE Psychologist found that the Individual did not exhibit the type of personality features or characteristics of men who commit the type of lewd act alleged in the Disorderly Conduct charge. Ex. 7 at 5.

## **2. 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 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). 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(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). In light of the DOE Psychologist’s determination that the Individual suffers from Alcohol-Related Disorder, a condition that may cause a significant defect in the Individual’s judgment and reliability, and that the Individual uses alcohol habitually to excess, 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 criminal activity, by its very nature, calls into question a person’s ability or willingness to comply with laws rules and regulations. Adjudicatory Guidelines, Guideline J. Given the information indicating that the Individual has a history of arrests, including a recent arrest for Disorderly Conduct, the LSO had sufficient grounds to invoke Criterion L.

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

At the hearing, the Individual challenged the DOE Psychologist’s conclusion that the Individual has an alcohol problem. The Individual presented evidence showing that his current consumption of alcohol has not created any problems with his life. Additionally, the Individual disputed the DOE Psychologist’s determination that the Individual’s level of alcohol consumption produces intoxication. During the hearing, the Individual also challenged the Criterion L allegations with his submission of court records that indicated that he was found “Not Guilty” of the Disorderly Conduct charge by a local court. Additionally, the Individual presented evidence as to his excellent workplace performance and his outstanding character. The relevant testimony is summarized below.

## 1. Alcohol Misuse

The Individual does not dispute the level of his daily alcohol consumption. Tr. at 82-83, 93. The Individual described his typical day in which he arrives at home approximately at 5:00 p.m. and then runs five and one-half miles.<sup>5</sup> Tr. at 80-81. When the Individual finishes his run, around 6:00 p.m., he begins preparing his dinner and consuming beer. Tr. at 81. After dinner, the Individual watches television until 8:30p.m. and then goes to bed. Tr. at 82. On a typical weekday, during 6:00 p.m. to 8:30 p.m., the Individual consumes four or five beers.<sup>6</sup> Tr. at 83. The Individual does not believe that he becomes intoxicated on the occasions that he consumes alcohol. Tr. at 88. Each of the Individual's witnesses testified to the Individual's moderate consumption of alcohol and to never having observed the Individual intoxicated. Tr. at 11, 25, 39, 48, 57, 63-66.

The Individual firmly insists that he does not have any type of alcohol problem. Tr. at 91. As support for this belief, the Individual asserts that his alcohol consumption has not produced any problems with his work performance, his finances, or his ability to take care of his personal and family responsibilities. Tr. at 92, 95 113. Because the Individual does not believe that he has an alcohol problem, he has not undertaken any of the treatment recommendations made by the DOE Psychologist. Tr. at 93.

The DOE Psychologist testified that, based upon the Individual's admitted nightly consumption of alcohol, he concluded that the Individual frequently possessed a breath alcohol level of 0.08, the level of legal intoxication. Tr. at 105. The DOE Psychologist believes that the Individual has developed functional and physical tolerance to the effects of alcohol based upon the Individual's ten-year history of significant consumption of alcohol. Tr. at 107. Because of this tolerance, the Individual can function "relatively normally" with regard to other people. Tr. at 107. At this point of time, the DOE Psychologist believes that the Individual's alcohol consumption is a "way of life." Tr. at 107. The DOE Psychologist opined that, given the Individual's stubbornness, the Individual is not likely to change his alcohol consumption habits. Tr. at 107-08. Further, the Individual would likely not benefit from an alcohol educational program or AA.<sup>7</sup> Tr. at 108.

Given the evidence before me, I cannot conclude that the Individual has resolved the Criteria H and J concerns raised by the Individual's admitted alcohol consumption, the DOE Psychologist's diagnosis of Alcohol-Related Disorder and the DOE Psychologist's determination that the Individual consumes alcohol habitually to excess. In the absence of other convincing expert testimony, I find that DOE Psychologist's testimony persuasive on the issue of whether the Individual's current pattern of alcohol consumption results in bouts of intoxication. The fact that

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<sup>5</sup> The Individual maintains an active exercise program on the recommendation of his physicians in order to preserve his lung function, which was damaged by Chronic Beryllium Disease (CBD). Tr. at 77-80.

<sup>6</sup> The Individual testified that during Saturdays and Sundays, he might consume five or six beers over the course of an entire day. Tr. at 73.

<sup>7</sup> The DOE Psychologist speculated that the Individual might be able to mitigate the security concerns associated with his alcohol consumption if the Individual would reduce his consumption to three beers a night and seek treatment from a physician regarding any sleeping problems the Individual might be suffering from. Tr. at 108-09.

the Individual's intoxication has not caused major life difficulties and is mostly restricted to occasions when the Individual is at home does not mitigate the concerns raised by the Individual's repeated bouts of intoxication. Any excessive use of alcohol raises a security concern due to the heightened risk that an individual's judgment and reliability may be impaired to the point that he or she may fail to safeguard classified matter or special nuclear material. *Personnel Security Hearing*, Case No. TSO-1004, *slip op.* at 6 (June 23, 2011). Because I find that the Individual is subject to bouts of intoxication and that the Individual has not sought any treatment for his alcohol problem, I cannot find that the Criteria H and J security concerns have been resolved.

## **2. Arrest History**

The Individual has submitted a copy of a certified court record indicating that he has been found "Not Guilty" with respect to the July 2011 Disorderly Conduct charge. Ex. A. The Individual testified that he did not perform any lewd act during the events which led to the citation for Disorderly Conduct. Tr. at 74. He also testified to his long history of disagreements with the neighbor who filed the charges. Tr. at 74. In reviewing the Criterion L derogatory information, the Individual does not believe that he has demonstrated any pattern of criminal conduct, especially since the other two charges cited in the Notification Letter, a 2001 DWI arrest and a 1984 Urinating in Public arrest, occurred over a period of 27 years. Tr. at 76. The Individual's other witnesses testified to the Individual's excellent judgment, reliability, trustworthiness and work record. Tr. at 16, 18-19, 35-36, 45, 48-50, 56, 59, 66.

As for the Individual's Disorderly Conduct charge, I note that his "Not Guilty" verdict is not totally dispositive of this matter. In a criminal case, the prosecution must present sufficient evidence to prove guilt "beyond a reasonable doubt." In a security clearance proceeding, once evidence exists raising a security concern, the Individual has the obligation to resolve the concern. *See Personnel Security Hearing*, Case No. TSO-1048, *slip op.* at 2 (November 4, 2011) (Part 710 "places the [evidentiary] burden on the individual because it is designed to protect national security interests."). In this case, I find that the Individual has submitted sufficient evidence to resolve the concern raised by the Disorderly Conduct charge: the "Not Guilty" verdict, evidence of conflict between the Individual and his neighbor, evidence provided by the Individual's witnesses, and the DOE Psychologist's opinion that the Individual did not fit the personality features of someone who would commit the lewd act described in the Disorderly Conduct charge. Accordingly, I find that the Individual has resolved the security concerns raised by the July 2011 Disorderly Conduct arrest.

With regard to the 1984 Urinating in Public arrest, I find that the passage of 28 years has resolved any security concerns raised by this arrest. *See Personnel Security Hearing*, Case No. TSO-0705 (May 28, 2009) (18-year old arrest for assault mitigated by the passage of time). However, with regard to the 2001 DWI arrest, I cannot find that the Individual has resolved the Criterion L security concern. The arrest occurred after the Individual's current level of problematic alcohol consumption began. Ex. 14 at 68-69; Tr. at 84 (Individual's current pattern of alcohol consumption began in late 1990s). Additionally, the Individual has not resolved the underlying alcohol problem that was likely responsible for the arrest. *See Personnel Security Hearing*, Case No. TSO-1079 (November 2, 2011) (an individual's unresolved Alcohol

Dependence prevents mitigation of Criterion L concerns arising from a history of alcohol-related arrests). As discussed above with regard to Criteria H and J, the Individual's unresolved alcohol problem may result in the impairment of the Individual's judgment. *See supra*. Consequently, I cannot find that the Individual has totally resolved the Criterion L concerns raised in this case.

#### **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 H, J, and L of the Part 710 regulations. I also find that the Individual has not presented sufficient information to resolve the concerns raised by the Criteria H, J, and L derogatory information. 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, 5, 2012