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

In the matter of Personnel Security Hearing )

Filing Date: November 16, 2011 )

Case No.: PSH-11-0020

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Issued: February 15, 2012

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**Hearing Officer Decision**

Kent S. Woods, Hearing Officer:

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision 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 several years. In March 2011, the individual reported to his Local Security Office that he had been charged recently with Driving Under the Influence of Alcohol (DUI). DOE Ex. 9. Based on this report, the Local Security Office (LSO) conducted a Personnel Security Interview (2011 PSI) with the individual in April 2011. 2011 PSI, DOE Ex. 2.

In August 2011, the LSO suspended the individual's access authorization. In September 2011, the LSO issued a Notification Letter to the individual, together with a statement entitled Summarization of Security Concerns, (Enclosure 1), alleging that reliable information in the possession of the DOE has created a substantial doubt concerning the individual's eligibility for an access authorization. DOE Ex. 1. On December 9, 2011, the LSO issued An Amended Summarization of Security Concerns (the Amended Summarization). DOE Exhibit 12. Specifically, in the Amended Summarization, the LSO identifies information indicating that the individual was diagnosed with alcohol dependence in 1992 and in April 2011, and that in 1988,

1992, March 2011 and November 2011, the individual was charged with DUI. The LSO finds that this information has raised security concerns under the provisions of 10 C.F.R. § 710.8(j). The LSO also finds that these four DUI charges and other legal charges related to the four DUIs raise concerns under 10 C.F.R. § 710.8(l) regarding the individual's ability or willingness to comply with laws, rules and regulations. Finally, the LSO finds that the individual's statements to the LSO regarding his March 2011 DUI and alleged factual discrepancies between the individual's medical treatment record and information that he reported to the LSO have raised concerns under 10 C.F.R. § 710.8(l) regarding the individual's honesty, reliability and trustworthiness. *Id.*

The individual requested a hearing (hereinafter 'the hearing') to respond to the concerns raised in the Notification Letter. On November 18, 2011, the Office of Hearings and Appeals Director appointed me the Hearing Officer in this case. At the hearing I convened in this matter, I received testimony from nine persons. The LSO presented the testimony of the DOE Personnel Security Specialist who conducted the PSI. The individual, who was represented by counsel, testified and presented the testimony of his wife, his union representative, and his Employee Assistance Program (EAP) counselor. Discussion at the hearing centered on the individual's Alcohol Dependence diagnosis and his past conduct that formed the bases for the LSO's Criteria J and L concerns, as well as the individual's recent conduct and efforts to address his Alcohol Dependence.

## II. APPLICABLE STANDARDS

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing 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). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard reflects a presumption against granting or restoring a security clearance. *See Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

## III. ANALYSIS OF TESTIMONY AND FINDINGS OF FACT

### A. Criterion J Concerns

#### 1. The Individual's Diagnosis of Alcohol Dependence

As a basis for finding that the individual suffers from Alcohol Dependence, the LSO finds in its Amended Summarization that the individual was diagnosed with Alcohol Dependence in 1992 and in April 2011, and that in 1988, 1992, March 2011 and November 2011, the individual was charged with DUI. DOE Exhibit 12. At the hearing, the individual agreed that he is alcohol

dependent, and that he previously received in-patient treatment for that condition in 1992. TR at 181, 151. His EAP counselor, who is an expert in the area of alcohol counseling and treatment, testified that the individual suffers from Alcohol Dependence and requires treatment. TR at 76-77. In addition, the individual testified that the DUI charges listed in the Amended Summarization are accurate, and that he drove while intoxicated on other occasions. TR at 166-168, 172-173, 184. He also testified that during the last couple of years, he has engaged in binge drinking due to an inability to stop consuming alcohol once he starts. TR at 142-143.

Based on this evidence, I find that the individual suffers from Alcohol Dependence and that his DUIs and admitted excessive consumption of alcohol constitute derogatory information under Criterion J. Alcohol misuse is a security concern because it can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. See Guideline G of the *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).

## 2. Whether the Individual Has Resolved the Criterion J Concerns

In deciding whether an individual has mitigated a security concern, a hearing officer must consider all relevant factors having a bearing on an individual's fitness to obtain or retain a security clearance. See 10 C.F.R. § 710.7(c). According to the Adjudicative Guidelines, among the factors that may serve to mitigate security concerns raised by an individual's alcohol disorder or excessive use of alcohol are: that the alcohol misuse happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment. Other factors that may mitigate alcohol-related concerns are: that the individual has provided evidence of actions undertaken to overcome an alcohol problem and has established a pattern of abstinence or responsible use; that the individual has completed a treatment program and has demonstrated an established pattern of modified consumption of alcohol or abstinence; or that the individual is a current employee who is participating in a counseling or treatment program without a history of previous treatment or relapse and is making satisfactory progress. Adjudicative Guidelines, Guideline G, ¶ 23; see, e.g., *Personnel Security Hearing*, Case No. TSO-1020 (September 9, 2011) (individual resolved concerns raised by alcohol dependence disorder by proving that he received therapy for alcohol dependence problem and that he had abstained from alcohol for 18 months).<sup>1</sup>

At the hearing, the individual presented testimony and other evidence to establish that although his initial efforts to maintain sobriety following the March 2011 DUI were unsuccessful, he is now completing an intensive in-patient treatment program, and that as a result of his progress in this program, he is at low risk for misusing alcohol in the future. I summarize the individual's testimony and evidence below.

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<sup>1</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>.

The individual testified that a week following his March 2011 DUI, he consumed seven or eight beers. He testified that following this incident, which occurred in early April 2011, he did not again consume alcohol until the day of his November 2011 DUI. TR at 172-173.<sup>2</sup> He stated that from May until November 2011, he and his wife participated in couples counseling with the EAP counselor, and that he attended some Alcoholics Anonymous (AA) meetings. TR at 180-181. The EAP counselor testified that in June 2011, the individual executed a Stipulation of Understanding (SOU) with the EAP in which he committed himself to sobriety and to random monthly tests for all mood altering substances. TR at 72. The EAP counselor stated that from June until November 2011, he had about seven sessions of marital counseling with the individual and his wife, aimed at improving their communication and moderating stress without alcohol. TR at 77, 108. The individual's wife testified that the individual began to attend weekly AA meetings in August 2011. TR at 136.

The individual stated that despite his SOU, on the day of his November 2011 DUI, he purchased and consumed hard liquor and beer. Then, despite feeling intoxicated and having a revoked driver's license, he drove his car and hit another vehicle. TR at 183-184. He stated that he does 'not really know' why he took these actions. His EAP counselor attributes his relapse to the stress caused by the individual having his security clearance pulled. TR at 91, 95. The EAP counselor stated that the individual's relapse was very serious because he jeopardized himself and society by drinking and driving. TR at 116.

The individual testified that he was incarcerated for several days following the November 2011 DUI, and that following his release he informed the LSO of his arrest. TR at 143-144. He and his wife then contacted the EAP counselor and discussed options for in-patient treatment for alcoholism. TR at 191. In early December 2011, he entered an in-patient residential treatment program (IRTP) where he continued to reside at the time of the hearing. TR at 152. He stated that he has not consumed alcohol since the day of his November 2011 DUI, and has been 'rules compliant' in his IRTP. TR at 191, 155. He testified that each day at the IRTP he studies the Narcotics Anonymous Book, attends symptoms management classes, and participates in group discussions on life issues and relationships. He stated that he also is engaged in Moral Recognition Therapy, which is aimed at combating anti-social tendencies and learning honesty and self-acceptance. TR at 192-193, 153. The individual stated that he is attending both AA and Narcotics Anonymous meetings on the weekends. TR at 49-50. He stated that the IRTP has been 'tough' but that he now feels much stronger. TR at 194. He testified that he has gained personal insights about how relationship problems and internalizing shame have contributed to his alcoholism. TR at 160. He stated that following his graduation from the IRTP, he will participate in an aftercare program, and that he is committed to ongoing sobriety and to active involvement in AA, with a sponsor. TR at 161, 195-196.<sup>3</sup> Based on this testimony, I find that as of the date of the hearing,

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<sup>2</sup> The EAP counselor testified that he believes that the individual told him that he began to consume alcohol again in early November 2011, but he is not certain of this. TR at 98, 116.

<sup>3</sup> Following the hearing, the individual's counsel submitted a certificate and other documents attesting to the individual's successful completion of the IRTP, his plans for his outpatient treatment, and the identity of his AA sponsor. See January 19, 21 and 23, 2012 e-mails from DOE counsel forwarding e-mails from the individual's counsel.

the individual has been abstinent from alcohol since his November 2011 DUI, a period of less than two months.

The individual's EAP counselor testified that he has been involved in the individual's diagnostic evaluations at the IRTP and in the structuring of his treatment program. He stated that the individual participates in both alcohol and narcotics treatment because the individual's experimentation with drugs as a teenager indicates that his addiction treatment should include both alcohol and drugs. TR at 105-106. The EAP counselor testified that he believes that the individual is progressing well in this IRTP and is completing his goals on schedule. He stated that the individual has improved his ability to express himself and to moderate and regulate his feelings and thoughts without substance use. TR at 99-100. He stated that following the IRTP, the individual should get involved in an aftercare program for three nights a week with individual sessions, and that he should supplement the aftercare with AA by finding a home group and a sponsor. TR at 109-110. He testified that the individual will need to change his past activities and associations in order to be successful in his recovery. TR at 101. He stated that the individual's paid outpatient services could fade out over time, but that he would need additional AA activity to replace the outpatient services. TR at 109-110. He stated that the individual should sign a new SOU with his employer that extends his monthly random alcohol and drug screen for five years. TR at 110.

The individual's EAP counselor stated that the longer the individual is in treatment, the lower the risk that he will relapse. He stated that he believes that the individual currently is committed to making the lifestyle changes and establishing the support network necessary to maintain his sobriety, and has an "above average likelihood of staying clean and sober." TR at 12. He stated that he is "fairly positive" that the individual will maintain his sobriety for the next year, but cautioned that "the first year is the toughest." *Id.* He acknowledged that the individual could relapse if he steps away from his support network and begins to "ruminate on the things that he hasn't done correctly. . . ." *Id.* He stated that he would have more confidence in the individual's ability to maintain his sobriety once the individual has completed a year of sobriety and rehabilitation activities from his entering the IRPT. *Id.*

In order for me to find that the individual has mitigated the Criterion J security concerns raised by his alcohol problem, I must conclude that the individual, at this time, has demonstrated adequate evidence of rehabilitation and reformation. In the individual's favor, he sought serious treatment for his alcohol problem following his November 2011 relapse and DUI. In addition, he now has successfully completed the IRTP and is implementing his outpatient treatment program. The individual also has been diligent about maintaining a connection with the EAP counselor for support and guidance, and the individual's wife fully supports his recovery efforts. TR at 131-132. All of these facts bode well for the individual's ultimate rehabilitation from Alcohol Dependence.

However, the EAP counselor indicated in his testimony that the individual needs to make lifestyle changes and establish a support system in order to maintain his sobriety. He stated that he will be more confident that the individual will maintain his sobriety after he has accomplished these tasks and completed a year of AA and counseling activities. In determining whether an individual is at low risk for future alcohol problems, Hearing Officers give considerable weight

to the opinion of a mental health experts. *See Personnel Security Hearing*, Case No. TSO-0082, *slip op.* at 8 (October 6, 2004) (“In a Part 708 proceeding, the Hearing Officer gives great deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation or reformation.”). In the present case, that the nature of the individual’s condition supports requiring a 12-month period of sobriety and rehabilitation activities to demonstrate a low risk for future problems.<sup>4</sup> The individual acknowledges that he is a binge drinker and is alcohol dependent, a severe form of substance use disorder. Further, the individual had two motor vehicle accidents in the past year while intoxicated, and has violated his SOU commitment to his employer by consuming alcohol. While the individual has successfully completed his IRTP, he still has the challenge of making healthy lifestyle changes, managing personal stress, and establishing a support system for maintaining his sobriety. While I believe that the individual has a good chance of ultimately rehabilitating himself from his Alcohol Dependence, I cannot find, at this time, that the individual is sufficiently rehabilitated to resolve the Criterion J security concerns raised by the derogatory information contained in the Notification Letter. *See Personnel Security Hearing*, Case No. TSO-0863 (March 25, 2010) (individual found not rehabilitated from Alcohol Dependence despite participation in AA for five months and completion of five months of abstinence).

#### B. Criterion L Concerns

As discussed above, the LSO finds in its Notification Letter that the individual’s four DUI charges and other legal charges related to those four DUIs raise concerns under 10 C.F.R. § 710.8(l) regarding the individual’s ability or willingness to comply with laws, rules and regulations. The LSO also finds that the individual may have been untruthful with the LSO in his e-mail and statement to the LSO concerning his March 2011 accident and DUI, because the actions taken by the individual and reported by the police indicated that the individual may have been trying to conceal his identity and avoid arrest, while the individual denied such intentions in his reports to the LSO. Finally, the LSO finds that factual discrepancies between the individual’s reports of drug and alcohol use in his medical treatment records and the information that he reported to the LSO have raised concerns regarding the individual’s honesty, reliability and trustworthiness. LSO’s Amended Summarization at 2-5, DOE Exhibit 12. At the hearing, the Personnel Security Specialist testified that the LSO is concerned that the individual is continuing to provide information or explanations that “avoid or minimize” the issues regarding the extent of his past substance abuse problems and the extent of his poor judgment and willingness to commit illegal acts when under the influence of alcohol. TR at 43-44.

I agree with the LSO that the individual’s DUIs and his conduct following his March and November 2011 alcohol-related accidents raise serious concerns about poor judgment and reliability associated with his pattern of excessive alcohol consumption. The individual admitted at the hearing that after he consumes alcohol, his judgment is poor. TR at 185-186. As discussed above, the individual accepts that he is alcohol dependent, is committed to sobriety, has completed an IRTP, and plans to be actively involved in counseling and AA activity in

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<sup>4</sup> In this regard, I note that medical professionals often find that a full year of abstinence and alcohol treatment is necessary to establish rehabilitation, because a one year period allows an individual to go through a sufficient number of ups and downs that normally occur within a year to test whether he can withstand normal stresses without turning to alcohol. *See Personnel Security Hearing*, Case No. TSO-0150 (2005).

support of that commitment. Accordingly, I find that when the individual achieves rehabilitation from Alcohol Dependence, he also will mitigate the LSO's Criterion L concerns regarding his ability and willingness to comply with laws, rules and regulations.

I also find that the individual's rehabilitation from Alcohol Dependence will resolve the LSO's concerns about the individual's honesty, reliability and trustworthiness. I find that the record supports the LSO's contention that the individual has not provided the LSO with accurate and complete information concerning his past use of illegal drugs and alcohol, and has provided explanations concerning conduct associated with his DUIs that may have minimized or rationalized his poor judgment while under the influence of alcohol. For example, at the hearing, the individual admitted that following his 1992 outpatient alcohol program, he only remained abstinent from alcohol for three years although he had told the LSO that he had remained abstinent for seven or eight years. 2011 PSI at 18 and 28, TR at 169. The individual also stated at the 2011 PSI that he had not consumed alcohol since the March DUI, while at the hearing he admitted that he drank to intoxication in early April 2011. TR at 172-173. However, I find that the individual's lack of honesty and good judgment appear to be limited to the area of his substance dependence issues. The individual's union representative testified that he has known the individual through workplace and union activities, that the individual has never received any disciplinary measures, and that he has never had any reason to question the individual's honesty. TR at 121-122. In addition, the individual's counsel submitted six statements from co-workers and a supervisor stating that the individual conducts himself in a professional manner, and is very dependable and helpful in the workplace. See January 12 and 19, 2012 e-mails from the DOE counsel forwarding e-mails from the individual's counsel.

Individuals suffering from Alcohol Dependence commonly minimize and rationalize their misuse of alcohol, and become more honest as they accept and address their problem. Alcohol treatment programs such as AA directly address this lack of honesty. See *Personnel Security Hearing*, Case No. TSO-0808 (2009). As discussed above, the individual's IRPT provided instruction to the individual for learning honesty and self-acceptance concerning his alcohol dependence. The EAP counselor testified that the individual now appreciates the wrongs he has committed in connection with his alcohol problem and is remorseful about them. He stated that he trusts the individual to be honest with him about his alcohol issues, and that this trust will be verified when the individual completes a year of sobriety. TR at 103. As discussed above, at the hearing the individual voluntarily admitted to alcohol use that he previously concealed from the LSO. I believe that the individual already is making progress in honestly presenting his alcohol issues to the DOE. The individual's rehabilitation from Alcohol Dependence will therefore resolve the Criterion L concerns regarding his honesty, reliability and trustworthiness. See *Personnel Security Hearing*, Case No. TSO-0808 (2009) (individual's minimization of alcohol use to DOE was caused by individual's alcoholism and will be mitigated when the individual achieves rehabilitation from Alcohol Dependence).

#### IV. CONCLUSION

For the reasons set forth above, I find that the individual was properly diagnosed with Alcohol Dependence, which is derogatory information under Criterion J, and that his alcohol related behavior and his statements concerning his alcohol use have raised a concern under Criterion L.

Further, I find that this derogatory information under Criteria J and L has not yet been mitigated by evidence of rehabilitation from Alcohol Dependence. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods  
Hearing Officer  
Office of Hearings and Appeals

Date: February 15, 2012