

Because the neither the August 2011 PSI nor the DOE Psychologist's examination resolved the security concerns raised by the Individual's 2011 DUI arrest, the LSO informed the Individual in a November 2011 notification letter (Notification Letter) that derogatory information existed which raised security concerns under 10 C.F.R. § 710.8(h), (j), and (l) (Criteria H, J, and L, respectively) and that his security clearance was suspended. 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 nine exhibits into the record (Exs. 1-9) and presented the testimony of one witness, the DOE Psychologist. The Individual, represented by his mother (Mother), presented his own testimony, as well as the testimony of four witnesses: his Mother, his supervisor (Supervisor), a co-worker (Co-Worker), and the DOE facility's Employee Assistance Program counselor (EAP Counselor). *See* Transcript of Hearing, Case No. PSH-11-0035 (hereinafter cited as "Tr.") The Individual submitted 11 exhibits (Exs. A-K).

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 J, K, and L

1. Alcohol Misuse, Psychological Evaluation, and Traffic Citations

Pursuant to a request that the Individual be granted a security clearance, the LSO conducted a PSI with the Individual in August 2008. Ex. 9; Tr. at 140. During the 2008 PSI, the Individual admitted that, during the period August 2007 through November 2007, he consumed seven to 15 shots of “hard” alcohol twice a month. Ex. 9 at 27-28, 37. During the PSI, the Individual stated that he understood the DOE’s concern with excessive alcohol consumption and expressed his intention not to consume alcohol in the future. Ex. 9 at 29, 37-39.

In August 2011, the Individual reported to the LSO that he had been recently arrested for Driving Under the Influence (DUI).² Ex. 6 at 3. At the time of his arrest, two breath tests indicated breath alcohol content levels of 0.11 and 0.12 g/210L, each of which exceeded the state’s limit of 0.08g/210L. Ex. 6 at 3. After this arrest, the LSO conducted the 2011 PSI with the Individual. Ex. 8. During the 2011 PSI, the Individual admitted consuming two 22 ounce (oz.) containers of beer, a 12 oz. container of beer, as well as 8 or 9 “shots” of different liquors over a four and one-half hour period before the DUI arrest. Ex. 8 at 49-51, 53-57, 71. Additionally, the Individual admitted that he had driven in an intoxicated state six or seven times during his life. Ex. 8 at 156-57. The Individual also revealed that he had been stopped for speeding four times, and on two of those occasions received citations – once in 2009 and once in 2010. Ex. 8 at 86-89, 91-92, 94.

After the 2011 PSI, the Individual was examined by the DOE Psychologist. In her Report, the DOE Psychologist found that the Individual had given her inconsistent reports about his prior alcohol use when compared to information the Individual provided in the 2008 PSI. The DOE Psychologist stated in the Report that this finding raised a question regarding his judgment and reliability. Ex. 4 at 9. She also found that, because the Individual had been stopped for speeding four times and had been arrested for DUI in 2011, the Individual had demonstrated a disregard for law.³ Ex. 4 at 9. With regard to the Individual’s use of alcohol, she found that the Individual was a user of alcohol habitually to excess. Ex. 4 at 10. As support for this finding, the DOE Psychologist cited the Individual’s “binge drinking” along with the Individual’s underreporting of his alcohol consumption. Ex. 4 at 10. She also found that the Individual could be properly diagnosed as suffering from Alcohol Related Disorder, Not Otherwise Specified (NOS), and that, given the findings described above, the Individual suffered from a mental condition or illness which may cause a significant defect in judgment and reliability. Ex. 4 at 10-11.

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

² The Individual was also cited for speeding at the time of this arrest. Ex. 6 at 4.

³ The Notification Letter only cited the speeding incidents which resulted in a citation.

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, Guideline I. Conduct involving such psychological conditions can raise questions about an individual’s ability to protect classified information. *Personnel Security Hearing*, Case No. PSH-11-0010 (March 1, 2012) (*PSH-11-0010*) (Alcohol Related Disorder, NOS, found to raise security concerns under Criterion H).⁴ 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; *PSH-11-0010*, *slip op.* at 4. In her Report, the DOE Psychologist concluded that the Individual had used alcohol habitually to excess and suffered from Alcohol Related Disorder, NOS, conditions that could cause a defect in judgment or reliability. Ex. 4 at 10. In light of these determinations, I find that the LSO properly invoked Criteria H and J.

Criterion L concerns information tending to show that an 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). Criminal conduct calls into question a person’s ability or willingness to comply with laws, rules, and regulations. Adjudicative Guidelines, Guideline J; *Personnel Security Hearing*, Case No. TSO-1111 (January 25, 2012). Given the information indicating that the Individual has been recently been arrested for DUI and cited for three speeding citations, the LSO had sufficient grounds to invoke Criterion L.

B. Whether the Individual Has Mitigated the Security Concerns

With regard to the issue of mitigation, I will consider the Criteria H, J and L concerns together. The Criteria H and J concerns both arise from the Individual’s misuse of alcohol. The Criterion L derogatory information described in the Notification Letter consists of the Individual’s two speeding citations and his 2011 DUI arrest. At the hearing, the Individual presented testimony to establish that he has abstained from alcohol for seven months and that he is now rehabilitated from his alcohol problem. The relevant testimony is summarized below.

The Individual testified that his last consumption of alcohol was in August 2011 and his intention is to never consume alcohol again. Tr. at 112, 120. The Individual believes that the 2011 DUI arrest was an isolated incident which represents a serious mistake in judgment. Tr. at 111. As a result of the arrest, the Individual entered a local outpatient alcohol education program and began to receive counseling from the EAP Counselor. Tr. at 112; Ex. K. In the outpatient program, he receives personal counseling and is educated on alcohol disorders. Tr. at 121-22. In December 2011, the Individual began the outpatient program and has learned about alcohol-

⁴ 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>.

related topics, such as triggers, emotions, and coping strategies. Tr. at 112-13. In this regard, the Individual now limits the amount of time he spends with friends that could subject him to peer pressure to consume alcohol. Tr. at 116. He also has acquired new friends who do not consume alcohol and prefer to play sports or video games. Tr. at 116. The woman he now dates is a non-consumer of alcohol. Tr. at 116. Further, the Individual now considers his family to be his most important support system. Tr. at 121. If he were to be tempted to consume alcohol, he would be able to discuss the situation with his parents. Tr. at 123.

The Individual plans to continue with the outpatient program for as long as he can continue to learn about his alcohol disorder. Tr. at 113-14. He continues to attend even though he feels a bit out of place since, unlike himself, most of the people who attend the program have had significant personal and family losses in their lives due to alcohol. Tr. at 113. He believes that he has experienced significant personal growth as a result of this incident and is confident he will not make a similar mistake again. Tr. at 113. He also intends to continue counseling with the EAP Counselor. Tr. at 113-14. He believes that the knowledge he has gained from these sessions will further reduce the possibility of misusing alcohol. Tr. at 114.

The EAP Counselor testified that he was approached by the Individual for counseling in August 2011, shortly after the Individual's 2011 DUI arrest. Tr. at 63. He recommended that the Individual seek an outpatient treatment program and also agreed to counsel the Individual individually. Tr. at 64-65. He has seen the Individual for 12 sessions totaling approximately nine and one-half hours. Tr. at 64, 69. In their counseling sessions, the EAP Counselor has encouraged the Individual to make a cost/benefit analysis of alcohol consumption. Tr. at 73.

The EAP Counselor did not "necessarily disagree" with a diagnosis of Alcohol Related Disorder, NOS.⁵ Tr. at 79. However, with regard to findings cited by the DOE Psychologist in her Report as supporting her diagnosis, the EAP Counselor believes that these findings are now no longer applicable to the Individual. Tr. at 75. Specifically, the EAP Counselor testified that the Individual now believes that he has problem with alcohol. Tr. at 75. As to the Individual's lack of candor, the EAP Counselor believes that this was probably due to a faulty memory aggravated by the use of alcohol during the period surrounding his 2011 DUI arrest. Tr. at 77. Further, the Individual's one extended period of significant alcohol consumption occurred while he was a college student and college students generally tend to have increased levels of alcohol consumption. Tr. at 81.

While the EAP Counselor believes that a 12-month period of abstinence is a significant milestone for the determination of the recovery status of a person suffering from serious alcohol problems, he does not believe that, in the Individual's case, a 12-month period is necessary to

⁵ The Individual was examined by an Occupational Medicine psychologist (OM Psychologist) regarding the Individual's Fitness for Duty in the DOE's Human Reliability Program shortly after the 2011 DUI arrest. Ex. J. In this report, the OM Psychologist found that the Individual did not have an alcohol use disorder and that the DUI arrest did not present "a pattern of concern." Ex. J at 3. The OM Psychologist, who has since left the facility, suggested that the Individual's file be kept open until he could review the police report of the arrest and consult with the EAP Counselor. Ex. J at 3. The EAP Counselor testified that after the OM Psychologist consulted with him, the OM Psychologist reaffirmed his belief that the Individual did not have an alcohol use disorder and that the Individual's risk of relapse was low. Tr. at 92, 103.

find that the Individual is rehabilitated. Tr. at 74. The Individual's attendance in the outpatient treatment center and his counseling has given the Individual the tools to resist social temptations to use alcohol in an inappropriate manner. Tr. at 88-89. Additionally, the Individual's family provides a strong support group for the Individual. Tr. at 92. In the EAP Counselor's opinion, the Individual risk's relapse into problematic alcohol consumption was "low." Tr. at 92.

The Individual's Mother testified that the Individual now lives with her and the Individual's father and that the three often attend outpatient treatment meetings together as a family. Tr. at 22. Since the arrest, the Individual does not go out very often. Tr. at 22. The Individual has expressed his remorse for the arrest and how it has caused his family financial hardship. Tr. at 22. She believes the Individual, who just turned 23 years old several weeks ago, has learned a lesson from his "young and foolish mistakes" and now realizes the impact of his alcohol misuse on his personal, family, and work life.⁶ Tr. at 21, 23.

After listening to all of the testimony, the DOE Psychologist offered an update to her opinion concerning the Individual. The DOE Psychologist testified that she heard a number of positive factors regarding the Individual's rehabilitation such as the Individual's belief that he has a problem and the testimony from the Individual's Mother that indicates the Individual has a strong support system in place. Tr. at 132. Additionally, the DOE Psychologist was impressed with the fact that the Individual continues to attend the outpatient program despite the fact he does not like parts of the program. Tr. at 132. She also believes the Individual has more credibility now than when she first interviewed him. Tr. at 133-34. She also noted in her testimony that the Individual is developing refusal skills with regard to times when he may be asked to consume alcohol and that the Individual has activities, such as basketball and video games that do not involve the consumption of alcohol ("sober fun"). Tr. at 133. Given all of these positive factors, the DOE Psychologist now believes that the Individual has a "low" risk of relapse and that the Individual's current seven-month abstinence, combined with his current treatment program, is sufficient evidence that the Individual is now rehabilitated from his alcohol problem. Tr. at 137.

In reviewing the evidence before me, I find that the Individual has resolved the security concerns raised by the Criteria H and J derogatory information. Both the EAP Counselor and the DOE Psychologist have given their expert opinions that, as of the date of the hearing, the Individual has demonstrated sufficient evidence to conclude that he is rehabilitated from his alcohol problem. I found the Individual and his Mother's testimony to be persuasive as to the length of the Individual's abstinence, his participation in the outpatient program, the changes that the Individual has made in his life in response to his outpatient program and, most importantly, the Individual's acceptance of the idea that he does have a problem with alcohol. In sum, I find that the Individual has resolved the concerns raised by the Criteria H and J derogatory Information. *See Personnel Security Hearing, Case No. PSH-11-0034 (March 16, 2012) slip op.* at 6 (and cases cited therein). The Individual's rehabilitation from his alcohol disorder, as well as the

⁶ The Supervisor testified as to the Individual's excellent integrity and work record as well as his perception that he had never seen any indication that the Individual suffered from an alcohol abuse problem. Tr. at 48, 49. The Co-Worker, who works in as a Labor Relations Manager for the Individual's employer, testified that the Individual has not been subject to any workplace discipline while employed at the DOE facility. Tr. at 57.

passage of time and his increased maturity since the speeding citations, resolves the Criterion L concerns. *See Personnel Security Hearing*, Case No. TSO-0098 (November 19, 2004) *slip op.* at 6 (Criterion L alcohol-related traffic offences may be mitigated by sufficient evidence of rehabilitation or reformation from an underlying alcohol problem).

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 presented sufficient information to resolve the concerns raised by the Criteria H, J, and L derogatory information. Therefore, I 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 restore the Individual's suspended access authorization.

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: April 19, 2012