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

In the Matter of Personnel Security Hearing)		
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Filing Date: February 14, 2012)	Case No.:	PSH-12-0010
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Issued: June 13, 2012

Hearing Officer Decision

William M. Schwartz, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXX (the individual) to hold an access authorization (also called a security clearance) 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."¹ For the reasons set forth below, I conclude that the individual should not be granted a security clearance at this time.²

I. BACKGROUND

The individual works for a Department of Energy (DOE) contractor and is an applicant for DOE access authorization. In August 2010, the individual completed a Questionnaire for National Security Positions (QNSP) and was subject to an Office of Personnel Management (OPM) background investigation. He provided information to the Local Security Office (LSO) during a

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5.

² 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>.

Personnel Security Interview (PSI) conducted in March 2011 that was inconsistent with answers he provided on his QNSP and during his OPM investigation, revealing that he had been hospitalized in January 2010 for alcohol abuse, treatment of prescription drug addiction and depression. Because the LSO could not resolve these discrepancies and the concerns raised by his alcohol and drug use to its satisfaction, it referred the individual to a DOE-sponsored psychologist for an evaluation. In May 2011, the DOE psychologist issued a report of his evaluation in which he diagnosed the individual as suffering from alcohol abuse, depressive disorder and anxiety disorder. In light of that report, as well as the individual's inconsistent statements, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. The LSO informed the individual of this determination in a Notification Letter that set forth the DOE's security concerns and the reasons for those concerns. Exhibit 3. 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 access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to OHA, and I was appointed the Hearing Officer. The DOE introduced ten exhibits into the record of this proceeding and presented one witness at the hearing. The individual presented the testimony of six witnesses in addition to his own testimony.

II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

When completing a QNSP in 2010, the individual responded "No" to a number of questions that asked whether he had any reprimands and suspensions in the workplace, alcohol- and drug-related charges, illegal use of controlled substances, and treatment and hospitalization for mental health conditions, including alcohol and drug abuse. Statements the individual made during his interviews and psychological evaluation, while at times inconsistent and not fully disclosing, nevertheless revealed that he should have responded "Yes" to those questions. Those statements also revealed that he had been prescribed medications for anxiety and depression from 2000 through 2011, and had been hospitalized in 2010 after self-medicating his grief with alcohol and prescription drugs. The individual also reported drinking alcohol in large quantities, becoming intoxicated nearly every night during 2009 and 2010, even after his January 2010 hospitalization, and currently drinking in very limited amounts. As stated above, the DOE psychologist diagnosed the individual with alcohol abuse, depression and anxiety. In addition, the individual's failing an employer's drug test in 2005 and an alcohol test in 2010 raised concerns about his willingness to follow rules, and two misrepresentations during interviews raised additional concerns about his candor. Exhibit 3.

The individual's misuse of alcohol and a prescription drug, his three diagnosed mental disorders, and his numerous misrepresentations raise security concerns under 10 C.F.R. §§ 710.8(f), (h), (j), and (l).³

³ Criterion F concerns arise when the LSO learns that the individual "[d]eliberately misrepresented, falsified, or omitted significant information from . . . a Questionnaire for National Security Positions [or] a Personnel Security Interview." 10 C.F.R. § 710.8(f). Security concerns under Criterion H relate to an "illness or mental condition of a nature which, in the opinion of a . . . licensed clinical psychologist, causes or may cause a defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion J concerns arise when an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a . . . licensed clinical psychologist as . . . suffering from alcohol abuse." 10 C.F.R. § 710.8(j). Finally, under Criterion L, concerns arise when derogatory information indicates that the individual has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or

To support Criterion F, the LSO cites seven occurrences in which the individual improperly answered QNSP questions with a negative response. It also cites two times during the March 2011 PSI in which the individual deliberately understated the extent of his alcohol and prescription drug consumption.

To support Criterion H, the LSO cites the DOE psychologist's diagnosis of the individual with Depressive Disorder NOS (Not Otherwise Specified) and Anxiety Disorder NOS.

To support Criterion J, the LSO cites the individual's use of alcohol from 1993 to 2011, at times to the point of intoxication, to cope with his brother's death and other stresses. As additional support for invoking this criterion, the LSO cites the DOE psychologist's diagnosis of the individual with Alcohol Abuse in Full Sustained Remission.

To support Criterion L, the LSO cites the individual's failing employer-administered random tests for drugs in 2005 and for alcohol use in 2010. It also cites his failures to fully disclose information at his OPM investigation and at his psychological evaluation.

This derogatory information set forth above adequately justifies the DOE's invocation of Criteria F, H, J, and L, and raises significant security concerns. Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 19, 2005) (Adjudicative Guidelines), at Guideline E. Certain mental conditions can impair an individual's judgment, reliability, or trustworthiness. *Id.* at Guideline I. In addition, habitual or binge consumption of alcohol to the point of impaired judgment and a diagnosis of alcohol abuse demonstrate excessive alcohol consumption that often leads to exercise of questionable judgment or failure to control impulses. *Id.* at Guideline G. Finally, testing positive for illegal drug use raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Id.* at Guideline H.

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 or restoring the individual's 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

trustworthy." 10 C.F.R. § 710.8(l).

reformation and 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). *See Personnel Security Hearing*, Case No. VSO-0013 (1995) (*affirmed* by OSA, 1996), and cases cited therein. 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. FINDINGS OF FACT AND ANALYSIS

Except as noted, the derogatory information set forth in the Notification Letter constitutes factually accurate information that supports the security concerns under Criteria F, H, J, and L.

In responding to specific questions posed on the QNSP, the individual denied having been officially reprimanded or suspended for misconduct in the workplace, denied having been hospitalized or having consulted with a health care provider within the past seven years regarding an emotional or mental health condition, failed to fully disclose all charges related to alcohol or illegal drugs, failed to fully disclose having illegally used any controlled substance within the past seven years, failed to fully disclose counseling or treatment within the past seven years for drug use, and denied any treatment for alcohol use. Exhibit 7 at Sections 13,⁴ 21, 22, 23(a), 23(d),⁵ 24(c).

Records obtained in the course of adjudicating the individual’s eligibility for a security clearance, and statements the individual made during interviews and the psychologist’s evaluation contradicted the above responses. For example, although the individual stated on the QNSP that the only time he had used marijuana in the past seven years was in July 2005, he tested positive for marijuana on a random test in September 2005. Exhibit 8 at 31. Moreover, although on the QNSP he denied any treatment or counseling for alcohol or for an emotional or mental health condition, he revealed that he had been hospitalized for three days in 2010 for alcohol and medication abuse. *Id.* at 18, 20.

The individual has been treated for anxiety and depression since about 2000. *Id.* at 29. He has resisted counseling, but has taken the prescription drug Xanax for about 11 years. *Id.* Between 2008 and 2011, the individual lost three close friends and underwent three major surgeries. He dealt with his grief by increasing his intake of Xanax and alcohol, though he was aware that these two

⁴ The Notification Letter, at I.A.1, states that the individual reported that he had been laid off from a job in March 2010, when in truth he resigned rather than be terminated. Exhibit 3. I have reviewed the QNSP itself, which clearly shows that the individual indicated that he “[q]uit a job after being told [he] would be fired.” Exhibit 7 at § 13C(1). He did, however, indicate that he had not received a written warning or been suspended for misconduct in the workplace. *Id.* at § 13C(2).

⁵ Despite the allegation in the Notification Letter at I.A.6, the individual acknowledged that he had received counseling or treatment for his drug use. He did not, however, provide details of his counseling as required by the form’s instructions. Exhibit 7 at § 23(d).

substances should not be combined. *Id.* at 18-22. On at least one occasion in 2009, the individual took 10 milligrams of Xanax over the course of a single day—two-and-one-half times his prescribed dosage, and drank alcohol after work. Transcript of Hearing (Tr.) at 36. His doctor then referred him to a psychiatrist, who began an eight-month program to wean him from Xanax, replacing it with Clonazepam, another anti-anxiety medication, from which he is now being weaned. *Id.* at 38, 41. He stopped drinking alcohol entirely after an unrelated hospitalization in January 2011, but has now resumed drinking, though rarely, and only outside of the home. *Id.* at 71-72.

A. Criterion F: Deliberate Falsification

At the hearing, the individual attempted to explain the discrepancies between his responses on the QNSP he completed and statements he made later in the security clearance adjudication process. After considering the entire record in this case, I find that the individual has mitigated the concerns regarding a few of his inconsistent responses. In those instances, I can ascribe the individual's responses to lost memory or honest mistake. *Id.* at 18 (failure to recall in 2010 that dismissed 1996 alcohol-related arrest also included charge for possessing drug paraphernalia), 28 (inconsistent reports of alcohol intake during PSI and psychological evaluation due to variations in actual intake during different periods).

Nevertheless, the individual has not convinced me that many of his incorrect responses on the QNSP were not deliberately intended to understate the extent of his alcohol and mental health problems. For example, the individual explained that he indicated on the QNSP that he had not had any mental health treatment, because he entered the three-day inpatient program in 2010 voluntarily. He contended that he had misinterpreted the question, and believed that only a court-ordered admission would require an affirmative response. *Id.* at 16-17. As for not listing the three-day program in his response about alcohol treatment, he offered a similar explanation, *id.* at 19, and when asked why he had not listed it in his response about drug treatment, he conceded that he did not know why. *Id.* He claimed that he didn't realize that he needed to disclose his attendance in his employer's employee assistance program following his positive test for marijuana in 2005. *Id.* at 18-19. He also testified that he had denied any work-related suspensions, because he did not realize that he had been suspended following his 2010 positive test for alcohol, even though he conceded that he was required to attend his employer's employee assistance program and was not permitted to go to work. *Id.* at 16, 23. Although the individual maintained at the hearing that he had nothing to hide from the LSO, his behavior belies that contention. I find it difficult to accept his purported misunderstandings of the questions on the QNSP and of his employer's employment actions.

I also find that the individual misrepresented the facts in at least one instance during the PSI. When asked whether he had abused Xanax before his hospitalization in 2010, the individual at first stated that he "was taking exactly what [he] was prescribed." He then admitted that one time, shortly before his hospitalization, he "did take a few more milligrams." Exhibit 8 at 26-27. At the hearing, however, he admitted that in 2009 he had more than doubled his dosage at least once. Tr. at 36. The individual has not explained why he minimized his drug usage during the PSI, and I find that he was deliberately attempting to present himself in an unrealistically favorable light. From a common-sense point of view, the individual's inconsistent responses throughout the hearing process raise unresolved questions about his trustworthiness, particularly in his interactions with the LSO. The individual therefore has not mitigated the LSO's concerns under Criterion F.

B. Criterion H: Mental Health Conditions

At the hearing, the DOE psychologist observed the individual and was present for all the testimony. When questioned about his opinion that the individual's depression and anxiety disorders caused a significant defect in his judgment or reliability, the DOE psychologist testified that the conditions were causing the individual to become more isolated and withdrawn from systems of support. *Id.* at 168. He stated that, in his opinion, "most of our good judgment comes from interaction with colleagues and friends and family." *Id.* After summarizing the individual's current support for his alcohol use—a church-sponsored program, his wife, and his mother-in-law—and his work with a psychiatrist to wean himself off anti-anxiety drugs, he concluded that, as of the date of the hearing, he would no longer diagnose the individual with an anxiety or depression disorder. Because, in the opinion of the DOE psychologist, the underlying mental conditions are no longer present, I find that the LSO's concerns under Criterion H have been mitigated.

C. Criterion J: Alcohol Abuse

At the time of the psychological evaluation, the DOE psychologist reported that the individual's alcohol consumption increased dramatically in 2009 and 2010, when he was drinking at least a six-pack of beer every night. Exhibit 10 at 4. The individual reported that he had quit drinking alcohol in January 2011,⁶ had been abstinent since, and was participating in a church-sponsored alcohol support group. *Id.* In his report, the DOE psychologist recommended a course of psychotherapy of at least two years to augment the medical therapy he was receiving. *Id.* at 5. At the hearing, the individual testified that he has now realized that his family and church are more important to him than drinking. Tr. at 48. Due to a new work schedule implemented in August 2011, he could no longer attend his alcohol support group, and has not found another church-based alcohol support group that meets at a time when he is available. *Id.* at 49, 64. He has become more active in his church, particularly in ministry groups, though their focus is not on alcohol use. *Id.* at 48-50. He still faces marital, family and financial pressures, and testified that he is coping with them without resorting to alcohol. *Id.* at 52. His wife and oldest son will hold him accountable for any alcohol abuse. *Id.* at 65. Finally, he conceded that he still drinks on occasion, and admitted to having a total of three beers in the six months preceding the hearing. *Id.* at 69.

After hearing all the testimony at the hearing, the DOE psychologist confirmed that the individual is still properly diagnosed with Alcohol Abuse. *Id.* at 155. He believed that the individual was in "tricky territory" by continuing to consume alcohol. *Id.* at 158. Although he felt that the individual was receiving good medical care, from a psychiatrist devoted to weaning him off unnecessary medications, he still felt that alcohol abuse counseling, whether through Alcoholics Anonymous or a church-based organization, was a necessary element of his treatment plan. *Id.* at 160, 163. His opinion was that the individual has the right structure in place for his recovery and considered his current church involvement to meet his psychotherapeutic needs. *Id.* at 164-65. He concluded that the individual's plan was "beginning to be therapeutic" but he was not yet confident that the individual was "out of the woods." *Id.*

⁶ The evaluative report states that the individual stopped drinking in January 2010. *Id.* This is clearly a typographical error. See Exhibit 8 at 17.

The DOE psychologist has convinced me that it is too soon to conclude that the individual has resolved his alcohol abuse problems. He resumed consuming alcohol after his January 2010 hospitalization. He resigned from his job after testing positive for alcohol in March 2010. He abstained for a short period after his surgery in January 2011, but has resumed drinking, although in limited amounts. I am not convinced, as the DOE psychologist is, that the individual's church-related activities are providing him the counseling the DOE psychologist states he needs. In any event, the individual has been engaged in his treatment plan for considerably less than the two years that the DOE psychologist recommended, and he continues to consume alcohol occasionally. After considering all the testimony and written evidence in the record, I am not convinced that the individual has resolved the LSO's security concerns that arise from his alcohol use.

D. Criterion L: Honesty, Reliability and Trustworthiness

The LSO's Criterion L concerns fall into two categories: an inability or unwillingness to comply with rules, and additional inconsistent statements that the individual made at different stages of his security clearance process that tend to show he is not trustworthy or reliable. The individual acknowledges that he failed two random tests with a former employer: he tested positive for marijuana in 2005 and for alcohol in 2010. At the hearing, he recognized that he had employed poor judgment on each occasion. Tr. at 77-79. This behavior cannot be mitigated as a one-time occurrence, and the most recent occurrence took place in the not-so-distant past. Thus, although he testified that he will not make the same error in the future, I cannot find that the individual has mitigated the LSO's more general concerns about his willingness or ability to follow rules, particularly rules pertaining to the protection of classified matter or information.

I find mitigated the first of the LSO's two Criterion L allegations about inconsistent information. The OPM investigator characterized the individual's report of his 2005 use of marijuana as a one-time event. During the PSI, however, the individual recounted a history of marijuana use dating back to his high school years. Exhibit 8 at 29-31. At the hearing, the individual explained that he restricted his information to the preceding ten years, as that was, according to his recollection, the time span of inquiry on the QNSP. By contrast, at the PSI, the interviewer clearly questioned him about his entire history of marijuana use, beginning with his first use. Tr. at 76-77. See Exhibit 8 at 29-31. Considering the circumstances, I find that the individual has successfully mitigated the LSO's concerns about his inconsistent responses in this instance.

I do not reach the same conclusion, however, regarding the LSO's second allegation. The individual failed to recount during either the PSI or the psychological evaluation that his wife had brought him to the emergency room on two occasions before his 2010 hospitalization, each time for treatment of overdose from combining Xanax and alcohol. The psychologist learned of these emergency room visits only by reviewing the individual's treating psychiatrist's records. Exhibit 10 at 4. When questioned at the hearing why he had not reported the emergency room visits, he stated that the test results convinced him that the amounts of medication and alcohol he ingested "would [not] cause or even remotely cause an overdose." Tr. at 79. He testified that he went to the emergency room only because his wife asked him to go. *Id.* at 80. Without more support for his contention, I am unwilling to rely on the individual's opinion regarding his medical condition at the time of his emergency room visits, particularly as they appear in the records of his treating psychiatrist. While I cannot determine why the individual failed to disclose his emergency room visits in the course of his

security clearance process, I do find that his explanation does not mitigate the LSO's concerns for his trustworthiness and reliability.

V. CONCLUSION

For the reasons set forth above, I conclude that the individual has resolved the DOE's security concerns under Criterion H. He has not, however, sufficiently resolved the DOE's security concerns under Criteria F, J, and L, and therefore has not demonstrated that granting his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the individual's security clearance should not be granted. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: June 13, 2012