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

In the Matter of:	Personnel Security Hearing	)	
		)	
Filing Date:	December 14, 2011	)	Case No.: PSH-12-0029
		)	
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Issued: May 3, 2012

**Hearing Officer Decision**

Diane DeMoura, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (“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 restore the Individual’s access authorization.

**I. BACKGROUND**

The Individual is employed by a DOE contractor in a position requiring him to hold a DOE access authorization. DOE Ex. 3. In December 2010, while on disability leave due to a medical condition, the Individual voluntarily entered an inpatient substance abuse facility to receive treatment for alcohol dependence. DOE Ex. 8. The Individual reported his treatment to his management, who in turn informed the Local Security Office (LSO). DOE Ex. 10 at 8-9. This potentially derogatory information prompted a March 2011 Personnel Security Interview (PSI). DOE Ex. 10. After the PSI, the LSO referred the Individual to a DOE consultant-psychiatrist (“the DOE psychiatrist”) for an evaluation. The DOE psychiatrist evaluated the Individual in August 2011 and issued a report. DOE Exs. 4, 5. After reviewing the Individual’s personnel security file, the LSO informed the Individual in an October 2011 Notification Letter that there

<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.

existed derogatory information that raised security concerns under 10 C.F.R. § 710.8 (h) and (j) (Criteria H and J, respectively). *See* Notification Letter, October 14, 2011. 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. DOE Ex. 2. 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 ten exhibits into the record (DOE Exs. 1-10) and presented the testimony of one witness, the DOE psychiatrist. The Individual presented his own testimony, as well as the testimony of six witnesses: his girlfriend, his father, his mother, his stepfather, his brother, and his supervisor. *See* Transcript of Hearing, Case No. PSH-11-0031 (hereinafter cited as “Tr.”).<sup>2</sup>

## 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) (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

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<sup>2</sup> After the hearing in this matter, but prior to the issuance of this Decision, the LSO issued a Security Termination Statement regarding the Individual, which indicated that the Individual’s employment with the DOE contractor had ended and, therefore, he no longer required DOE access authorization. Based on that Security Termination Statement, I dismissed the Individual’s administrative review proceeding (designated as OHA case number PSH-11-0031), terminating the administrative review process without a final decision regarding the Individual’s eligibility for access authorization, pursuant to 10 C.F.R. § 710.33. In a subsequent letter, the LSO informed OHA that the Security Termination Statement pertaining to the Individual resulted from an administrative error. The LSO requested that the Individual’s administrative review proceeding be reinstated and that a Hearing Officer’s Decision be issued regarding his eligibility for DOE access authorization. Accordingly, OHA reinstated the Individual’s administrative review proceeding, and designated the case as OHA case number PSH-12-0029. The record of PSH-12-0029 is comprised of the entire record of PSH-11-0031, including all submissions filed by the parties and the transcript of the hearing.

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 and J**

##### **1. The Individual’s Alcohol Use and Related Facts**

The Individual began drinking alcohol socially while in high school. DOE Ex. 4 at 10. During college, the Individual initially consumed alcohol infrequently, and generally not to intoxication. *Id.* The Individual got married while in college. *Id.* During the first few years of his marriage, the Individual consumed alcohol about once per week, usually drinking a beer with dinner at home. *Id.* The Individual’s alcohol consumption slowly increased over time to ten to twelve drinks per week. *Id.* Following his separation from his wife in December 2009, the Individual’s drinking increased significantly. *Id.* Until approximately March 2010, the Individual drank three to six beers at home every evening. *Id.* In March 2010, the Individual moved to a new home located across the street from a bar. *Id.* From March 2010 to October 2010, the Individual frequented that bar five to seven nights per week, drinking one beer each night. *Id.* The Individual’s preexisting medical condition worsened, and the Individual left work for a period of time on disability leave. *Id.* at 10-11. The Individual’s doctors warned him against consuming alcohol because of his condition. *Id.* at 11. Nevertheless, because he had nothing to do while home on disability leave, the Individual began drinking again. *Id.* At that point, the Individual’s daily alcohol consumption increased substantially. He generally began drinking around noon and continued to drink until bedtime. *Id.*

In November 2010, the Individual recognized that he needed to stop drinking. He realized that his alcohol consumption was severely impacting his health and his personal relationships. *Id.* The Individual stopped drinking at the end of November 2010 and, after consulting with his counselor<sup>3</sup> and his family, agreed to enter an inpatient substance abuse treatment program. *Id.*; see also DOE Ex. 8 (treatment program records). The Individual remained at the treatment facility for 29 days, during which he attended group counseling sessions and daily Alcoholics Anonymous (AA) meetings. *Id.*

As noted above, the Individual was evaluated by the DOE psychiatrist in August 2011. Following the evaluation, the DOE psychiatrist diagnosed the Individual with Alcohol Dependence, with Physiological Dependence, in Early Partial Remission. DOE Ex. 4 at 16. Despite the Individual’s participation in inpatient substance abuse treatment, and seven months of purported abstinence from alcohol, the DOE psychiatrist noted that the Individual’s insight regarding his alcohol problem was “quite limited.” *Id.* She further opined that the Individual did not demonstrate adequate evidence of rehabilitation and reformation. *Id.* The DOE psychiatrist concluded that in order to demonstrate adequate evidence of rehabilitation and reformation, the

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<sup>3</sup> The Individual had been seeing a counselor for issues unrelated to his alcohol use. Tr. at 119.

Individual should remain completely abstinent from alcohol for a minimum of one year, if he also attends AA meetings twice per week and works with an AA sponsor, or a minimum of two years if he chooses not to participate in AA. *Id.* at 16-17. In an addendum to her report, the DOE psychiatrist noted that the Individual tested positive for alcohol on a urinalysis test administered to him on the day of his interview with her, despite his contention that he consumed his last alcoholic drink in February 2011. DOE Ex. 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). Criterion J relates to conduct indicating that the Individual has “been, 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). It is well-established that excessive use of alcohol raises security concerns because “excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines, Guideline G, ¶ 21. *See also Personnel Security Hearing*, Case No. TSO-0678 (2008).<sup>4</sup> In light of the DOE psychiatrist’s determination that the Individual met the criteria for Alcohol Dependence, a condition which causes or may cause a significant defect in her judgment and reliability, the LSO properly invoked Criteria H and J.

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

Among the factors that may serve to mitigate security concerns raised by an individual’s alcohol use are that “the individual acknowledges his or her ... issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser),” and that “the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.” Adjudicative Guidelines, Guideline G, ¶ 23.

At the hearing, the Individual testified candidly regarding his past alcohol consumption and the effects that alcohol had on his life. The Individual acknowledged that he began drinking heavily following his divorce, despite knowing that doing so negatively impacted his health. Tr. at 115. According to the Individual, he very quickly became a “barely functional alcoholic.” *Id.* He stated that he felt “physically terrible” all the time, but it did not occur to him to stop drinking. Tr. at 118-19. The Individual ultimately decided to seek treatment for his alcohol problem after being encouraged to do so by his counselor and his parents. Tr. at 119. The Individual did not

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<sup>4</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>.

find the treatment program that he attended to be particularly useful. Tr. at 113-14. He believed the program was designed for much younger individuals. Tr. at 114. He did, however, find that the participating in the program helped him recognize that he had a problem with alcohol that he needed to address. *Id.*

After returning home from the treatment program, the Individual attended AA meetings regularly for approximately one month. Tr. at 124. After the first month, his attendance became more sporadic. The Individual did not believe he needed to attend AA meetings regularly; rather, he chose to attend meetings when he felt he was in danger of drinking again. Tr. at 124-25. For example, the Individual had more free time after the suspension of his security clearance and found that he was thinking about drinking again. Tr. at 125-26. He recognized that those thoughts were “destructive” and began attending AA meetings regularly to help him maintain his sobriety. Tr. at 126. The Individual has also identified an AA member that he intends to ask to be his sponsor. Tr. at 125.

The Individual had his last knowing consumption of alcohol in February 2011, at a birthday party thrown for him by his new girlfriend and her family. Tr. at 121. He was given a bottle of liquor as a gift, and everyone drank a shot of the liquor. Tr. at 123. He knew at the time that he should not have consumed the alcohol, and he immediately regretted drinking it. *Id.* He has not knowingly had any alcohol since that time. *Id.* Regarding his positive urinalysis test following his interview with the DOE psychiatrist, the Individual adamantly maintained that he did not knowingly consume alcohol in August 2011, but realized after the positive urinalysis that he had, in fact, consumed alcohol. Tr. at 128-29, 150-52. The Individual’s girlfriend corroborated his testimony and, as discussed below, the DOE psychiatrist agreed that the unknowing consumption reported by the Individual, coupled with his medical condition, explained the positive test. Tr. at 52, 168-72.

The Individual recognizes that he cannot drink in moderation and he intends to remain abstinent in the future. Tr. at 135, 143. In order to ensure that he is accountable for his actions, the Individual has an agreement with his doctor that he be subject to alcohol screenings prior to each appointment with her every few months.<sup>5</sup> Tr. at 128. The Individual also intends to continue attending AA meetings for the foreseeable future. Tr. at 130-31, 157-58. The Individual also has a strong support system in place to help him maintain his abstinence. For example, the Individual is in a stable relationship with his girlfriend and is planning to get married in the near future. Tr. at 143. His girlfriend has attended AA meetings with him in order to support his abstinence. Tr. at 42, 126. She also no longer drinks alcohol, and she and the Individual do not keep any alcohol in their home. Tr. at 40, 51, 159-60. The Individual’s father has been in AA and maintained abstinence for over 25 years and is a source of support and advice for the Individual. Tr. at 97, 141. The Individual’s mother and stepfather have also taken an active interest in the Individual’s recovery from alcohol dependence. Tr. at 62-71, 83-91. They moved from their home in a different state to the Individual’s state for approximately six months to provide support and assistance during his recovery. Tr. at 62. The Individual’s stepfather

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<sup>5</sup> The Individual tested positive for alcohol on one of the screenings, which took place the day after he was administered a urinalysis test in connection with his evaluation with the DOE Psychiatrist on which he tested positive for alcohol. The other screenings were negative for alcohol. Tr. at 161; *see also* DOE Ex. 7.

accompanied the Individual to the treatment facility when he enrolled in the substance abuse program. Tr. at 62, 138.

The Individual's testimony regarding his abstinence, his treatment, and his AA attendance was corroborated by his girlfriend, his brother, and his parents. Tr. at 44-47. The Individual's girlfriend stated that in February 2011, she was unaware that the Individual was in recovery from an alcohol problem and the drinks "may have been pushed on him." Tr. at 38. However, since she became aware that he had an alcohol problem and that alcohol negatively impacts his medical condition, she is very supportive of his abstinence. Tr. at 40. She usually attends AA meetings with him several times per week. Tr. at 44. The Individual's girlfriend has observed the Individual during his AA meetings. She stated that it is "a really good crowd" and the Individual actively participates in the meetings. Tr. at 44. The Individual's brother indicated that he sees the Individual fairly regularly and he has not seen the Individual drink since seeking treatment for his alcohol use. Tr. at 21. He noted that the Individual's health and mental state had greatly improved since the Individual stopped drinking. Tr. at 21-22. The Individual has made clear to his brother that he cannot drink in the future because of his medical condition, and the Individual's brother believes the Individual intends to remain abstinent in the future. Tr. at 22-23. The Individual's parents stated that the Individual had a serious alcohol problem, stemming primarily from his divorce, but he sought treatment and no longer drinks. Tr. at 60, 68, 84, 90, 96, 108. They noted that the Individual is doing much better, both mentally and physically. Tr. at 76, 90, 101. They also confirmed that he is committed to remaining abstinent in the future and has a strong support system to help him attain that goal. Tr. at 69-70, 90, 104-05.

After listening to the hearing testimony, the DOE psychiatrist did not change her diagnosis of alcohol dependence. Tr. at 163-64. As to the Individual's prognosis, the DOE psychiatrist cited several positive factors. As an initial matter, the DOE psychiatrist discussed the Individual's positive result on the urinalysis test he was administered following his evaluation with her. Tr. at 168-72. According to the DOE psychiatrist, when she informed the Individual that he tested positive for alcohol, he was shocked and "very emotional," and she believed his reaction was genuine. Tr. at 168-69. A passing statement by the Individual at the hearing – that he ate an apple and drank cranberry juice each morning for breakfast – confirmed the DOE psychiatrist's belief that the Individual did not knowingly ingest alcohol in August 2011. Tr. at 169-70; *see also* Tr. at 129 (The Individual believed it "more than likely [that he] was drinking cranberry and vodka every morning with [his] morning apple."). The DOE psychiatrist explained that when individuals ingest large amounts of sugar, the sugar gets metabolized and converted into some form of alcohol. Tr. at 170. She stated that the fact that the Individual already had compromised liver function due to his medical condition, combined with the daily intake of the sugar contained in an apple and fruit juice, together with the small amount of alcohol that was mixed in with the juice without the Individual's knowledge, was likely enough to cause the positive result on the alcohol screening. Tr. at 170-71. Therefore, at the hearing, the DOE psychiatrist was convinced that the Individual's last knowing consumption of an alcoholic drink occurred in February 2011, approximately one year before the hearing. Tr. at 172.

In addition to the Individual's one year of abstinence, the DOE psychiatrist cited as a positive factor the Individual's growing insight into his alcohol dependence. Tr. at 173. She stated that

the Individual had indicated during their interview that he would not hesitate to go to AA meetings on a regular basis if he felt like he was in danger of drinking again and, based on the testimony, he did resume his participation in AA when he needed the additional support. *Id.*; Tr. at 178-79. The DOE psychiatrist was also impressed by the Individual's support system. Tr. at 172. She noted that the Individual's girlfriend and family "were not enablers," and were "well informed about the disease of alcoholism [and] the risk of relapse," and, therefore, were a strong support system for the Individual. *Id.* Finally, the DOE psychiatrist noted that the stressors that contributed to the Individual's excessive use of alcohol – his divorce and his medical issues – are mostly resolved. *Id.* Based on these factors, the DOE psychiatrist concluded that the Individual has made significant progress in the year since his last drink. Tr. at 174. Therefore, she opined that the Individual was rehabilitated and reformed from alcohol dependence, and she concluded that his risk of relapse was "low." *Id.*

After considering the hearing testimony and evaluating the record as a whole, I find that the Individual has mitigated the security concerns raised by his consumption of alcohol. The Individual admitted himself to an inpatient treatment program to address his problem with alcohol. He has developed extraordinary insight into the problems caused by his past use of alcohol, particularly in terms of the effects of alcohol on his health. He has been abstinent from alcohol for one year as of the date of the hearing and intends to remain abstinent indefinitely. In addition, the Individual resumed regular participation in AA program and has the support of his girlfriend who regularly attends AA meetings with him. He also has a very involved and well-educated support system in his girlfriend and family. Finally, the DOE psychiatrist believes that the Individual is unlikely to relapse in the future. Given these factors, I find that the Individual no longer consumes alcohol, and has demonstrated adequate evidence of rehabilitation and reformation. Accordingly, I conclude that the Individual has mitigated the Criteria H and J concerns cited in the Notification Letter. *See, e.g., Personnel Security Hearing, Case No., TSO-0963 (2011) (individual who engaged in treatment and eleven months of abstinence demonstrated low risk of relapse); Personnel Security Hearing, Case No. TSO-0559 (2007) (concerns raised by alcohol use mitigated by individual's seven months of abstinence, commitment to abstinence, participation in AA, Personnel Security Hearing, Case No. TSO-0768 (2009) (concerns raised by individual's alcohol use mitigated where psychiatrists agreed that risk of relapse was low).*

#### **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 and J of the Part 710 regulations. I also find that the Individual has presented sufficient information to fully resolve those concerns. 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.

Diane DeMoura  
Hearing Officer  
Office of Hearings and Appeals

Date: May 3, 2012