

The Notification Letter informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for a security clearance. The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on September 19, 2011.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his supervisor, his former girlfriend, a DOE consultant psychologist (the Psychologist), and three of his coworkers. *See* Transcript of Hearing, Case No. TSO-1111 (hereinafter cited as "Tr."). The LSO submitted 11 exhibits, marked as Exhibits 1 through 11, while the Individual submitted no exhibits.

II. FINDINGS OF FACT

The Individual has an extensive criminal history. On July 16, 1986, he was charged with Driving While Intoxicated (DWI). On February 24, 1987, he was charged with Fleeing from an Officer, Driving on a Suspended License, and Minor in Possession of Alcohol. On March 13, 1987, he was charged with Driving on a Suspended License. In July 1989, the Individual was charged with Felony Hit and Run. On August 2, 1992, he was charged with Possession of a Concealed Weapon and DWI. On December 25, 1992, he was charged with Financial Interest in Gaming. In July 1994, he was charged with Disorderly Conduct (the Individual admits that he was consuming alcohol prior to this arrest. Tr. at 84). On February 5, 1995, he was charged with Fleeing from a Police Officer and DWI. On September 25, 1995, he was charged with Contempt-Failure to Pay. In June 1998, he was charged with Driving on a Suspended License. On July 3, 1998, he was charged with Driving on a Suspended License, 2nd Offence. In March 2002, he was charged with Deposit Account Fraud.

At the request of the LSO, the Individual was evaluated by the Psychologist. The Psychologist reviewed selected portions of the Individual's personnel security file, administered two standardized psychological tests² and interviewed the Individual. After completing his evaluation of the Individual, the Psychologist issued a report in which he concluded that the Individual suffers from alcohol abuse, in partial remission, which causes a significant defect in his judgment and reliability.³ Exhibit 10 at 4. The Individual also opined that the standardized psychological tests that he administered to the Individual revealed "personality issues which allow him to externalize self-responsibility and tendency to be self-aggrandizing." *Id.* The Psychologist also stated that the Individual was not reformed or rehabilitated from his alcohol abuse. *Id.* The Psychologist opined that "in order for [the Individual] to achieve rehabilitation, his habitual externalization and privilege of his own interests would have to be accounted for and addressed. He would participate in an outpatient alcohol treatment program with the goal of abstinence and would follow all subsequent aftercare recommendations including participation in

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).

² Specifically, the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) and Personality Assessment Inventory (PAI).

³ A copy of the Psychologist's report appears in the record as Exhibit 10.

Alcoholics Anonymous under the supervision of a credible sponsor.” *Id.*

III. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of 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). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. ANALYSIS

A. Criterion J

The Individual has a history of five alcohol-related arrests or citations: a DWI on July 16, 1986, a Minor in Possession charge on February 24, 1987, a DWI on August 2, 1992, a Disorderly Conduct charge in July 1994, and a DWI charge on February 5, 1995. In addition, the Psychologist diagnosed the Individual with alcohol abuse. The Individual's pattern of five alcohol-related arrests and alcohol abuse diagnosis raise security concerns about the Individual under Criterion J. 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. *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) at ¶ 21. In the present case, a particularly strong association exists between the Individual's consumption of alcohol and his subsequent failure to exercise good judgment and to control his impulses, as evidenced by his repeated engagement in activities while under the influence of alcohol that required the intervention of law enforcement to protect the Individual and those around him.

Turning to the present case, I was convinced by the Psychologist's testimony that the Individual needs to abstain from the use of alcohol and undergo treatment for his alcohol abuse. However, the Individual continues to use alcohol on a daily, or almost daily basis, and has not undergone treatment for his alcohol abuse. The Individual correctly notes that his alcohol-related arrests occurred in a time-limited period, from 1987 through 1995, and that his last alcohol-related arrest occurred over sixteen years ago. The Individual contends that this sixteen-year period in which he has not had any alcohol-related arrests is evidence that he has established a pattern of

responsible drinking. Tr. at 71-72, 90-92. The Individual contends that this pattern of responsible drinking has resulted from his maturing, settling down, and deciding that he wanted to change his life in order to provide for his children and to avoid living in the poverty that he witnessed around him when he was growing up. *Id.* at 94-96, 100. The Individual presented the testimony of three coworkers and his supervisor who each agreed that the Individual was an extremely dedicated and responsible employee. *Id.* at 12-22, 33-45, 46-54, 55-68. As a supervisor in an important safety related function, the Individual has continually exhibited the utmost in honesty, trustworthiness, sound judgment and reliability. The mother of three of the Individual's children also testified on his behalf. *Id.* at 23-32. She testified that the Individual is a dedicated father to their children.

The Psychologist was present for the testimony of each of the other witnesses during the hearing. After the other witnesses had concluded their testimony, the Psychologist testified. The Psychologist began his testimony by noting that the MMPI-2 and PAI tests that he had administered to the Individual suggested that the Individual was minimizing and externalizing some responsibility. Tr. at 104. The testing further suggests that the Individual is "in a category of somebody who is high energy, kind of sensation seeking, but who arguably makes his own rules." *Id.* at 106. The Psychologist cited the Individual's inconsistent reporting, during his interview of the Individual and the Individual's two Personnel Security Interviews (PSI), of the amount and frequency of his alcohol use, as cause for further concern about the Individual's alcohol consumption.⁴ *Id.* at 107. The Psychologist testified that the Individual's inconsistent reporting of his alcohol use and continuing use of alcohol leads him to conclude that the Individual's alcohol abuse is only partially in remission. *Id.* at 107, 113, 116. The Psychologist testified that the Individual has a "moderate" risk of "recidivism." *Id.* at 107, 114, 116, 122. The Psychiatrist further testified that if the Individual continues to drink, there is "a likelihood that at some point, [he] will return to an abusive pattern of alcohol use." *Id.* at 112, 114, 116, 122.

Based upon the compelling testimony of the Psychologist, I find that the Individual has not mitigated the security concerns raised under Criterion J.

C. Criterion L

The Individual has a significant history of criminal conduct, and incidents where his failure to exercise appropriate self-control required the intervention of law enforcement, between July 16, 1986 and March 2002. The Notification Letter sets forth his history of five alcohol-related arrests or citations, three for DWI's, one for Minor in Possession, and one for Disorderly Conduct. In addition, the record shows that the Individual had been arrested or cited on seven additional occasions. The Individual, who has been quite straight forward in describing the circumstances leading to the other arrests and citations, disputes the validity of his 2002 arrest. However, even if that arrest was not warranted, his history of criminal conduct is quite significant. This significant pattern of criminal conduct raises security concerns under Criterion L.

⁴ A copy of the transcript of the Individual's June 16, 2006, PSI appears in the record as Exhibit 11. A copy of the transcript of the Individual's June 30, 2010, PSI appears in the record as Exhibit 8.

“Conduct involving questionable judgment, . . . or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.” Adjudicative Guidelines at ¶ 15. “Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.” *Id.* at ¶ 30.

The most recent example of the Individual's criminal conduct occurred in either 1998 or 2002, either ten or fourteen years ago. Paragraph 32 of the Administrative Guidelines sets forth a number of conditions which may mitigate concerns arising from an Individual's past criminal conduct. Specifically, ¶ 32(a) and (d) both cite the passage of time as a mitigating condition for criminal conduct. Moreover, ¶ 32(d) also cites a good employment record as a mitigating condition from an Individual's past criminal conduct. While the passage of time and the Individual's good employment record are strong mitigating factors, the sheer number of criminal incidents diminishes the weight of these mitigating factors. Moreover, many of the Individual's arrests stemmed from his use of alcohol. As indicated above, the Individual has not yet demonstrated adequate rehabilitation or reformation from his alcohol abuse. I therefore find that the security concerns raised under Criterion L remain unresolved.

V. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria J and L. I find that unmitigated security concerns remain under both of these criteria. Accordingly, the Individual has not demonstrated that granting him a security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be granted at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: January 25, 2012