

report (Psychological Report). According to the DOE psychologist, the individual suffers from Alcohol Dependence, in early full remission. The DOE psychologist further concluded that the individual's Alcohol Dependence is a mental illness that causes or may cause a significant defect in his judgment and reliability.

In May 2012, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, notably subsections (h), (j) and (l) (hereinafter referred to as Criteria H, J and L respectively). 2/

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the DOE Counsel called one witness, the DOE psychologist. The individual presented the testimony of five witnesses - a substance abuse counselor, his Alcoholics Anonymous (AA) sponsor, a manager, a friend and his wife. He also testified on his own behalf. The DOE and the individual submitted a number of written exhibits prior to the hearing.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "will not endanger the common defense and security and will be clearly

2/ Criterion H relates to information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or 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 information that a person 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(j). Finally, Criterion L relates, in relevant part, to information that a person 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 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).

consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer’s Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person’s access authorization in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As stated above, the LSO cites three criteria as bases for suspending the individual’s security clearance: Criteria H, J and L. To support Criterion H, the LSO relies on the opinion of the DOE psychologist that the individual suffers from Alcohol Dependence. As for Criterion J, the LSO cites the DOE psychologist’s opinion and the individual’s alcohol use, as well as a number of alcohol-related citations and arrests. *See* DOE Exh. 1.

I find that the information set forth above constitutes derogatory information that raises questions about the individual’s alcohol use under both Criteria H and J. First, a mental condition such as Alcohol Dependence can impair a person’s judgment, reliability and trustworthiness. *See* Guideline I 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*). Second, the excessive consumption of alcohol itself is a security concern because that behavior 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 id.* at Guideline G.

Finally, to support its reliance on Criterion L, the LSO cites the individual’s admission during his February 2012 PSI that he did not report his counseling for alcohol in January 2012 as required by the DOE. The LSO also cites the individual’s history of criminal conduct. This information also raises questions about the individual’s judgment and reliability under Criterion L. *See* DOE Exh. 1.

IV. Findings of Fact

By his own account, the individual has been drinking alcohol since the age of 15. In January 1992, the individual was cited for Minor in Possession (MIP) after drinking two beers in his car while in a parking lot at a high school football game. *Id.* In July 1992, he was charged again with MIP. The

individual admitted to having alcohol in his possession. *Id.* In 1993, the individual was arrested and charged with Driving While Intoxicated (DWI), Reckless Driving, Leaving the Scene of an Accident and MIP. He admitted to consuming three to six shots of alcohol prior to this arrest. *Id.* Again, in 1994, he was charged with Assault and Battery and Minor Allowing to be Served and admitted to consuming alcohol prior to the incident. *Id.* Most recently, in January 2012, the individual was arrested for Aggravated Driving Under the Influence (DUI) and Failure to Maintain a Lane. His breath alcohol content registered .18. *Id.*

During his February 2012 PSI, the individual admitted that he was hospitalized for alcohol poisoning in the summer of 1994 after consuming six to eight shots of alcohol in a ten-minute period. He further admitted that he would drink six to eight drinks almost daily from 2010 until the week following his 2012 DUI. He acknowledged that he was instructed to abstain from alcohol as a part of his conditions of release following his 2012 DUI. However, he admitted that he continued to consume alcohol a week after the arrest. *Id.*

In addition, during his February 2012 PSI, the individual admitted that after consuming five to six shots of alcohol, he went into his bedroom on January 21, 2012 (approximately one week after his 2012 DUI), unlocked his gun safe, took out a shotgun, loaded it and tried to get the safety off in an attempt to commit suicide. He admitted that he would have used the gun if his wife had not taken it away from him. The individual was taken to an emergency room where he was evaluated and released about three hours later. The next day, the individual contacted a counselor at his employer's EAP who recommended that the individual enter a substance abuse treatment program. The individual began an Intensive Outpatient Program (IOP) the following week. He has now completed the 10-week program, which involved his attending four meetings a week for three hours a day. The individual is also attending three AA meetings a week and is currently continuing with after care one evening a week. *Id.*

V. Analysis

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c). 3/ After due deliberation, I have determined that the individual's access authorization should be restored. I find that restoring the individual's security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

3/ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his 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.

A. The Diagnosis of Alcohol Dependence

The individual does not dispute the DOE psychologist's diagnosis of Alcohol Dependence. Therefore, the focus of the analysis will be on whether the individual has demonstrated adequate evidence of rehabilitation or reformation from Alcohol Dependence.

B. Evidence of Rehabilitation or Reformation from Alcohol Dependence

During the hearing, the individual admitted to being an alcoholic, but stated that he is committed to his sobriety. Transcript of Hearing (Tr.) at 123. He stated that his drinking gradually increased about two years ago, but that he did not recognize it. *Id.* at 111. The individual explained that he believes he used drinking as a coping mechanism and now realizes that he should have reached out for professional help. *Id.* After his suicide attempt, the individual promised his wife that he would never attempt anything like that again. *Id.* at 117. He testified that he has been treated for depression since July 2012 and has noticed a significant improvement in his attitude. *See* Indiv. Exh. I.; Tr. at 108 and 109. The individual further testified that he has been sober since January 23, 2012. He voluntarily sought out his employer's EAP and entered into an IOP. *Id.* at 118. According to the individual, abstinence is not a struggle for him anymore. He testified that he has a good support network through his wife and family, and relates well to his AA sponsor. *Id.* at 123, 124 and 126. The individual meets with his alcohol counselor and medical doctor once a month. He believes his life is manageable now, stating that he has no intention of returning to his previous lifestyle. *Id.* at 116. The individual further intends to work through the 12 steps of AA. With respect to his past criminal conduct, the individual testified that, with the exception of his 2012 DUI, he was an adolescent and very immature. He noted that his mother was an alcoholic and attributes much of his behavior to his lack of structure while growing up. He described his past criminal conduct as partly "acting out." *Id.* at 105.

The substance abuse counselor testified that she began meeting with the individual nine months ago at the IOP. Indiv. Exh. G. At the beginning of the nine-month period, she met with the individual four times a week. Tr. at 79. She now meets with him twice a month. *Id.* at 80. According to the counselor, the individual successfully attended all scheduled treatment sessions and has been in compliance with all assignments, AA attendance, sponsorship meetings and drug testing requirements. Indiv. Exh. G. The individual is currently attending the after care program. The counselor testified that she agrees with the DOE psychologist's diagnosis of Alcohol Dependence, but believes the individual's risk of relapse is minimal, if he continues his after care maintenance. Tr. at 86. She stated that the individual's nine months of sobriety is a positive step forward. *Id.* The counselor also opined that the individual's family support is a key component to his sobriety. *Id.*

The individual's AA sponsor met the individual in an AA meeting and has sponsored him for about six weeks. *Id.* at 93. He testified that the individual actively participates in AA meetings and believes the individual is sincere in his commitment to remain abstinent. *Id.* at 95. The individual's friend has had routine contact with the individual since 2007 as the individual is one of his assistant little league baseball coaches. He described the individual as very trustworthy. *Id.* at 16. The friend testified that the individual informed him about his 2012 DUI, and the friend decided to allow the

individual to continue to coach. *Id.* at 17. He further testified that the individual expressed regret and remorse about the incident and has attempted to take the necessary steps to rectify the situation through alcohol treatment. *Id.* at 18. Likewise, the individual's manager testified that the individual informed him about his 2012 DUI, and discussed other personal issues, including his suicide attempt with him. *Id.* at 29. He testified that the individual has always been trustworthy and honest, and follows rules and regulations. *Id.* at 38 and 39.

Finally, the individual's wife, who has been married to the individual for eleven years, testified that she believes the individual drank to the point of intoxication after the 2012 DUI because he was "scared." *Id.* at 54. She acknowledged that they had frequent arguments about finances and spending and testified that the night of his 2012 DUI, she and the individual had gotten into a fight about family finances. *Id.* at 56. The wife corroborated the individual's testimony that he stopped drinking on January 23, 2012 after his suicide attempt. *Id.* at 54. She testified that the individual has learned to manage his stress through outlets such as camping and baseball. *Id.* at 65. The wife stated that the individual now realizes the importance of his family and stated that the family is now in "better place." *Id.* at 67.

The DOE psychologist listened to all the testimony at the hearing before testifying himself. He testified that he was impressed by the significant integrity of the individual's witnesses. *Id.* at 147. He particularly noted that all of the individual's witnesses testified to the individual's strength of character and observed that the individual's wife is in the process of repairing trust her trust in the individual. *Id.* The DOE psychologist testified that, in his Psychological Report, he recommended that the individual should achieve one year of abstinence to be considered rehabilitated. However, after listening to the testimony during the hearing, he is satisfied that the individual has met his treatment goals and has achieved adequate evidence of rehabilitation. *Id.* at 151. He recommended that the individual should continue to be abstinent for the rest of his life and continue with individual therapy. *Id.* The DOE psychologist further testified that the individual's prognosis is good. *Id.* He added that he did not believe that with another three months of abstinence he would gain anymore certainty with respect to the individual's prognosis, reiterating that he was satisfied with the individual's nine months of treatment. *Id.* at 152. He noted the individual's underlying depression, but believes it is manageable. *Id.* at 146. He testified that the individual's suicide attempt was intertwined with the his alcohol use, and stated that as long as the individual is abstinent, the individual is highly unlikely to have further issues.

C. Hearing Officer's Evaluation of the Evidence

In the administrative process, Hearing Officers accord deference to the expert opinions of psychiatrists, psychologists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing*, Case No. TSO-0728 (2009). ^{4/} In this case, the DOE psychologist convinced me that the individual has demonstrated a considerable understanding of his alcohol problem through his alcohol treatment and has achieved adequate evidence of rehabilitation.

^{4/} Decisions issued by 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 credibly testified that he no longer has a desire to consume alcohol, that his outlook has improved and that he is committed to participating in AA and after care. Moreover, the individual successfully completed an IOP and has established a pattern of abstinence. *See Adjudicative Guidelines* at Guideline G ¶ 23(b). Based on the foregoing, I find that the individual has demonstrated adequate evidence of rehabilitation at this time. For this reason, I find that he has mitigated the security concerns under Criteria H and J.

D. Criterion L

The key issue under Criterion L is whether the individual has brought forward sufficient evidence to demonstrate that he is reliable and trustworthy, and that he is no longer subject to pressure, coercion, exploitation or duress. Here, the Criterion L security concerns relate to the individual's admission during his February 2012 PSI that he did not report his counseling for alcohol in January 2012 as required by the DOE, as well as the individual's history of criminal conduct.

During the hearing, the individual presented both testimonial and documentary evidence that he did in fact report his alcohol counseling on January 25, 2012 by phone and e-mail to DOE officials pursuant to the DOE reporting requirements. *Indiv. Exhs. E and F.* I therefore find that the individual has mitigated the Criterion L security concern related to this issue. With respect to the individual's history of criminal conduct, specifically his numerous alcohol citations and arrests, all but one occurred between 15 to 20 years ago when the individual was an adolescent. I find that these instances of criminal conduct are mitigated by the passage of time and that they are unlikely to recur. *See Adjudicative Guidelines* at Guideline J ¶ 32(a). With respect to the individual's most recent incident of criminal conduct, his 2012 DUI, I find the concerns here are inextricably intertwined with the judgment and reliability concerns found in Criteria H and J. In light of the fact that the individual has demonstrated adequate evidence of rehabilitation and thus mitigated security concerns with respect to Criteria H and J, I find that the individual has mitigated the security concerns with respect to the 2012 DUI. After considering the "whole person," I am convinced that the DOE can rely on the individual's ability to make sound judgment calls regarding the safeguarding of classified information. *See Adjudicative Guidelines* at ¶ (2)a. I therefore find that the individual has sufficiently mitigated the LSO's concerns under Criterion L at this time.

E. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H, J and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the individual has brought forth convincing evidence to mitigate the security concerns associated with Criteria H, J and L. I therefore find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: November 8, 2012