* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Personnel Security Hearing	)	
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Filing Date: July 30, 2012	)	Case No.: PSH-12-0100
	)	
	)	

Issued: November 15, 2012

Hearing Officer Decision

Steven J. Goering, Hearing Officer:

This Decision concerns the eligibility of XXXXXXX (hereinafter referred to as "the individual") for access authorization 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 DOE should not restore the individual's access authorization at this time.[2]

I. BACKGROUND

The individual is an employee of a DOE contractor and holds a suspended access authorization. After learning that the individual had been arrested on March 5, 2012, for Aggravated Driving Under the Influence (DUI), a Local Security Office (LSO) summoned the individual for an interview (PSI) with a personnel security specialist on May 3, 2012. Exhibit 3 (DOE Case Evaluation); Exhibit 8 (PSI Transcript). After the PSI, the LSO referred the individual to a local psychologist (hereinafter referred to as "the DOE psychologist") for an agency-sponsored evaluation. The DOE psychologist prepared a written report, setting forth the results of that evaluation, and sent it to the LSO. Exhibit 4 (Psychological Assessment). Based on this report and the rest of the individual's personnel security

[1] An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

[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.

file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. Exhibit 3. The LSO informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. Exhibit 1 (Notification Letter). 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 an access authorization.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and the OHA Director appointed me the Hearing Officer in this case. The DOE introduced nine exhibits into the record of this proceeding, and called the DOE psychologist as a witness. The individual introduced ten exhibits, and presented the testimony of five witnesses, in addition to his own testimony.

II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

The Notification Letter cited derogatory information within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j) (hereinafter referred to as Criteria H and J, respectively). Exhibit 1.[3] Under both criteria, the LSO cited (1) the report of the DOE psychologist, in which he diagnosed the individual as suffering from Alcohol Dependence, and that this disorder is an illness or condition, which causes, or may cause, a significant defect in judgment or reliability; (2) the individual's March 5, 2012, DUI arrest, prior to which he drank 20 glasses of wine, resulting in a measured blood alcohol concentration of 0.36%; (3) his admission that, approximately six months prior to the arrest, his drinking escalated and negatively affected his work performance and attendance; (4) his admission that he used alcohol as a coping mechanism and that he was an alcoholic; (5) his admission that he quit drinking in 2009, but began to drink again after three months.

This information adequately justifies the DOE's invocation of Criteria H and J, as it raises significant security concerns related to excessive alcohol consumption, which often leads to the exercise of questionable judgment or the failure to control impulses, and calls into question the individual's future reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (*Adjudicative Guidelines*), The White House (December 19, 2005), Guideline G.

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 the individual a security

[3] Criterion H defines as derogatory information indicating that the individual has an "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). Under Criterion J, information is derogatory if it indicates that the 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(j).

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 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). 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

The individual does not dispute any of the allegations in the Notification Letter, and I find that each of these allegations is valid and well supported by the record in this case. *See* Exhibit 2 (Response to Notification Letter); 10 C.F.R. § 710.27(c) (requiring Hearing Officer to "make specific findings based upon the record as to the validity of each of the allegations contained in the notification letter"). The issue before me, therefore, is whether the individual has shown adequate evidence of rehabilitation and reformation, i.e., that there is an acceptably low risk that the individual will relapse into excessive alcohol use in the future.

In this regard, the individual has provided documentation that, within days of his DUI arrest, on March 15, 2012, the individual entered a 10-week Intensive Outpatient Program (IOP), which included three 3-hour group sessions per week, a weekly one-hour individual session with a therapist, and three Alcoholics Anonymous (AA) meetings per week. *Id.*; Exhibit A (April 30, 2012, letter from clinical director of treatment center); Tr. at 111 (testimony of clinical director). He successfully completed the IOP on May 29, 2012. Exhibit B (June 6, 2012, letter from clinical director). Since then, the individual has participated in the treatment center's aftercare program, consisting of one 90-minute group therapy session per week and continued AA attendance. Exhibit G (October 10, 2012, letter from clinical director). The center recommends participation in its aftercare program for one year after completion of the intensive outpatient program. Exhibit A; Tr. at 114.

On March 19, 2012, the individual entered into a formal one-year Recovery Agreement with his employer's Employee Assistance Program (EAP). The requirements of this agreement include, in addition to the IOP, 24 unannounced drug and alcohol tests over a one-year period, monthly progress meetings with the EAP, and attendance at three AA meetings per week. In a letter dated two days prior to the hearing in this matter, the EAP coordinator confirmed that the individual "has at all times been cooperative and motivated with all aspects of the Recovery Agreement and the formal treatment." Exhibit F (October 10, 2012, letter from EAP coordinator).

Finally, the individual testified, credibly in my opinion, that he has not consumed alcohol since his March 5, 2012, DUI arrest, and this testimony was corroborated by his wife and son, both of whom

live with the individual. Tr. at 38, 86. In his response to the Notification Letter, the individual stated that he was "doing everything I can to rehabilitate and reform my behavior toward Alcohol Dependency." Exhibit 2 at 1. Based upon the evidence in the record, including the testimony at the hearing in this matter, I have no reason to doubt this statement.

The Adjudicative Guidelines set forth the following conditions that "could mitigate security concerns" arising from excessive alcohol consumption.

> (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
>
> (b) the individual acknowledges his or her alcoholism or 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);
>
> (c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;
>
> (d) 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 at ¶ 23 (Guideline G).

Regarding condition (a), I cannot find in this case that the individual's excessive use of alcohol was "infrequent" or happened under "unusual circumstances." As the individual acknowledged at the hearing, he drank on a regular basis, even if "not necessarily every night," and the amount he consumed increased beginning in 2009, "from being the three to six a night to six to eight to ten, maybe even as much as twelve . . . during the six months" prior to his arrest. Tr. at 24. Nor can I find that the individual has met condition (d), as he has not yet completed the one year of aftercare required under his treatment program.

On the other hand, based on the evidence in the record, I could conclude that the individual has met condition (a), (b), or (c), respectively, were I to find that: (a) so much time has passed that the behavior is unlikely to recur; (b) the individual has established a pattern of abstinence; or (c) the individual is making satisfactory progress in his counseling or treatment program. Notably, the Part 710 regulations require my consideration of similar factors, specifically "the recency of the conduct," and "the absence or presence of rehabilitation or reformation," and "the likelihood of continuation or recurrence."

The application of certain of these factors explicitly requires looking back at what the individual has accomplished to date. Thus, in considering whether he "has established a pattern of abstinence," the

most relevant fact is that the individual had, at the time of the hearing, abstained from alcohol use for over seven months. Regarding whether the individual "is making satisfactory progress in his counseling or treatment program," there is clearly evidence of progress in the documents and letters submitted by the individual and in the testimony of clinical director of his treatment program. Such evidence, both as to the individual's abstinence and his progress in treatment, is also relevant to the consideration of the presence of rehabilitation and reformation.

Taking into account what steps the individual has taken and where he stands as of the date of the hearing, I must assess the factor at the heart of the security concern in this case going forward, that is, the likelihood of recurrence, here whether the individual will return to excessive alcohol use in the future. Expert opinion as to an individual's prognosis can also be very helpful in this regard and, in the present case, there are three such opinions.

First, the record contains two letters, dated June 12, 2012, and October 10, 2012, from the coordinator of the EAP at the individual's place of employment, a licensed clinical psychologist. Exhibit C; Exhibit F. These letters list in detail the components of the individual's Recovery Agreement, including the IOP and aftercare, as described above. In the more recent letter, the EAP coordinator concludes that the individual "appears to be doing well and engaged in the treatment process and he has a favorable prognosis." Exhibit F; *see also* Exhibit C ("His long term prognosis is in my opinion good.").

In addition, the clinical director of the individual's treatment program testified at the hearing. In his opinion, the potential for relapse by the individual is low, based upon the

> work that he did while he was in the intensive outpatient program, . . . our continuing care/aftercare program and having had conversations with [the individual] with regards to the level of commitment to recovery, meetings, working with a sponsor, those are all things I check in with him about as his therapist working in the program.

Tr. at 107; *see also id.* at 119 (prognosis based on "15-and-a-half years in the field, working with people from dealing with addiction -- from every level of addiction to information that's provided to me, i.e., things that I read, and then mostly it's based on [the individual's] behavior and what he has demonstrated to me with regards to his commitment to his recovery").

The third opinion is that of the DOE psychologist, who, in his June 9, 2012, report, found that, "[g]iven the intense and at times dangerous nature of his drinking, and given how insensitive he has been to perceiving his intoxication, [the individual] should remain abstinent for at least 12 months to demonstrate sustainable change." Exhibit 4 at 7. The psychologist noted in his hearing testimony that the Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV-TR) "doesn't want us to diagnose a person in sustained remission . . . until after a year." Tr. at 39. He further explained why one year is not merely an arbitrary marker in time. "There is good reason for that, and that is that people often drink at celebratory occasions, such as New Year's or anniversaries, birthdays, Christmas, whatever, and we like to see a person go through all of those times and not drink." *Id.*

Having heard the testimony at the hearing, however, the DOE psychologist explained why he would "make an exception, quite frankly, about this, under this circumstance for this particular man." *Id.* at

143.[4] He contrasted the individual's testimony with other cases, where "we'll go through a hearing and we will still feel that he's still minimizing, he's still not really owning it, he's mouthing the words 'I'm responsible,' but there is no sense of real responsibility, there is blaming of other people, ..." *Id.* He puts the individual in the category of people who "are not tooting their own horn, they are not -- they are reasonably humble, but also reasonably confident, they have been broken by the experience, they are not minimizing what they've done, there is testimony about the remarkable change, . . ." *Id.*

Nonetheless, although the DOE psychologist testified that the individual was currently at a low risk of relapse, the psychologist characterized his confidence in that prognosis as moderate. *Id.* at 129-30; 139. Asked at what point he would have a high degree of confidence in his prognosis, the DOE psychologist responded that he "certainly" would at twelve months, "because I'd like him to go through all the seasons and all the celebratory things, it lets him go through some bruises and all the knocks around, more time to see his response to that." *Id.* at 139; *see also id.* at 130 ("I would be more confident after a year."); *id.* at 148 ("it would move from moderate to high [confidence] at 12 months, because I would have more time.").

Considering all of the evidence in the record, and giving due weight to the opinions of the EAP coordinator, the clinical director, and the DOE psychologist, I could reasonably conclude that the individual is at a low risk of relapse at this time or, to use the terms of the EAP coordinator, that the individual has a "favorable" or "good" prognosis.

What prevents me, however, from reaching this conclusion is the very logical reason cited by the DOE psychologist. The individual has, by all appearances, done everything he could do in the seven months since March 2012 to demonstrate what the DOE psychologist calls "sustainable change," but has not yet passed through the full cycle of events, occasions, and seasons marked throughout an entire year. This rationale for requiring a full year of abstinence has been cited as significant in the testimony of expert witnesses in prior cases, and hearing officers in those cases have relied upon that testimony in reaching determinations both favorable and unfavorable to those seeking a clearance. *See, e.g.*, *Personnel Security Hearing*, Case No. TSO-0591 (2008); *Personnel Security Hearing*, Case No. TSO-0445 (2007); *Personnel Security Hearing*, Case No. TSO-0256 (2005).

With this in mind, and given that I am to resolve "any doubts concerning the individual's eligibility for access authorization in favor of the national security," I cannot find, with sufficient confidence,

[4] In his testimony, the DOE psychologist also presented data from a study of the efficacy of alcohol treatment published in 1991. Exhibit 9 (citing Diana Chapman Walsh, Ph.D., et al., *A Randomized Trial of Treatment Options for Alcohol-Abusing Workers*, 325 New Engl. J. Med 775 (1991)). This study followed 200 subjects, of which 56 to 90 percent (depending on the criteria used) were classified as Alcohol Dependent, but nearly all of which the DOE psychologist "suspects . . . would have been classified as Alcohol Dependent" under DSM-IV-TR criteria. Email from DOE psychiatrist to DOE Counsel (November 7, 2012) (providing additional data on study). The subjects were divided into three groups, one of which received inpatient treatment that the DOE psychologist described as "very similar" to the IOP treatment received by the individual in the present case. Tr. at 132. The study tracked the percentage of subjects who received the inpatient treatment and remained abstinent over the course of 2 years, at intervals of 3, 6, 12, 18, and 24 months from discharge. Of these subjects, 58 percent remained abstinent for six months, 55 percent remained abstinent for one year, and 34 remained abstinent for two years. The DOE psychologist noted the "only . . . three percent drop" between six months and twelve months. *Id.* at 133. The study shows, according to the DOE psychologist, that "the critical period . . . is the first six months, and that the next six months, it does not drop off nearly as much, so we're at a plateau area, relatively speaking." *Id.* at 138. The DOE psychologist acknowledged, however, that other studies show as much as 10 percent more "drop off" in the period between six and twelve months. Tr. at 138-39.

that the individual was, as of the time of the hearing in this matter, at a low risk of relapsing into excessive alcohol use.

Ultimately, while taking into account the relatively favorable expert opinions in this case, the decision as to whether the risk of future behavior presenting a security concern is low enough to warrant the grant or restoration of a clearance is a common-sense determination to be made by DOE officials, including the hearing officer, not by a consultant psychologist or other outside experts. *Personnel Security Hearing*, Case No. TSO-0209 (2006) (citing 10 C.F.R. 710.7(c) ("question concerning an individual's eligibility for access authorization" is to be decided by "DOE officials involved in the decision-making process . . . .")). As I do not find that risk to be low enough in the present case, I cannot find that the individual has resolved the concerns related to his excessive use of alcohol and diagnosis of Alcohol Dependence under Criteria H and J.

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V. CONCLUSION

For the reasons set forth above, I conclude that the individual has not resolved the DOE's security concerns raised in this case. Therefore, the individual has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not restore the individual's security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: November 15, 2012