*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	)	
		)	
Filing Date:	February 19, 2014	)	
		)	Case No.: PSH-14-0014
		)	

Issued: June 13, 2014

Administrative Judge Decision

William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization[1] under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As discussed below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I have determined that the individual's access authorization should not be restored.

I. Background

The individual works for a DOE contractor in a position that requires him to maintain a DOE security clearance. Two recent alcohol-related arrests and a diagnosis of Alcohol Abuse raised security concerns in the opinion of the Local Security Office (LSO), and the LSO suspended the individual's security clearance. On January 9, 2014, the LSO sent a letter (Notification Letter) to the individual advising him that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information

[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(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

fell within the purview of three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (j), and (l) (hereinafter referred to as Criteria H, J, and L).[2]

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing, and I was appointed the Administrative Judge in the case. At the hearing that I conducted, the individual presented his own testimony and that of four other witnesses, and the LSO presented the testimony of one witness, a DOE consultant psychologist. In addition to the testimonial evidence, the LSO submitted 15 exhibits into the record. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.

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 denials"); *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 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.

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[2] Criterion H concerns information that a person suffers from '[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). Criterion L concerns 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. Such conduct or circumstances include, but are not limited to, criminal behavior." 10 C.F.R. § 710.8 (l).

B. Basis for the Administrative Judge's Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge 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 eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites three criteria as the bases for suspending the individual's security clearance, Criteria H, J, and L. With regard to Criteria H and J, the LSO relies on the opinion of a DOE consultant psychologist (DOE psychologist) who determined that the individual meets the criteria for Alcohol Abuse set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association,* Fourth Edition Text Revised (DSM-IV-TR), which, in his opinion, may cause significant defects in the individual's judgment and reliability. In addition, the LSO cites the individual's arrests for Driving While Intoxicated (DWI) in 2012 and 2013.

I find that there is ample information in the Notification Letter to support the LSO's reliance on Criteria H and J. The excessive consumption of alcohol 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 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 Guideline G. Moreover, certain emotional, mental, and personality conditions, such as Alcohol Abuse, can impair judgment, reliability, or trustworthiness. *Id.* at Guideline I.

As for Criterion L, the LSO cites as support the individual's arrests as two incidents of criminal conduct. Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness and by its very nature calls into question a person's ability or willingness to comply with laws, rules and regulations. *See* Adjudicative Guidelines at Guideline J. I find that the LSO properly relied on Criterion L in this case, particularly because these arrests both occurred relatively recently.

IV. Findings of Fact

A. Criteria H and J

Although the individual has consumed alcohol throughout his adult life, his consumption appears not to have seriously affected his life until 2012. For over 30 years, he followed two distinct drinking patterns. He often, but not always, split a six-pack of beer with his golfing partner over the course of a round of golf, which takes four to five hours. Tr. at 29-31. He also, with no particular regularity, would go to a bar, by himself or in the

company of friends, on an average of once or twice monthly. During these outings, he would drink four to seven beers or four to five "Crown and Cokes," or a combination of the two, over the course of three hours. Ex. 8 (Report of DOE Psychologist) at 3. He typically drove himself to and from the bar on these occasions. *Id.*

On March 23, 2012, the individual stopped at a bar and had four drinks that he could recall, and perhaps more. *Id.* at 4. He believed he left the bar between 7:00 and 7:30 that evening, and was arrested at about 10 p.m., when he hit a row of parked motorcycles. Due to the late hour of his arrest, he now believes he spent more time at the bar than he realized. *Id.* A blood alcohol concentration test revealed that he was intoxicated. He was arrested for DWI, jailed, released on bond, and ordered to refrain from alcohol. He attended a five-week intensive outpatient program, and he met with a substance abuse counselor on an individual basis for five months, from March to August 2012. He abstained from alcohol for over a year, until about April or May 2013. *Id.* at 5.

The individual resumed drinking alcohol in the spring of 2013. He believed that he could enjoy alcohol provided he reduced his intake: "[A]fter going through all of the . . . aftercare and watching the . . . films, I thought I understood that . . . all I had to do is watch what I drink." Tr. at 79. His wife had never approved of his drinking, and now disapproved of his decision to no longer maintain abstinence. *Id.* at 48-49. She had observed that, while the individual commonly stated his intention to go out to have one or two drinks, he inevitably returned home having consumed more than he had intended, and she did not fail to point out the discrepancy to him. *Id.* at 49, 59. On September 6, 2013, the individual returned to the same bar he had visited on the occasion of his 2012 arrest, and consumed, by his report, three 16-ounce beers and two Crown and Cokes within one to two hours. He then moved on to another bar, and had at least four more drinks, and possibly more, over the next several hours. Sometime after 2 a.m., the local police discovered the individual asleep in the driver's seat of his car. He has no recollection of what transpired between the time he was inside the second bar and the time police woke him, subjected him to a field sobriety test, which he failed, and arrested him for his second DWI. He was jailed and released later that day on bond. Ex. 8 at 6.

The individual sought out his substance abuse counselor within the first week after his release from jail, and re-entered an aftercare program. Tr. at 79. From his counseling sessions, he understood that, for some reason, he apparently could no longer tolerate alcohol on a predictable basis and, after consuming a single drink, had lost the ability to control his intake of alcohol, at least on some occasions. The substance abuse counselor recommended that he abstain from alcohol permanently. *Id.* at 97. The testimony of the individual, his wife, and his golfing partner reflects that he has adopted her recommendation, and has not consumed any alcohol since September 6, 2013. *Id.* at 33, 56, 86. He continues to attend aftercare weekly and sees his counselor once or twice a month. The counseling sessions focus on his abstinence as well as more general life skills to enhance "his ability to cope with life more effectively." *Id.* at 121. He did not attend intensive outpatient treatment after his second DWI, as he did after his first DWI; both his counselor and the DOE psychologist feel that that form of therapy does not suit his personality, and that his individual counseling sessions are the appropriate approach for him. *Id.* at 111.

The DOE psychologist evaluated the individual in November 2013. He observed that the individual had abstained from alcohol for more than a year after his first DWI arrest. When he resumed drinking, he began consuming roughly six to eight beers a month, similar to his drinking pattern before his DWI arrest. Ex. 8 at 5. His second DWI arrest occurred four or five months later, at which time he not only failed a field sobriety test but experienced a blackout. *Id.* at 6, 7. As a result of his counseling after the second DWI, the individual understood that a single beer could affect him such that he might continue drinking without an awareness of how much he was consuming. Even though he had maintained abstinence temporarily in the past, now armed with his understanding that he appears to be unable to tolerate alcohol, he believed he was committed to and capable of total abstinence. *Id.* at 7. The DOE psychologist diagnosed the individual with Alcohol Abuse-binge drinking, which he found to be a condition that can cause significant defects in the individual's judgment or reliability. To demonstrate adequate evidence of reformation or rehabilitation, the individual would need to abstain from alcohol for at least12 months from the date of his last drink, and participate in aftercare for a minimum of six months. Because the individual had abstained from alcohol for only two months at the time of the evaluation, the DOE psychologist found that there was not sufficient evidence of rehabilitation. *Id.* at 9-10.

The individual's counselor testified that she had seen him for individual counseling sessions after both DWI arrests. *Id.* at 110-11. She explained that after the first DWI, the individual attended a five-week intensive outpatient program (IOP) along with individual sessions with her. *Id.* at 110. Due to the individual's shy and closed personality style, she determined that a repeat of the intensive outpatient program would benefit him, but that individual therapy would be more appropriate, supported by group aftercare. *Id.* at 111, 113. She testified that the individual has now successfully completed six months of aftercare. *Id.* at 114. She further stated that, although he has not yet abstained from alcohol for a full year, he has followed all of her recommendations to date and is "on the right path." *Id.* at 118. She spoke of the difference between the individual's frame of mind after his first DWI—when he, like many, regarded the event as a mistake, stopped drinking for a while, and then negotiated new terms with himself to control his drinking—and after his second, when he realized that he was someone who simply cannot manage alcohol. *Id.* at 120. Finally, she offered her opinion that the individual is at very low risk of relapse; she believes he will not test his ability to tolerate alcohol, because too much in his life is at risk—certainly his job, but also his stated fear that he might hurt himself or others if he were to drive while intoxicated. *Id.* at 125-26.

At the hearing, the DOE psychologist maintained his opinion that the individual suffers from Alcohol Abuse. For 30 years, the individual drank heavily and regularly. While not occurring daily, his binge drinking concerned the DOE psychologist, because the individual lacks a sense of when he is legally intoxicated. Moreover, he had developed a tolerance for alcohol, at least until recently, and had suffered blackouts. *Id.* at 129-30. The DOE psychologist stated that the substance abuse counselor had crafted a good treatment plan for the individual and, given his new sensitivity to alcohol, the individual had a better reason than in the past for maintaining abstinence over the long run. The DOE psychologist felt, however, that the individual needs monitoring by the counselor

for at least a year, in part because the individual had been abstinent once before (2012-13) for about 14 months before he resumed drinking. *Id.* at 133-35. He stated that he has moderate to high confidence that the individual is likely to maintain his abstinence; his confidence lowers to merely moderate when he considers the period beyond when his supports are withdrawn, that is, when he will no longer be seeing his counselor. *Id.* at 140.

B. Criterion L

The Notification Letter listed two arrests as evidence of the individual's criminal behavior. The arrests were for DWI in March 2012 and September 2013, and have been discussed in detail above. The individual's substance abuse counselor and the DOE psychologist each testified at the hearing that, in their opinion, the individual's criminal behavior was the direct result of his Alcohol Abuse and, once rehabilitated, he would no longer engage in any form of criminal conduct. *Id.* at 126, 141.

V. Analysis

I have thoroughly considered the record of 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) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored. I cannot find that granting the individual's DOE 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.

A. Criteria H and J

After considering the entire record in this proceeding, I find that the individual is properly diagnosed as suffering from Alcohol Abuse. I am convinced that the individual has not consumed alcohol since his second DWI arrest in September 2013. He has also been seeing a counselor and participating in group aftercare since that time, and has followed the counselor's recommendations conscientiously. As of the hearing, however, the individual had maintained his abstinence for less than eight months. In contrast, the DOE psychologist stated at the hearing that the individual needed a full year of treatment and monitoring of his abstinence, and I find that his opinion was well-founded and reasonable. I am therefore convinced that, despite the treatment he is receiving, it is too soon to conclude that the individual has resolved his alcohol problem and that the likelihood of relapse is, while not high, not low either. I have taken into consideration a number of mitigation factors in his favor, specifically, his acknowledgment of his alcohol problem, his abstinence, and his voluntary treatment program, Adjudicative Guidelines at Guideline G, ¶ 23. Despite these favorable factors, and 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.

B. Criterion L

The individual has acknowledged that he was arrested on two occasions following heavy consumption of alcohol. These arrests occurred relatively recently, within the past two years, and relatively close in time. They correspond to his practice of occasional binging, which had been a pattern for roughly 30 years, a pattern which he broke only seven months before the hearing. Therefore, although some time has passed since he committed himself to permanent abstinence from alcohol, it is premature to conclude that another similar alcohol-related arrest is unlikely to recur, at least until the individual has progressed further in the treatment of his alcohol abuse. Adjudicative Guidelines at Guideline J, ¶ 32(a). Nor do I find that any of the other three conditions that could mitigate security concerns raised by criminal behavior apply here. *See id.,* ¶ 32(b), (c), (d) (the person was pressured or coerced into committing a criminal act; evidence that the person did not commit the offense; evidence of successful rehabilitation).

The individual's limited arrest record does not indicate a pattern of criminal conduct. Nevertheless, in light of the alcohol-related nature of the arrests and his current incomplete rehabilitation from alcohol abuse, I am not convinced that the individual has resolved the Criterion L concerns at this time.

VI. 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 have found that the individual has not brought forth sufficient evidence to mitigate the security concerns associated with these criteria. I therefore cannot find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Administrative Judge
Office of Hearings and Appeals

Date: June 13, 2014