

2013, PSI nor the psychiatric examination resolved the security concerns raised by the Individual's recent treatment for an alcohol problem or by newly discovered evidence relating to the Individual's falsification of an answer she provided in a February 2011, Questionnaire for National Security Positions (February 2011, QNSP), the LSO suspended the Individual's security clearance. Ex. 1.

In February 2014, the Individual received a detailed notification letter (Notification Letter) from the LSO outlining the specific derogatory information, described under 10 C.F.R. § 710.8 (f), (j), (h), and (l) (Criteria F, J, H, and L, respectively), upon which it relied in making the decision to suspend the Individual's security clearance.² Ex. 1. The Notification Letter also informed the Individual that she was entitled to a hearing before an Administrative Judge to present evidence to resolve these doubts. The Individual requested a hearing in this matter. The LSO forwarded this request to OHA and the OHA Director assigned me as the Administrative Judge in this matter. The DOE introduced 10 exhibits (Exs. 1-10) into the record of this proceeding and presented the testimony of the DOE Psychiatrist at the hearing. The Individual introduced three exhibits (Exs. A-C) and, at the hearing, presented her own testimony along with the testimony of a psychologist (Therapist) from whom she is currently receiving treatment.

II. FACTUAL FINDINGS AND THE ASSOCIATED SECURITY CONCERNS

A. Factual Findings

The Part 710 regulations require that I "make specific findings based upon the record as to the validity of each of the allegations" in the Notification Letter. 10 C.F.R. § 710.27(c). I set forth my factual findings below.

In February 2011, the Individual signed the February 2011, QNSP. Ex. 8. In the February 2011, QNSP, the Individual certified that, in the prior seven years, she had not used any illegal drug including marijuana. Ex. 8 at 29 (Section 23a).

² Criterion F relates to information indicating that an individual "[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization . . ." 10 C.F.R. § 710.8(f). Criterion H describes information that shows that an individual 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 derogatory information is that which shows that an 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). Criterion L refers to information indicating that an individual 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).

In the October 2013, PSI, the Individual stated that, during the period 1990 to 1996, she became intoxicated from alcohol approximately once a week. Ex. 9 at 196-98. She also stated that, during 1996 to 2010, she would consume a bottle of wine daily and become intoxicated. Ex. 9 at 126-31, 131-43.³ Beginning in February 2010, the Individual increased her alcohol consumption from one and one half to two bottles of wine daily. Ex. 9 at 143. The Individual reported that, during the period from December 2010 to June 2011, increased stress caused her to raise her alcohol consumption from two to two and one half bottles of wine daily. Ex. 9 at 148-57. The Individual also consumed four to six ounces of bourbon daily in addition to her consumption of wine during this period. Ex. 9 at 147-57. The Individual also admitted that, during the period March 2013 to July 2013, she would typically consume the equivalent of a bottle of wine a day and that, in her opinion, this level consumption would make her legally intoxicated. Ex. 9 at 176-79.

During the October 2013, PSI, the Individual reported that, in June 2011, she fractured her humerus in a fall in which her excessive alcohol consumption had played a role. Ex. 9 at 157, 207-12. Later that month, the Individual passed out from alcohol consumption and was discovered floating face down in a neighbor's pool. Ex. 9 at 158-64, 210-12, 235. The hospital where she was taken for treatment informed her that her blood alcohol content was 0.34. Ex. 9 at 159. The Individual also reported that her ex-husband, mother, and several friends expressed concern about her excessive use of alcohol. Ex. 9 at 225-26.

The Individual also reported that she has "always been a heavy drinker; it runs in my family" and considers herself to be a "high functioning alcoholic." Ex. 9 at 90, 126. The Individual also admitted in the October 2013, PSI that, from 2010 to 2013, she would typically "pass or black out" approximately 75 percent of the time. Ex. 9 at 218-20. Further, from 1990 to 2013, she estimates that she operated a vehicle in an intoxicated state on approximately 35 occasions. Ex. 9 at 200-05. The Individual stated that, despite taking a prescription medication, Naltrexone, in April 2013, to treat her alcohol use disorder, she continued to consume alcohol. Ex. 9 at 228-30. She also admitted that her excessive alcohol consumption adversely affected her performance while working at the DOE facility and that she would report to work at the DOE facility "hung over" on a daily basis from 2010 to 2013. Ex. 9 at 215-16, 222-23. Eventually, the Individual came to believe that she needed help for her alcohol problem and she decided to enter the Treatment Facility in August 2013. She completed her treatment at the Treatment Facility seven weeks later. Tr. at 79; Ex. 6 at 7.

In describing the effect of her use of alcohol or other illegal substances on her work performance, the Individual stated that, while working as a contractor employee for another federal agency from 2004 to 2008, she used marijuana twice a week. During this period, her husband smoked significant amounts of marijuana each day.⁴ Ex. 9 at 29, 41, 135, 164, 168; *See also* Tr. at 61 (Individual's then spouse smoked approximately \$1,200 of marijuana per month and smoked marijuana "24/7"). She used marijuana during this period despite her knowledge that

³ The Individual did stop consuming alcohol for a period of six months in 2008. Ex. 9 at 152-55.

⁴ In February 2012, the Individual divorced her spouse. Ex. 9 at 10-11, 162-64, 168.

such use was illegal and against that agency's policy. Ex. 9 at 246, 253, 270-71, 288-89. When asked during the October 2013, PSI why she had denied using marijuana in the February 2011, QNSP, the Individual responded that she was afraid that if she admitted using marijuana she would not be given a security clearance. Ex. 9 at 294-98.

After conducting the October 2013, PSI, the LSO referred the Individual to the DOE Psychiatrist for a psychiatric examination. Ex. 6. In his January 2014, evaluative report (Report) on the Individual, the DOE Psychiatrist found that the Individual met the diagnostic criteria, as described in the *Diagnostic and Statistical Manual of Mental Disorders Fourth Edition Text Revision* (DSM-IV TR), for "Alcohol Dependence, In Early Full Remission." Ex. 6 at 10-11. As of the date of his Report, the DOE Psychiatrist concluded that the Individual had not demonstrated adequate evidence of rehabilitation or reformation. Ex. 6 at 11. The DOE Psychiatrist also found that the Individual's Alcohol Dependence was an illness or mental condition that could cause a significant defect in judgment and reliability, Ex. 6 at 11. In order to demonstrate rehabilitation, the DOE Psychiatrist recommended that, in light of her current commitment to therapy, her use of therapeutic resources, and her willingness to acknowledge her alcohol problem, the Individual should complete a period of abstinence of six months duration past the date of his Report. Ex. 6 at 10.

B. Security Concerns

1. Criteria F and L Derogatory Information

In its Notification Letter, the LSO invoked Criteria F and L derogatory information to support its decision to suspend the Individual's security clearance. With regard to Criterion F, the LSO referenced the Individual's alleged falsification on her February 2011, QNSP relating to her non-use of illegal drugs. Conditions that can raise a security concern include the deliberate omission, concealment, or falsification of relevant facts from any questionnaire completed during the personnel security process. See Guideline E 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*). The LSO identified as Criterion L derogatory information, the Individual's use of an illegal drug while employed at a federal agency and knowing that such use violated the policies of the agency. Use of an illegal drug can also raise questions about an individual's reliability and trustworthiness, both because such usage may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. See *Adjudicative Guidelines*, Guideline H. Given the Individual's admission that she had, in fact, used marijuana, an illegal drug, during the period 2004 to 2008 while employed at another federal agency, the LSO had sufficient grounds to invoke Criteria F and L.

2. Criteria H and J Derogatory Information

The Notification Letter also cited derogatory information under Criteria H and J as grounds to suspend the Individual's security clearance. The LSO cited the DOE Psychiatrist's Report

diagnosing the Individual as suffering from Alcohol Dependence, an illness that could cause a significant defect in judgment, as support for its invocation of Criterion H. The LSO also cited the Report and the Individual's statements concerning the extent of her alcohol use and its physical consequences as supporting its finding regarding Criterion J. I find that the information set forth above constitutes derogatory information that raises security concerns about the Individual under both Criteria H and J. A mental condition such as Alcohol Dependence can impair a person's judgment and reliability and trustworthiness. *See Adjudicative Guidelines*, Guideline I. Further, 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. *Adjudicative Guidelines*, Guideline G.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictates that, in these proceedings, an Administrative Judge 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 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). In considering these factors, the Administrative Judge also consults the *Adjudicative Guidelines* that set forth a more comprehensive listing of relevant factors.

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. ANALYSIS

The Individual does not dispute the factual accuracy of the allegations made in the Notification Letter. Tr. at 10. Because I find that the Individual's alcohol disorder had a significant effect on the incidents that gave rise to the Criterion F and L concerns, I will discuss the Criteria H and J concerns first.

A. Criteria H and J

The Individual believes that she had a significant alcohol problem. However, after receiving treatment, the Individual asserts that she is now rehabilitated from her Alcohol Dependence disorder.

At the Treatment Facility, the Individual underwent cognitive behavioral therapy for her alcohol dependence disorder. Tr. at 13. The seven-week program consisted of everyday group counselling, once weekly individual counselling and SMART Recovery meetings once a week.⁵ Tr. at 13-19. Additionally, the Treatment Facility randomly tested the Individual for the presence of alcohol and other substances. Tr. at 19.

The Individual believes that the most important concept she learned at the Treatment Facility was that her alcohol misuse had distorted her thinking. Tr. at 20. Her consumption of alcohol aggravated her tendency to over magnify problems and view them as worse than they really were. Tr. at 20. The Treatment Facility helped her to recognize her automatic negative thoughts and then to change these thoughts. Tr. at 20-21. The Treatment Facility also taught her to change the methods by which she responded to life stresses once she left the Treatment Facility. Tr. at 21. Because stress and anxiety were found to be the significant reasons for her misuse of alcohol, the Individual received counselling on finding alternative ways to deal with these feelings including receiving instruction on mindful meditation. Tr. at 22.

The Treatment Facility also instructed the Individual with a holistic plan for health involving changing her diet and incorporating exercise in her life. Tr. at 21. She also participates in the Treatment Facility's "recovery life plan" where she is assigned a life coach and consults with her on a once a week or once every two-week basis. Tr. at 22. The Individual has a good rapport with her life coach and anticipates continuing with the recovery life plan until a year has elapsed from her release from the Treatment Facility. Tr. at 22, 24. The Individual has also removed several "negative people" from her life to reduce her stress level. Tr. at 56. Her intention to remain sober is motivated, in part, by her children and her own self-interest. Tr. at 46. The Individual has been able to stop smoking cigarettes because of her reduced stress level. Tr. at 65.

The Individual attends SMART meetings weekly and has recently completed the training program to become a certified SMART meeting facilitator. Tr. at 25, 28. Additionally, the SMART program maintains an on-line message and chat room. Tr. at 26. The Individual has

⁵ SMART is an acronym for Self-Management and Recovery Training. According to the Individual's testimony, SMART is a science- and evidence- based approach to substance abuse and other maladaptive behaviors. It is not a 12-step treatment program as used by Alcoholics Anonymous. SMART is based on a cognitive behavioral therapy and rational and motive behavioral therapy. Tr. at 25; *see* Tr. at 78-79 (Therapist testimony concerning the SMART Treatment approach); Ex. 6 at 9 (DOE Psychiatrist's opinion that SMART Recovery approach was a good match for the treatment of the Individual).

been participating in the chat room where she can get support. She also has an on-line “daily group” of Individuals on the SMART web site where she checks in on a daily basis. Tr. at 27.

The Individual’s Therapist, a clinical psychologist who holds a Ph.D., testified that she began to see the Individual in January 2012 and diagnosed her as suffering from Alcohol Dependence, in early full remission. Tr. at 72. She initially sought to help the Individual maintain motivation for abstinence. Tr. at 72. Their sessions were sporadic until August 2013, when the Individual informed the Therapist that she was going to seek inpatient treatment for her alcohol problem. Tr. at 73. Once the Individual returned from the Treatment Facility, they began to have weekly sessions. Tr. at 73. The Therapist now sees the Individual once every week. Tr. at 73. The Therapist believes that the Individual is now able to identify alternatives to consuming alcohol when she is confronted with various stressors or triggers and is fully engaged with the therapy she has received. Tr. at 40-42, 80, 84. The Therapist recommends that the Individual continue with individual therapy for another six months to function as a safety net for the Individual. Tr. at 76. Overall, the Therapist believes that the Individual’s risk of relapse is low. Tr. at 86.

The DOE Psychiatrist, after listening to the Individual’s and the Therapist’s testimonies, opined that the Individual, as of the date of the hearing, has demonstrated adequate evidence of rehabilitation from her Alcohol Dependence disorder. Tr. at 95, 100. In support of his opinion, the DOE Psychiatrist noted that the Individual has been honest about her condition, has received treatment for her disorder, and has continued with outpatient treatment since completing her initial inpatient treatment at the Treatment Facility. Tr. at 95. The DOE Psychiatrist found that the Individual’s testimony was consistent with the information she had provided him. Further, the Individual’s participation in the available self-help programs, her involvement with the life coach, and her current participation as a facilitator in SMART recovery meetings were excellent prognostic factors in her favor. Tr. at 96. The DOE Psychiatrist noted that, at the time of the hearing, the Individual had between 10 and 11 months of abstinence from alcohol. While this is short of the standard 12-month period of abstinence, he believed that her current period of abstinence was sufficient to demonstrate rehabilitation. Tr. at 96. The DOE Psychiatrist also agreed with the Therapist’s assessment of the Individual’s condition. Tr. at 96. Overall, he assessed the Individual’s prognosis as good and that her risk of relapse is low. Tr. at 97.

After evaluating the evidence before me, I find that the Individual has resolved the Criteria H and J security concerns raised by her prior misuse of alcohol and her diagnosis of Alcohol Dependence by the DOE Psychiatrist. The Individual’s last consumption of alcohol was in August 2013. Tr. at 32. At the time of the hearing, I find that the Individual has demonstrated 10 months of abstinence. *See* Exs. A-C (negative random alcohol test results). I am convinced by the Individual’s testimony that she realizes she had an alcohol problem and that she is very committed to her treatment program. I am also persuaded by the Therapist’s and the DOE Psychiatrist’s opinions that the Individual can now be considered rehabilitated from her alcohol problem and that her risk of relapse is low. Consequently, I find that the security concerns raised by the Criteria H and J derogatory information contained in the Notification Letter have been resolved.

B. Criteria F and L

At the hearing, the Individual admitted that she had falsified the February 2011, QNSP. Tr. at 33-34. The Individual testified that she took full responsibility for the false response and confirmed that she had provided the false response because she was afraid she might not be granted a security clearance if she answered truthfully. Tr. at 34. The Individual also testified that, during 2004 to 2008, she used marijuana while employed at another federal agency despite knowing the agency's policy against such illegal drug use. Tr. at 61.

During the period she used marijuana, the Individual, in the evenings, would typically smoke one marijuana cigarette while consuming alcohol. Tr. at 33-34. The Individual believes that she was usually intoxicated when she would smoke a marijuana cigarette. Tr. at 62. While the Individual does not claim that she was intoxicated by alcohol at the time she made the falsification, she believes that her judgment was significantly impaired at the time of this falsification because of her Alcohol Dependence Disorder. Tr. at 35.

The Therapist believes that the Individual is very forthcoming. Tr. at 90. This is especially so since the Therapist believes that the Individual has a low tolerance for guilt. Tr. at 91. The DOE Psychiatrist testified that, in his opinion, a person suffering from Alcohol Dependence Disorder could have impaired judgment even during periods where the person's blood alcohol level is zero. Tr. at 101-02. During his initial assessment of the Individual and his review of her testimony, the DOE Psychiatrist believed that the Individual was honest and that the Individual knows that being honest is in her best interests. Tr. at 102.

The Criteria F and L concerns center on the Individual's failure to report her use of marijuana in the February 2011, QNSP and her use of marijuana while employed by a federal agency from 2004 to 2008, despite knowing that it violated the agency's policies. After reviewing the evidence, I find that the Individual has mitigated the Criterion F and L concerns raised in the Notification Letter. The Individual, by her own admission provided a false answer regarding past marijuana usage in the February 2011, QNSP. However, other than this one-time falsification that occurred three years ago, there is no other evidence that the Individual has committed other acts that would cause me to question her truthfulness. *See, Adjudicative Guidelines*, Guideline E, ¶ 17(c) (citing as a mitigating factor for questionable personal conduct: "the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment"). Further, based upon my assessment of the Individual's testimony and that of the two expert witnesses, I find it likely that the Individual's judgment in providing the false answer was impaired by her then existing Alcohol Dependence. Because the Individual has been rehabilitated from her Alcohol Dependence, I believe that it will be unlikely that the Individual will fail to be truthful in the future. I also find it to be a significant factor that the Individual no longer lives in the environment which contributed to her marijuana use - living with a spouse who used marijuana frequently at home. Tr. at 61; Ex. 6 at 4; Ex. 9 at 41, 135.

I also find that the concern raised by the Individual's deliberate violation of a former agency's policy during the period 2004 to 2008 has also been resolved. Her last reported violation of her employer's policy prohibiting illegal drug use has been six years ago. *See Adjudicative Guidelines*, Guideline E, ¶ 17(c). Further, there is no evidence that the Individual has used marijuana since then. Given the

significant changes that the Individual has made in her life, I find that the Individual will comply with her employer's rules and policies in the future.

In sum, I find that the Individual has resolved the concerns raised by the Criterion F and L derogatory information listed in the Notification Letter have been resolved.

V. CONCLUSION

For the reasons set forth above, I conclude that the Individual has mitigated all of the DOE's security concerns under Criteria H, J, F and L. Therefore, the Individual has demonstrated that restoring her access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should restore the Individual's access authorization. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals

Date: August 1, 2014