

Alcohol Abuse is a mental illness that causes or may cause a significant defect in his judgment and reliability.

In April 2014, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created 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 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).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 Administrative Judge in this case. At the hearing that I convened, the individual presented his own testimony and that of three witnesses. The DOE Counsel called one witness, the DOE psychologist. Both the DOE 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 her 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 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.

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).

B. Basis for 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 in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites two criteria as bases for suspending the individual's security clearance: Criteria H and J. To support Criterion H, the LSO relies on the diagnosis of the DOE psychologist that the individual suffers from Alcohol Abuse, and the expert's opinion that Alcohol Abuse is a mental illness that could cause a significant defect in the individual's judgment and reliability. As for Criterion J, the LSO cites the DOE psychologist's opinion, the individual alcohol-related arrest as well as his alcohol use. *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 Abuse can impair a person's judgment and 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.

IV. Findings of Fact

On November 3, 2013, the individual was arrested and charged with Driving While Intoxicated (DWI). According to the individual, he consumed approximately 15 beers and half of a bottle of red wine six hours prior to his arrest. His breath alcohol content registered .182. DOE Exh. 1. During his December 2013 PSI, the individual admitted that from 2012 to the time of his arrest for DWI in November 2013, he consumed six to eight beers in four hours once a month. He further admitted that in 2006, he received a letter of counseling from the military after consuming eight to ten beers and punching a window with his fist. *Id.*

Based on this information, the individual was referred to a DOE psychologist for a psychological evaluation. On February 14, 2014, the DOE psychologist evaluated the individual. In his Report, he concluded that the individual met the Diagnostic Statistical Manual of Mental Disorders, IVth Edition TR (DSM-IV-TR) criteria for Alcohol Abuse. The DOE psychologist

further concluded that the individual possesses an illness or mental condition, which causes, or may cause, a significant defect in judgment and reliability. DOE Exh. 6.

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 and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. Based on the facts in this record, I find that restoring 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. The Diagnosis of Alcohol Abuse

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

B. Evidence of Rehabilitation and Reformation from Alcohol Abuse

During the hearing, the individual readily acknowledged his November 3, 2013, DWI as well as his alcohol problem. Transcript of Hearing (Tr.) at 38. He testified that the 2013 DWI made him realize that he had an alcohol problem. *Id.* According to the individual, he voluntarily began recovery on November 7, 2013, and has been sober for nine months. *Id.* He stated that on the night of his arrest in 2013, he went to a bar with a group of friends and consumed four to six beers and consumed a couple more drinks later that evening. *Id.* at 39. The individual testified that he was subsequently stopped for speeding and arrested for DWI. *Id.* at 41. The individual further testified that since entering recovery, his life has changed. He testified that he now recognizes the triggers that led him to drink and has gained insight as to why he was in denial about his alcohol problem. *Id.* at 50. The individual has a strong support system, including his wife. He stated that he and his wife communicate more now and have a closer relationship. *Id.* at 52. According to the individual, he does not frequent bars anymore. He has a sponsor and attends recovery meetings once a week. *Id.* at 57. He testified that he has no intention to drink in the future. *Id.* at 75.

During the hearing, the individual also offered the testimony of his sponsor, his supervisor and his wife. The individual's sponsor testified that he met the individual through a 12-step recovery program at church about nine months ago. *Id.* at 97. He testified the individual admitted that he

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.

has an alcohol problem and wanted to change his behavior when he entered recovery. *Id.* at 99. He further testified that the individual voluntarily approached him to be his sponsor and stated that, although the individual has called in need of support several times, he has never called him expressing that he has an urge to drink. *Id.* at 100 and 110. The individual's wife recalled when the individual was arrested for DWI in November 2013. *Id.* at 19. She stated that the individual told her what happened and that he entered into a recovery program at their church shortly thereafter. *Id.* at 20 and 22. The individual's wife testified that alcohol treatment has significantly changed her husband's life, noting that his parenting skills have improved and that he is more focused on his children and family. *Id.* at 24. She also testified that the individual does not keep alcohol in the house and has changed his group of friends, no longer associating with friends who drink. *Id.* at 25. The individual's wife stated that the individual enjoys attending his recovery meetings and has not struggled with recovery. *Id.* at 32. Finally, the individual's supervisor testified that he has known the individual for 10 years, that he has never been impaired at work and that he has no doubts concerning the individual's judgment and reliability. *Id.* at 11-13. He stated that the individual has been forthcoming about his alcohol problem and that he is aware that the individual is participating in a recovery program. *Id.* at 15.

The DOE psychologist listened to all the testimony at the hearing before testifying himself. He testified that he met with the individual in February 2014 and concluded that he is suffering from Alcohol Abuse. *Id.* at 121. The DOE psychologist stated that his recommendation in February was that the individual abstain from alcohol completely for nine months. He further recommended that the individual participate in an AA-like recovery program for at least nine months and gain the ability to discuss the effects intoxication has on his judgment and cognitive functioning. The DOE psychologist noted that the individual's honesty and moral basis to his character were the reasons that he recommended nine rather than twelve months of recovery. He testified that, based on the hearing testimony, the individual has met all of the criteria he asked him to address in February 2014, and stated that he believes the individual has achieved adequate evidence of rehabilitation. *Id.* at 128. He noted that although the individual's treatment program is more programmatic rather than more intimate and personal than he would have liked, it has still been effective. *Id.* The DOE psychologist further testified that the individual's prognosis is good and that the individual's risk of relapse is low for the next two or three years. He noted that "occasionally if someone is locked into the programmatic aspects of a [recovery] program, if something happens to the program and causes it to fracture or causes the church to fracture, it can cause a lack of faith and loss of direction." However, the DOE psychologist noted that there is no way to predict that possibility. *Id.* at 129. Finally, he opined that the individual should continue with his recovery program. *Id.*

C. Administrative Judge's Evaluation of the Evidence

In the administrative process, Administrative Judges accord deference to the expert opinion of psychiatrists, psychologists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing, Case No. TSO-0728 (2009)*.⁴ At the outset, I am persuaded by the testimony of the DOE psychologist that the individual has achieved adequate

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>.

evidence of rehabilitation. Moreover, the Adjudicative Guidelines describe factors that could mitigate security concerns involving psychological conditions and alcohol consumption. *See Adjudicative Guideline, Guidelines G and I, ¶ 23 and ¶ 29, respectively.* In this case, the individual has satisfied the following mitigating factors: (1) the individual has readily acknowledged his alcohol problem, provided evidence of actions taken to address his problem and has established a pattern of responsible use; (2) the individual has successfully completed a 12-step rehabilitation program, has demonstrated a clear and established pattern of abstinence in accordance with his treatment recommendations, i.e., his participation in his recovery meetings, and has received a favorable prognosis by a duly qualified medical professional; and (3) the DOE psychologist has opined that the individual's condition has a low probability of recurrence. *Id.* For these reasons, I find that the individual has sufficiently mitigated the DOE's security concerns under Criteria H and J.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Criteria H and J. 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 adequately mitigate the security concerns associated with Criteria H and J. 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
Administrative Judge
Officer of Hearings and Appeals

Date: September 12, 2014