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**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of Personnel Security Hearing )

Filing Date: June 4, 2014 )

Case No.: PSH-14-0059

Issued: September 5, 2014

**Administrative Judge Decision**

Shiwali G. Patel, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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.”<sup>1</sup> For the reasons set forth below, I conclude that the DOE should not grant the individual access authorization.<sup>2</sup>

**I. BACKGROUND**

The individual is an employee of a DOE contractor and is an applicant for a DOE access authorization. After the individual revealed information during a background investigation that raised concerns regarding his alcohol consumption and mental health, a Local Security Office (LSO) summoned him for an interview (PSI) with a personnel security specialist on November 18, 2013. Exhibit 7. When the LSO could not resolve the potentially disqualifying information, it referred the individual to a psychiatrist (“DOE psychiatrist”) for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report, setting forth the results of that evaluation, and sent it to the

<sup>1</sup> 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.

<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.energy.gov/oha>.

LSO. Exhibit 6. Based on this report and the rest of the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. Exhibit 1. 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 an Administrative Judge 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 Administrative Judge in this case. The DOE introduced eight exhibits (Exs. 1-8) into the record of this proceeding, and called the DOE psychiatrist as a witness. The individual introduced four exhibits (Exs. A-D), and presented the testimony of three witnesses, in addition to his own testimony. *See* Transcript of Hearing, Case No. PSH-14-0059 [hereinafter cited at "Tr."].

## **II. REGULATORY STANDARDS**

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate 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).

A DOE administrative review 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).

## **III. NOTIFICATION LETTER AND 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.<sup>3</sup> To support Criterion H, the

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<sup>3</sup> Criterion H relates to information indicating that the individual has an "illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychiatrist, causes or may cause, a significant defect in judgment or

LSO cited the diagnosis by the DOE psychiatrist of Major Depressive Disorder, severe, recurrent, with mixed features, under DSM-5 (*Diagnostic and Statistical Manual for the American Psychiatric Association, Fifth Edition*), which causes, or may cause, a significant defect in his judgment or reliability. *Id.* The LSO relied on the following information to support its application of Criterion J: the individual's (1) diagnosis by the DOE psychiatrist of Alcohol Dependence, with physiological dependence, in sustained remission, under the DSM-IV-TR (*Diagnostic and Statistical Manual for the American Psychiatric Association Fourth Edition, Text Revision*), or Alcohol Use Disorder under the DSM-5,<sup>4</sup> without adequate evidence of rehabilitation or reformation; (2) admission that from 2009 to May 2012, he drank half of a fifth to a full fifth of vodka<sup>5</sup> every day to become intoxicated; (3) diagnosis of alcohol pancreatitis and partial kidney shutdown in the spring of 2011; (4) hospitalization after passing out from drinking a fifth of vodka in an hour in the summer of 2010; (5) hospitalization on March 6, 2011, after consuming two fifths of vodka in two days, lack of memory of the incident because he blacked out, and refusal to seek alcohol treatment at the time; (6) admission that alcohol created problems in his marriage and school performance, and that in 2007, he began using alcohol to cope with those difficulties and to self-medicate for his sleeping problems; and (7) admission that his mother and sister expressed concerns with his excessive alcohol consumption from 2009 through 2012 and that his girlfriend ended their relationship because of his drinking. *Id.*

I find that this information adequately justifies the DOE's invocation of Criteria J and H. The individual's Major Depressive Disorder is a mental condition that may impair his judgment, reliability or trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 19, 2005) (Adjudicative Guidelines) (Guideline I). Moreover, his excessive alcohol consumption may lead to questionable judgment or a failure to control impulses, and also calls into question the individual's future reliability and trustworthiness. *Id.* (Guideline G).

#### **IV. FINDINGS OF FACT AND ANALYSIS**

##### **A. The Individual's History of Alcohol Consumption**

The individual is 43 years old and is an applicant for a DOE security clearance. In September 1989, the individual enlisted in the military, where he remained for approximately eight years and nine months. While the individual had a top secret clearance when serving in the military, he testified that he never revealed classified information because he feels patriotic towards the United States and has a "great deal of integrity." Tr. at 54. Early in his military career, in late 1990, the individual blacked out from consuming alcohol and did not recall what happened that night. Ex. 6 at 2. The individual believes that was his first episode of intoxication. *Id.*

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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 psychiatrist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

<sup>4</sup> In his report, the DOE psychiatrist stated that the corresponding DSM-5 diagnosis is Alcohol Use Disorder. Ex. 6 at 12-13.

<sup>5</sup> In his report, the DOE psychiatrist stated that a fifth of vodka contains approximately 17 standard drinks. Ex. 6 at 4.

While he received several awards for his service in the military, the individual testified that his working conditions became “hostile” and “intolerable” and that he “was constantly being harassed.” Tr. at 61-63. Consequently, he faced a lot of stress from his job and suffered insomnia; eventually, he began to consume alcohol every night in order to fall asleep. Ex. 6 at 3. In September 1997, the individual left his work site to avoid deployment. That night, he drank heavily and subsequently, walked around for three days and slept outside. *Id.*; Tr. at 64. On the third day, after his feet became so blistered that he could not walk any further, he called his friend, who brought him to the hospital. Ex. 6 at 3. The individual was ordered into inpatient alcohol treatment and then underwent a follow up outpatient treatment program, which he successfully completed in May 1998. *Id.* The individual testified that while he was not an alcoholic during his time in the military, he did abuse alcohol. Tr. at 66.

After he left the military, the individual continued to consume alcohol, and by 2005, it became problematic. When he went back to school for his undergraduate studies, he became socially isolated and consumed two to six beers or a few drinks of vodka on the weekends to fall asleep. Ex. 6 at 3-4; Tr. at 68-70. He also became severely depressed. Tr. at 70. Consequently, the individual’s alcohol consumption increased, and he began to consume a half of a fifth, which increased to a fifth, on the nights that he drank alcohol. Ex. 6 at 3-4.

The individual’s mother eventually became concerned with his alcohol consumption, even though he attempted to conceal his drinking. Moreover, his drinking also caused his school performance to decline. *Id.* In addition, the individual experienced alcohol-related health problems, such as obesity, high blood pressure, alcohol pancreatitis, and renal failure. *Id.* at 4. In 2009, he visited a medical facility, where the doctor prescribed him lithium for his psychological problems, specifically related to depression.<sup>6</sup> Ex. 7 at 194. The individual did not inform that doctor about his alcohol consumption.

In the summer of 2010, when the individual became upset about his girlfriend’s sexual encounter with someone else, he drank one fifth of vodka in an hour and became extremely intoxicated. His mother found him passed out on the couch and called the ambulance to take him to the hospital. *Id.* at 4-5. On March 6, 2011, he had another alcohol-related hospitalization. His mother had called campus police when she spoke to the individual on the phone because he was intoxicated and sounded despondent. She was concerned that he would inflict harm on himself, and the campus police arrived to his dorm room and found him intoxicated. *Id.* The officers noted that the individual told them that he no longer wished to be there, that his life was bad, and that he consumed two half-gallon bottles of vodka in the last two days,<sup>7</sup> and they found a razor utility knife by his desk. *Id.* The individual remembers very little from what happened that time and he was taken to the

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<sup>6</sup> Without consulting a physician, the individual stopped taking lithium sometime in late 2013 because he developed skin problems from it. Tr. at 108. While there was discussion at the hearing about it not being advisable that the individual failed to consult with a physician, he did not suffer any withdrawal symptoms from discontinuing lithium.

<sup>7</sup> While the individual does not remember how much he consumed that night, the DOE psychiatrist’s report indicates that the officers noted that the individual consumed two half-gallon bottles of vodka over two days. The LSO’s Statement of Security Concerns, however, states that the individual consumed two fifths of vodka in two days. Regardless of whether he consumed two-fifths or two gallons of vodka during those two days, the relevant fact is that the individual consumed so much alcohol that he blacked out, put his health at risk, and was subsequently hospitalized due to his excessive alcohol consumption.

hospital. At the hospital, he was evaluated and diagnosed with pancreatitis, admitted that alcohol was the cause of it, and was treated as an inpatient for three days. At the end of his treatment, he was recommended to seek treatment for his alcoholism, but he chose not to at the time. *Id.*

In the spring of 2011, the individual had partial renal failure that was partly caused by his excessive drinking, while taking lithium and ibuprofen for his back pain. *Id.* at 6. He graduated in the fall of 2011, and around October 2011, he enrolled in a graduate program. In graduate school, because his alcoholism, depression and anxiety increased, he withdrew from his classes and moved back home with his mother. Finally, in May 2012, the individual decided to stop consuming alcohol and he sought treatment. At the hearing, he testified that his primary purpose for going to the hospital was for treatment in dealing with his autism. Tr. at 72. Around July 2012, the individual began inpatient treatment and he saw a psychiatrist who diagnosed him as bipolar, depressed, alcohol dependent and with Asperger's syndrome. Tr. at 71. He continued with treatment and participated in daily individual counseling and group therapy four times a week. Around October 2012, the individual was transferred to another inpatient treatment facility, and in April 2013, he was then transferred to a residential treatment home, where he resided until approximately January 2014. Tr. at 85. At the treatment home, the individual was a residence manager, and was counseled by his clinic social worker once or twice a week, focusing on his alcoholism and depression initially, and then later, his Asperger's. He remained abstinent throughout his participation in the treatment programs.

However, since leaving the treatment home in January 2014, the individual has consumed alcohol twice. In February 2014, he attended a pub with his friends and consumed five two-ounce glasses of beer, but did not drink to intoxication. Tr. at 78-79. He stated that he consumed beer because he did not tell anyone that he had a problem with alcohol consumption and wanted to fit in because everyone else was drinking beer. Tr. at 78.

The individual again consumed alcohol in May 2014 – this time to intoxication – when he received the DOE psychiatrist's report, which he interpreted as an attack on his integrity, characterizing it as “knocking [him] to [his] core.” Tr. at 79. He was so upset by the report that he purchased vodka and drank a half of a fifth of it, discarding the remaining vodka the next day. Tr. at 137. The next day, he informed his supervisor and joined the Employee Assistance Program (EAP). Tr. at 80. He acknowledges that he made a mistake by consuming alcohol and getting intoxicated. *Id.*

#### B. The Individual's Current Treatment and Support System

The individual admits that he is an alcoholic, and at the hearing, he testified that the major stressor in his life has always been dealing with Asperger's syndrome. Tr. at 67, 72. Currently, the individual sees a private counselor every other week for his Asperger's and another counselor through EAP on the weeks he is not meeting with the private counselor, and through both, has counseling once a week. Tr. at 81. He began seeing the counselor with the EAP in February 2014, and his other counselor in March 2014. Tr. at 137-38. The individual is also subject to random alcohol tests at his lab and he submitted Alcohol Testing Forms from May 29, 2014, June 2, 2014, and June 13, 2014, indicating that all of his test results for alcohol were negative. Ex. A; Tr. at 82. He plans to remain enrolled in the EAP and continue with alcohol testing and counseling for as long as necessary. Tr. at

91. He also has attended support groups for adults with Asperger's Syndrome, which he has found to be helpful. Tr. at 136

The individual submitted a letter from a clinical social worker at a program in which he participated from March 15, 2013, to February 12, 2014. Ex. C. She stated that the individual accomplished all of his "treatment goals in exemplary fashion." *Id.* She also stated that throughout his time there, he maintained consistently clean Urine Analyses and Blood Alcohol Contents, participated in work and recreation therapy and served as house manager for the home that he lived in. *Id.* Because he carried out his duties responsibly, the social worker stated that she "could always and, without question, count on [him] to be completely reliable and trustworthy." *Id.* The social worker also commented that his strengths include his "respect for and protection of private and/or restricted information, ability to demonstrate good judgment, impulse control, sense of humor, good problem solving skills . . . and [his] dedication to living a healthy, sober, self-affirming life." *Id.*

Currently, the individual lives with his fiancé, who is supportive of his abstinence from alcohol. Tr. at 73. The individual acknowledges the benefits of cognitive behavioral therapy and testified that he has become more social by joining book clubs and spending time with friends. Tr. at 74-75. He has developed a social support system of very close friends, his fiancé, mother and sister. Tr. at 75-76, 84. He does not have any alcohol in his house or any cravings for alcohol. Tr. at 91. He also goes to dinner with his friends and even when they consume alcohol at dinner, he does not have any urges to drink alcohol and his friends are aware of his intention to remain abstinent. Tr. at 141. The individual states that he sleeps very well now. Tr. at 90.

### C. Expert Testimony

Two experts testified at the hearing. The first expert is a psychologist who evaluated the individual and met with him four times. Tr. at 150-51. The psychologist opined that the individual is not depressed, but that he is an alcoholic. Tr. at 152. She stated that the individual's candor with regard to his alcoholism and disclosures is "unusual" and makes it easier to treat him. Tr. at 155. She further testified that the individual is receiving appropriate treatment for his alcoholism by having counseling and random drug testing, and she does not have any additional suggestions for his treatment plan. Tr. at 157. As for the individual's prognosis, the psychologist testified that it is very good. Tr. at 170. She further opined that if the individual gets through 18 months to two years without a relapse, it is highly unlikely that he will relapse again. *Id.* She stated that while individual has not fully recovered, his recovery is "a little better" than early recovery.<sup>8</sup> Tr. at 172.

The DOE psychiatrist testified that the individual is in an early stage of rehabilitation. Tr. at 189. He stated that the individual's Asperger's is a mildly negative factor that impacts his prognosis in maintaining sobriety because of the additional stress it gives him. Tr. at 193. He believes that the individual's current treatment program is adequate, but that for adequate evidence of rehabilitation, the individual needs to maintain treatment and sobriety for a year from his last drink in May 2014. Tr. at 196. He also stated that the individual's current prognosis is fair and that he has a moderate risk of relapse. Tr. at 196-97. With respect to the individual's depressive disorder, the DOE

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<sup>8</sup>When asked what stage of recovery the individual was in, she stated: "I guess AA would say it's early recovery. I'd say it's a little better than that, but he's not, you know, fully recovered. Nobody ever is." Tr. at 172.

psychiatrist noted that although depressive episodes generally reoccur for people with Major Depressive Disorder, the individual has not been depressed even during the six months he had not been taking his medication. Tr. at 199-200. The DOE psychiatrist further testified that the individual is currently not depressed and that his depression is in remission.<sup>9</sup> Tr. at 215-16. He explained that even when he evaluated the individual a few months before the hearing, his depression was in remission, and he observed that the individual was handling the stress of the hearing very well. Tr. at 215.

#### D. Lay Testimony

At the hearing, the individual presented the testimony of two individuals to discuss his work habits and judgment. The first witness, who was a recruiter at a hiring event where he met the individual, testified that the individual is “meticulous” and “very thorough.” Tr. at 16. He also stated that when the individual received notice that his clearance was denied, he was “noticeably upset,” not in a condition to work and had to take a day or half day off from work. Tr. at 16, 30. The witness explained that the individual was “noticeably visibly shaken,” and “he wasn’t in a position to do – to be productive at the office.” Tr. at 32.

The second witness is the individual’s co-worker and has known him for a year and three months. Tr. at 36. He stated that the individual is a good worker and that they have socialized a few times outside of work. Tr. at 37, 41. He recalled one instance where he and the individual went to pub and the individual ordered a sampler of beer, of about six small-sized beer samples. Tr. at 37. However, the individual did not become intoxicated at that event, and he has never witnessed the individual become intoxicated. Other than that episode, the witness has not known the individual to consume alcohol. The witness has also visited the individual’s current residence and did not observe any alcohol or liquor cabinets in the individual’s home. Tr. at 43. Similar to the other witness’s testimony, this witness testified that when the individual received the results of his security clearance application, he became “very distraught.” Tr. at 44. He further testified that he believes that the individual exercises good judgment and is reliable. Tr. at 48.

#### E. Evaluation of Evidence

##### *i. Major Depressive Disorder*

Based on the testimony provided at the hearing, I conclude that the individual has mitigated the Criterion H concern in the Notification Letter associated with his diagnosis of major depressive disorder. The DOE psychiatrist testified that the individual’s depression is in remission, and that the individual is currently not depressed, even after having stopped his medication six months ago. Adjudicative Guidelines at ¶ 29(c) and (e). I also find that as he is currently receiving counseling every week, and given the testimony provided by both experts in this matter, there is no indication in the record that the individual’s depression is currently in a state that affects his judgment, reliability or trustworthiness to pose a security concern. *Id.* at ¶ 29(b).

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<sup>9</sup> When asked about the individual’s depression, the DOE psychiatrist specifically stated: “That was accurate when I saw him six months ago and that’s accurate today. He’s not depressed. He’s handling the stress of this interview, which is huge, I would say very well.” Tr. at 215.

*ii. Alcohol Use Disorder*

However, I cannot conclude that the individual has mitigated the concerns associated with his alcohol use disorder. 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, specifically, whether the individual will return to abuse alcohol in the future. Adjudicative Guidelines at ¶ 23(a). At the outset, I want to note that I commend the individual for acknowledging his issues with alcohol, participating in treatment programs and counseling once a week, and creating a support system of his family and friends. Adjudicative Guidelines at ¶ 23(b). I also believe that he genuinely intends not to consume alcohol anymore. Yet, I still have concerns that he has not yet established a pattern of abstinence as of the date of the hearing and that he may return to abuse alcohol in the future.

At the hearing, the DOE psychiatrist testified that the individual would need a year of abstinence to demonstrate sufficient evidence of rehabilitation and reformation. In addition, the individual's own expert stated that if he does not consume alcohol for 18 months to two years, it is unlikely that he will relapse again, inferring that a longer period of abstinence may be necessary for there to be sufficient evidence of rehabilitation and reformation. Here, however, the individual was only abstinent for three months, which is nine months less than the DOE's psychiatrist's recommendation and more than a year less than what his own expert suggested. Thus, in this instance, I find that the individual's three months of sobriety is insufficient for establishing a pattern of abstinence. This is also consistent with OHA case precedent. *See Personnel Security Hearing*, Case No. PSH 12-0100 (2012) (concluding that even seven months of sobriety of an individual who was diagnosed as alcohol dependent was insufficient for resolving concerns under Criterion J); *Personnel Security Hearing*, Case No. PSH-12-0077 (2012) (eight months insufficient to resolve concerns raised by alcohol dependence); *Personnel Security Hearing*, Case No. PSH-11-0013 (2012) (seven months insufficient to resolve concerns raised by alcohol dependence).

Further, I cannot find that the individual's previous excessive use of alcohol was "infrequent" or happened under "unusual circumstances," or that he does not have a history of previous relapse, particularly given his two recent relapses in February and May 2014, after participating in intensive treatment programs. Adjudicative Guidelines at ¶ 23(a), 23(c). Moreover, I am concerned by his consumption of a half of a fifth of vodka from being so upset with the DOE psychiatrist's report, which, ironically, highlighted serious issues regarding the individual's alcohol abuse. *Id.* at ¶ 23(a). After a lengthy period in his life of abusing alcohol to cope with stress, depression or other related feelings that began while he was in the military, the individual now asserts that he has a strong support system to rely on instead of alcohol. However, just a few months has elapsed since he excessively consumed alcohol because he felt deeply upset by the DOE psychiatrist's report, and this occurred *after* he completed inpatient treatment and while he was in counseling. As such, I cannot conclude that the individual's reliance on his support system is now so strong that he would always refrain from alcohol consumption to cope with extreme stress.

I recognize the stress that even this decision may cause the individual, but at this moment, it is simply too soon to find that he mitigated the DOE's concerns. As explained above, the psychologist who evaluated him opined that the individual is just "a little better" than early recovery, and the DOE psychiatrist's prognosis of the individual was fair, both of which indicate that he has yet not demonstrated "a clear or established pattern of . . . abstinence." *Id.* at ¶ 23(d).

Thus, at the time of the hearing, the individual has not provided sufficient evidence of rehabilitation and reformation. Hence, I conclude that the individual has not mitigated the Criterion J concern cited in the Notification Letter. 10 C.F.R. § 710.7(a) ("Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security."). Accordingly, the individual shall not be granted access authorization at this time.

## V. CONCLUSION

For the reasons set forth above, I conclude that the individual not has resolved the DOE's security concerns cited in the Notification Letter under Criterion J. Therefore, the individual has not demonstrated that granting him 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 grant the individual a 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.

Shiwali G. Patel  
Administrative Judge  
Office of Hearings and Appeals

Date: September 5, 2014