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

In the Matter of:	Personnel Security Hearing	)	
		)	
Filing Date:	July 17, 2014	)	
		)	Case No.: PSH-14-0070
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Issued: October 14, 2014

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**Administrative Judge Decision**

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William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> 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 should not be granted an access authorization at this time.

**I. Background**

The individual works for a DOE contractor that has requested that he apply for a DOE security clearance. Investigation into the individual’s history of alcohol consumption raised security concerns in the opinion of the Local Security Office (LSO), and the LSO had the individual evaluated by a DOE consultant psychologist (DOE psychologist). On June 18, 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

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<sup>1</sup> 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.

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).<sup>2</sup>

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 seven other witnesses, and the LSO presented the testimony of one witness, the DOE psychologist who had evaluated the individual. In addition to the testimonial evidence, the LSO submitted nine 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 (9<sup>th</sup> 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 granting 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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<sup>2</sup> 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).

## **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 support for its security concerns under Criteria H and J, the LSO relies on the opinion of the DOE psychologist, who determined that the individual is a user of alcohol habitually to excess which, in his opinion, causes or may cause significant defects in the individual's judgment and reliability. In addition, the LSO cites the individual's statements regarding his pattern of alcohol consumption over the past ten years. Ex. 1.

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.

## **IV. Findings of Fact**

The individual is a responsible, caring, hard-working, and detail-oriented person. Tr. at 26, 37, 39, 47, 62, 70, 81 (testimony of wife, friends, supervisor, and co-workers). He reported during his March 7, 2014, PSI that his typical weekly consumption of beer consisted of six beers on each of three nights during the workweek, and another 18 beers over the weekend. Ex. 7 at 13, 25. Although he drank less while a teenager, this consumption pattern has been fairly consistent since age 21. *Id.* at 13. He also stated that about 35% of the time he gets intoxicated, after drinking at least 12 beers, and has a hangover, after drinking at least 18 beers, about 10% of the time. *Id.* at 14, 18. Although he admits to driving when "buzzed" only once, six to eight years ago, he estimates that he has driven after drinking one or two beers ten times in the past year. *Id.* at 21, 28. At his psychological evaluation, he reported a similar pattern of alcohol consumption, but stated that he drives after drinking twice a month, and that on those occasions he may have consumed as many as six beers. Ex. 6 at 3.

The DOE psychologist evaluated the individual in May 2014. He determined that the individual met the criteria for neither Alcohol Abuse nor Alcohol Dependence as set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association*, Fourth Edition Text Revised (DSM-IV-TR). Ex. 6 at 4. Nevertheless, based on the PSIs, his own interview with the individual, and an Alcohol Use Inventory that he administered, he reached the opinion that the individual uses alcohol habitually to excess. *Id.* He further observed that the individual had never been involved in a rehabilitation program, and as adequate evidence of rehabilitation or reformation from this alcohol condition, he would recommend participation in an intensive outpatient program, abstinence from alcohol for at least 12 months, participation in Alcohol Anonymous (AA) at least three times weekly for a year, permission for the on-site psychologist to communicate with his AA sponsor, and random blood alcohol testing. *Id.* at 4-5. The DOE psychologist concluded that the individual's protracted and continuing "problematic pattern of alcohol use" demonstrated a significant defect in judgment or reliability. *Id.* at 5.

At the hearing, the individual testified that after he met with the DOE psychologist, more than three months before the hearing, he stopped drinking during the week, and drank only occasionally on the weekends. Tr. at 101. As of the hearing, he had stopped drinking altogether; his last drink had been four days earlier. *Id.* at 92. Two days before the hearing, the individual met with a substance abuse counselor and enrolled in an intensive outpatient program. *Id.* at 91-94. He stated that he had attended his first AA meeting the night before the hearing. *Id.* at 91, 98. When asked why he had not begun counseling sooner, the individual explained that he felt he had financial responsibilities to his family that he needed to get in order before he could commit to the cost of the intensive outpatient program. *Id.* at 95. *See also id.* at 52-53 (testimony of supervisor that individual had been discussing financial burden with him since receiving DOE psychologist's report).

The individual's counselor testified that she had met the individual two days before the hearing. *Id.* at 11. At the time, she evaluated the individual as having a drinking problem, "at least alcohol abuse," with very little insight into the problem. *Id.* at 13. She recommended that the individual stop drinking indefinitely, attend an intensive outpatient program, begin attending AA meetings, secure a sponsor, and return for a follow-up visit with her. *Id.* at 12, 15. Her impression was that the individual lacked a clear understanding of alcohol problems, mainly because he believed his alcohol consumption was normal, as it appears to be within his social system. *Id.* at 16. While she conceded that the individual has complied with her recommendations so far, she was unwilling to venture a prognosis for the individual based on his very short period of participation—just two days—in her program. *Id.* at 18-20.

In his testimony at the hearing, the DOE psychologist maintained his opinion that the individual consumes alcohol habitually to excess. Because he determined that the individual regularly drank five or more drinks at a time, he classified the consumption pattern as binge drinking, which he found to affect the individual's ability to fully control his faculties. *Id.* at 115. He was also concerned that the individual admitted to being "buzzed" on a frequent basis, which in his opinion indicated that the individual was often under the influence of alcohol to a degree that lowered his inhibitions and made "it more likely to produce errors in judgment." *Id.* He observed that the individual lives in an

environment where there is no stigma associated with alcohol consumption and, fortunately, he has suffered no negative consequences from it. He noted, however, that the individual is a man of integrity, is highly motivated to act in such a manner to retain his position at the site, and now shows some awareness and insight into the concerns that his alcohol consumption has raised. *Id.* at 116-17. Nevertheless, he expressed his opinion that the individual is at a very early stage in his process of rehabilitation. *Id.* at 119. While the individual appears to be making a good start, the DOE psychologist stated that his two days in the program were not a sufficient basis for revising or updating his opinion regarding the individual's alcohol issues. *Id.* at 120.<sup>3</sup>

## 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 should not be granted an access authorization at this time. 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.

The individual has maintained a pattern of significant alcohol consumption for at least ten years. His consumption is not regarded as out of the ordinary by his peers, and he has not had any alcohol-related arrests or accidents. As a result, he has encountered no negative consequences of drinking and had, at least until very recently, little insight into the concerns it raised. Once he became aware of the problem, most likely when he received the DOE psychologist's evaluation, he began to take action. He cut back on his alcohol consumption and investigated the financial burdens of engaging in the treatment that the DOE psychologist recommended. Shortly before the hearing, he met with a counselor, began abstaining from alcohol, and started attending an intensive outpatient program and AA. As of the hearing, however, the individual had been abstinent for less than a week, attended two sessions of the intensive outpatient program and one AA meeting. In contrast, the DOE psychologist maintained 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, as neither the counselor nor the DOE psychologist was willing to address the individual's likelihood of relapse. 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

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<sup>3</sup> Contrary to his statements to the DOE psychologist at the evaluation that he drank and drove twice a month, the individual testified at the hearing that in fact he never drove with his family in the car while he was "under the influence." *Id.* at 108. When asked to assume that the individual's most recent assertion was correct and then questioned whether that fact would alter his opinion about the individual's alcohol use, the DOE psychologist stated that it would not, because there were other indications that the use was excessive. *Id.* at 124.

record, I am not convinced that the individual has resolved the LSO's security concerns that arise from his alcohol use.

## **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 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 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 granting the individual an access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual should not be granted an access authorization 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: October 14, 2014