



the Individual participate in a March 2014 Personnel Security Interview (PSI). DOE Ex. 12. In April 2014, the HRP's consultant-psychiatrist ("the HRP psychiatrist") evaluated the Individual in connection with his HRP certification. DOE Ex. 14. In addition, the LSO referred the Individual to a DOE consultant-psychologist ("the DOE psychologist") for an evaluation, which took place in May 2014. DOE Ex. 7. In July 2014, the LSO informed the Individual that there existed derogatory information that raised security concerns under 10 C.F.R. §§ 710.8(h), (j) (Criteria H and J, respectively).<sup>3</sup> See DOE Ex. 1 (Notification Letter, July 30, 2014).

The Individual requested a hearing on this matter. DOE Ex. 2. The LSO forwarded his request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. At the hearing, the Individual, represented by counsel, testified on his own behalf. In addition, the Individual submitted three exhibits into the record (Indiv. Exs. A-C). The DOE counsel presented the testimony of the DOE psychologist, and tendered fourteen exhibits (DOE Exs. 1-14). See Transcript of Hearing, Case No. PSH-14-0089 (hereinafter cited as "Tr.").

## II. REGULATORY STANDARD

The regulations governing the Individual's eligibility for access authorization are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The regulations identify certain types of derogatory information that may raise a question concerning an individual's access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Administrative Judge considers relevant factors, including "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 of the individual at the time of the conduct; the voluntariness of 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," and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Administrative Judge also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors and considerations. 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).

Ultimately, the decision concerning eligibility is "a comprehensive, common-sense judgment made after consideration of all relevant information, favorable and unfavorable . . . ." 10 C.F.R.

---

<sup>3</sup> Criterion H concerns information that a person has "an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a 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 conduct indicating that the Individual has "been, 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).

§ 710.7(a). In order to reach a decision favorable to the individual, the Administrative Judge must find that “the grant or restoration of access authorization to the individual will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* See generally *Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

### **III. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS**

As stated above, the LSO issued a Notification Letter informing the Individual that the DOE possessed derogatory information which raised doubts regarding his continued eligibility to hold a DOE access authorization. According to the Notification Letter, this information raises security concerns under Criteria H and J of the Part 710 regulations. DOE Ex. 1. As a basis for its Criterion H concerns, the LSO cited the DOE psychologist’s opinion that the Individual meets the diagnostic criteria for Other Specified Personality Disorder and Alcohol Use Disorder, which are illnesses or mental conditions which cause, or may cause, a significant defect in his judgment or reliability. *Id.* In support of its Criterion J concerns, the LSO cited the following information regarding the Individual’s alcohol use: (1) the Individual’s self-reported pattern of excessive alcohol consumption between 2010 and 2012; (2) the Individual’s admission that he discontinued his participation in the Alcoholics Anonymous (AA) program in 2013, after participating for approximately eight to ten months, because he “did not like to be told what to do in regards to his sobriety;” and (3) the opinion of the DOE psychologist that the Individual is, or has been, a user of alcohol habitually to excess. *Id.*

It is well-settled that certain mental conditions “can impair judgment, reliability, or trustworthiness,” and that the diagnosis of such a condition by a duly qualified mental health professional may raise security concerns. Adjudicative Guidelines, Guideline I, ¶ 27. Similarly, there is no question that the excessive use of alcohol raises security concerns because “excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” *Id.*, Guideline G, ¶ 21. In light of the DOE psychologist’s diagnoses of the Individual with Other Specified Personality Disorder and Alcohol Use Disorder, his opinion that the Individual is, or has been, a user of alcohol habitually to excess, as well as the Individual’s own statements regarding his alcohol use, I find that the LSO properly invoked Criteria H and J in this case.

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

In making a determination regarding the Individual’s eligibility for DOE access authorization, I have thoroughly considered the record in this proceeding, including the hearing testimony and the documentary evidence. For the reasons set forth below, I cannot conclude that restoring the Individual’s suspended DOE access authorization “will not endanger the common defense and security, and is clearly consistent with national interest.” 10 C.F.R. § 710.7(a).

#### **A. Criterion H –Illness or Mental Condition**

The Individual has a history of depression, marked by recurrent suicidal thoughts, which spans over 30 years. Tr. at 18-20. However, he was not formally diagnosed with a mental condition until 2007 when his marriage counselor suggested to the Individual that he may be “clinically depressed” and should consult with a psychiatrist concerning his psychological condition.<sup>4</sup> DOE Ex. 14 at 9. The Individual met with a psychiatrist, who diagnosed him with depression and prescribed appropriate medications. *Id.*; Tr. at 34-35. He also began meeting with a counselor on a weekly basis for individual therapy sessions. Tr. at 23-24.

In late 2011, following several years of marital problems, the Individual entered into a relationship with a married coworker. DOE Ex. 14 at 7. The Individual and his wife separated in early 2012, and they finalized their divorce in March 2013. Tr. at 14; DOE Ex. 14 at 7. Around the time that the Individual and his wife separated, in April or May of 2012, the Individual’s coworker also discontinued their relationship.<sup>5</sup> DOE Ex. 14 at 7. The Individual had difficulty coping with the end of his relationship with his coworker; however, he did ultimately begin a new relationship in September 2013. *Id.* at 8; Tr. at 32. Nonetheless, in January 2014, the Individual observed the coworker with another male coworker and became depressed. DOE Exs. 7 at 4, 12 at 9-12. The incident prompted the Individual to prepare his will and ask another coworker to be the executor of his estate. DOE Ex. 12 at 7-8, 12. Fearing that the Individual intended to harm himself, this coworker filed an incident report notifying their employer of her concerns. DOE Ex. 10.

In her May 2014 evaluation report, the HRP psychiatrist diagnosed the Individual with Persistent Depressive Disorder. DOE Ex. 14 at 17, 18-19. She based this diagnosis on the Individual’s “acknowledged symptoms of insomnia, low self-esteem, feelings of hopelessness in the form of sustained pessimism, decreased interest in social activities, implied sense of being overwhelmed or out of control . . . .” *Id.* at 17. In addition, the HRP psychiatrist noted that the Individual’s demeanor and statements during the evaluation “provided clues to long-term personality dysfunction . . . .” *Id.* Ultimately, the HRP psychiatrist concluded that the Individual exhibited traits which meet the criteria for “borderline personality disorder and other traits that are significant but do not meet full criteria for the specific disorder.” *Id.* at 18.

The DOE psychologist’s evaluation of the Individual largely echoed the findings of the HRP psychiatrist. In his May 2014 report, the DOE psychologist noted that the Individual’s history of depression “has been long-standing and unremitting,” despite the treatment that the Individual has undergone over the years. DOE Ex. 7 at 7. In addition, the DOE psychologist indicated that the Individual displayed “signs of a personality disorder marked by a pervasive pattern of instability or interpersonal relationships and mood.” *Id.* at 8. According to the DOE psychologist, based on the Individual’s “instability, volatility, suicidality, and ample evidence of

---

<sup>4</sup> After experiencing marital difficulty over several years, the Individual and his wife sought marriage counseling in 2007. *Id.* at 7, 12.

<sup>5</sup> There is disagreement in the record regarding the nature of the relationship. The Individual has described the relationship as an “intense,” albeit not physical affair. DOE Ex. 7 at 4. The coworker disagreed. She stated that she and the Individual confided in one another regarding difficulties in their respective marriages and became closer than they should have and things “got out of hand.” *See* DOE Ex. 9. Although the coworker did not testify at the hearing, in a written statement dated January 17, 2014, she alleged that the Individual behaved inappropriately toward her after she discontinued their relationship. *Id.*

a clinically significant distress and impairment in social and interpersonal areas,” he meets the diagnostic criteria for Other Specified Personality Disorder. *Id.* Finally, the DOE psychologist concluded that the Individual’s depression and personality disorder were illnesses or mental conditions which cause, or may cause, a significant defect in his judgment or reliability. *Id.* at 7-8.

At the hearing, the Individual acknowledged that depression has been a part of his life for many years, “more at some times than others,” and that he has had suicidal thoughts intermittently since he was in college. Tr. at 19-20, 34-35. According to the Individual, when things in his life became overwhelming, he took solace in the idea of suicide as “a possible way out.” He stated that he was “able to gain comfort” from the idea that he had “that one bit of control over [his] life.” *Id.* The Individual has since learned that his suicidal thoughts were a poor coping mechanism to which he turned in difficult times. In May 2014, the Individual attended an intensive outpatient program (IOP) at the suggestion of his site’s Employee Assistance Program (EAP) counselor. Tr. at 16-17; *see also* Individ. Ex. B. While the focus of the IOP was primarily on alcohol-related issues, the Individual found the program helpful in addressing issues pertaining to his depression. According to the Individual, he found the IOP beneficial because the program made him aware that his coping skills “were non-existent or self-destructive.” Tr. at 18. Describing the group sessions in the IOP as “very enlightening,” the Individual stated that he has learned not to avoid difficult situations and is now better able to communicate. Tr. at 20-21. The Individual testified that he continues to take his anti-depressant medications, and he sees his psychiatrist every six months for medication management. Tr. at 42. He also continues meeting with a counselor for individual therapy and attends the IOP aftercare sessions. Tr. at 43-44; Individ. Ex. B. The Individual has noticed improvement in his day-to-day life. He stated that he can still “get down,” but he does not resort to planning or threatening suicide as a coping mechanism anymore. Tr. at 35. He further stated that he “no longer cope[s] by disappearing back into [his] mind and using that to avoid the situation at hand.” Tr. at 33-34. Finally, the Individual, who has been in a stable relationship since September 2013, noted that his relationship has benefitted from his willingness to communicate and be honest with his partner, rather than to avoid difficult situations. Tr. at 30, 33.

After listening to the Individual’s testimony at the hearing, the DOE psychologist did not change the findings or opinions contained in his May 2014 report. Tr. at 72-73. The DOE psychologist noted that personality disorders are among “the more difficult kinds of issues to treat.” Tr. at 104. He testified that, as of the hearing, the Individual had not yet made “significant progress” in treating his psychological conditions. Tr. at 72. The DOE psychologist concluded that the Individual should continue to undergo “regular, routine” and “protracted” treatment focused on his personality and “characterological” issues, separate from any treatment of his alcohol-related condition. Tr. at 104, 107.

Among the factors that may serve to mitigate security concerns raised by the diagnosis of illnesses or mental conditions which cause, or may cause, significant defects in judgment or reliability, such as the Individual’s psychological conditions in this case, the Adjudicative Guidelines identify the following possible mitigating factors: “demonstrated ongoing and consistent compliance” with a treatment plan; voluntary participation in counseling or treatment with a favorable prognosis by a duly qualified mental health professional; a recent opinion by a

duly qualified mental health professional that the condition is under control “and has a low probability of recurrence or exacerbation;” and, “no indication of a current problem.” Adjudicative Guidelines, Guideline I, ¶ 29. In this case, two mental health professionals diagnosed the Individual with depression and a personality disorder, conditions which may cause a significant defect in judgment and reliability. Moreover, the DOE psychologist testified that the Individual was in the early stages of his treatment and required a “protracted” period of treatment for his conditions. In the absence of any medical testimony to the contrary, I am convinced by the DOE psychologist’s testimony that the Individual continues to have an illness or mental condition which causes, or may cause, a significant defect in his judgment or reliability. Consequently, I find that the Individual has not sufficiently mitigated the Criterion H concerns cited in the Notification Letter regarding his psychological conditions.

## **B. Criteria H and J – Excessive Alcohol Use**

The Individual began consuming alcohol at age 18, when he typically “consumed [a] six-pack of beer on a daily basis” while attending college. DOE Ex. 14 at 12. His consumption of alcohol decreased when he began dating his former wife because she was opposed to his drinking. During most of his marriage, the Individual typically consumed alcohol only in social settings where his wife was not present. *Id.* In 2011, the Individual’s wife indicated during a marriage counseling session that she no longer cared whether he drank alcohol. DOE Ex. 7 at 3; DOE Ex. 14 at 12. Subsequently, the Individual began drinking alcohol nightly, often drinking himself to sleep. *Id.* That drinking pattern continued until May 2012, when, according to the Individual, he began attending Alcoholics Anonymous (AA) meetings and working with a sponsor in the wake of his separation from his wife. Tr. at 14-15.

At the hearing, the Individual asserted that he was abstinent from alcohol from August 2012 to April 2013. Tr. at 14-15. According to the Individual, he decided to resume drinking in April 2013 because he “realized that he was not happy . . . with [AA] and the situation that [he] was in.” Tr. at 15. The Individual continued to drink “two, three drinks a week, and maybe three or four total on the weekend” until January 2014, when his HRP certification was suspended. *Id.* Following the suspension of his HRP certification, the Individual met with the EAP counselor, who suggested that the Individual abstain from alcohol until he met with the HRP psychiatrist. *Id.* In her May 2014 report, the HRP psychiatrist opined that the Individual “recently met criteria for Alcohol Use Disorder, Mild-Moderate.” DOE Ex. 14 at 18. She further noted that although the Individual had recently attended AA, his participation was “short-lived and motivated by [his] desire to get his ex-wife back. When it did not work, he stopped going to meetings.” *Id.* at 24. The HRP psychiatrist concluded that “in light of his other mental disorders,” the Individual’s “risk of relapse for alcohol use disorder in the immediate foreseeable future [was] moderate to high.” *Id.* After meeting with the HRP psychiatrist, the Individual resumed consuming alcohol “at about the same rate that [he] had been previously” drinking. Tr. at 17.

After evaluating the Individual in May 2014, the DOE psychologist raised similar concerns regarding the Individual’s alcohol consumption as those noted by the HRP psychiatrist in her report. The DOE psychologist concluded that the Individual had a “protracted history” of excessive alcohol use, and he noted that the Individual readily admitted that “during an almost two-year period he was intoxicated on a daily basis.” DOE Ex. 7 at 7. In diagnosing the

Individual with Alcohol Use Disorder, the DOE psychologist opined that the Individual's "reliance on excessive alcohol consumption for solace during difficult times" was of particular concern. *Id.*

As noted above, in June 2014, the Individual completed an IOP in order to address his alcohol-related condition. Tr. at 16-17; *see also* Individ. Ex. B. The Individual also continued his individual counseling sessions with the EAP counselor, resumed his participation in AA meetings, and attended aftercare group sessions through the IOP. Tr. at 26, 47; *see also* Individ. Exs. B, C.

In "the last few weeks" prior to the hearing, despite having maintained several months of abstinence, the Individual resumed consuming alcohol, drinking "three or four times" with his significant other and at events with her family. Tr. at 27-28. When asked at the hearing why he resumed drinking, the Individual testified that his decision to drink again was driven, in part, by his desire to make a good impression on his significant other's family at events he attended and "not to make any waves" in the group. Tr. at 55. According to the Individual, his significant other is supportive of his efforts not to drink. Regarding his most recent incidents of drinking, the Individual stated that although his significant other did not dispute his decision to drink, she did "express[] worry."<sup>6</sup> Tr. at 55-56. As of the date of the hearing, the Individual was uncertain of his future intentions regarding his consumption of alcohol. Tr. at 52. When asked whether he believed he had a problem with alcohol, the Individual vacillated in his answer. Ultimately, he stated that alcohol "has been" a problem for him, and is currently a problem "from the fact that it is important to DOE." Tr. at 58-61.

After listening to all of the hearing testimony, the DOE psychologist did not change the opinions that he offered in his May 2014 report regarding the Individual's alcohol consumption, or his ultimate diagnosis of Alcohol Use Disorder. Tr. at 68; *see also* DOE Ex. 7. The DOE psychologist described the Individual's decision to resume drinking – despite his repeated participation in AA, his completion of an IOP, and the evaluations by several mental health professionals who expressed concern regarding the Individual's alcohol consumption – as "troubling." Tr. at 69, 108. The DOE psychologist stated that alcohol "cannot be a go-to coping skill" for the Individual as it has been in the past. Tr. at 105. The psychologist added that "the lack of [a] frank admission [by the Individual] that alcohol has been a problem" is itself problematic in that it raises questions regarding the Individual's insight into the impact of alcohol on his life. Tr. at 69-70. Finally, during his testimony, the DOE psychologist did not change his recommendation that, in order to establish rehabilitation from his alcohol-related condition, the Individual should demonstrate at least one year of abstinence. Rather, he stated that, as of the hearing, the Individual required additional treatment for alcohol-related condition. Tr. at 105. In that regard, he noted that the Individual has not "ever done that for a year." Tr. at 72.

With respect to security concerns raised by an individual's excessive alcohol use, among the possible mitigating factors are that "so much time has passed, or the behavior was so infrequent,

---

<sup>6</sup> The Individual's significant other did not testify at the hearing. Therefore, the Individual's assertions regarding his recent alcohol consumption and his significant other's reaction to his decision to drink remain uncorroborated in the record.

or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," that "the individual acknowledges his or her alcoholism or issues of alcohol abuse [and] provides evidence of actions taken to overcome this problem . . .," and that "the individual has successfully completed inpatient or outpatient counseling or rehabilitation . . ., has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations . . . and has received a favorable prognosis by a duly qualified medical professional . . . ." Adjudicative Guidelines, Guideline G, ¶ 23. Similarly, as indicated above, factors that may serve to mitigate concerns raised by an individual's mental or psychological condition include the susceptibility of the condition to treatment, a favorable opinion by a duly qualified mental health professional that the condition is "under control or in remission, and has a low probability of recurrence or exacerbation," and the absence of evidence of a "current problem." Adjudicative Guidelines, Guideline I, ¶ 29.

After considering the hearing testimony and evaluating the record as a whole, I am unable to find that the Individual has mitigated the security concerns raised by his consumption of alcohol. As an initial matter, although the Individual represented at the hearing that he had abstained from consuming alcohol on various occasions for several months at a time, his testimony in that regard is wholly uncorroborated in the record. Even assuming, however, that his statements regarding his purported periods of abstinence are accurate, the Individual resumed drinking shortly before the hearing. The Individual's stated reason for drinking again – that he did not want to upset or "make waves" with his significant other's family – leaves me with doubts regarding the extent to which the Individual is able to control his drinking, particularly in times of stress. In addition, while the Individual established at the hearing that he has taken some positive steps to address the concerns raised by his alcohol consumption, such as resuming his participation in AA and completing an IOP, he appears to have done so because he believed it would reflect positively on him and hasten the restoration of his suspended security clearance. Despite the assessments of various mental health professionals regarding the Individual's alcohol use, as well as his own completion of an IOP and participation in AA, at the hearing, the Individual demonstrated a marked lack of insight into the role alcohol that has played in his life. The Individual's decision to resume drinking only serves to underscore his lack of insight in this regard. Moreover, that he resumed drinking despite his awareness of the underlying concerns related to his alcohol consumption continues to call into question his judgment and reliability.

In the absence of any evidence to the contrary, serious doubts remain regarding the Individual's acceptance that his alcohol consumption is actually a problem, apart from the DOE's concerns, as well as the likelihood that he will continue to seek treatment for his alcohol-related condition after the conclusion of this proceeding. Therefore, based on the evidence in the record before me, I cannot conclude that the Individual's alcohol-related condition is "under control" and "has a low probability of recurrence," or that there is "no indication of a current problem." *Id.* In this respect, I am convinced by the DOE psychologist's testimony that the Individual has not yet demonstrated rehabilitation or reformation from his Alcohol Use Disorder. Consequently, I find that the Individual has not mitigated the security concerns cited under Criteria H and J regarding his alcohol consumption.

## V. CONCLUSION

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the Individual's eligibility for a security clearance under Criteria H and J of the Part 710 regulations. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has not presented sufficient information to resolve the cited security concerns. Therefore, I cannot conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and security is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore the Individual's suspended DOE access authorization at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Diane DeMoura  
Administrative Judge  
Office of Hearings and Appeals

Date: February 4, 2015