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

In the Matter of Personnel Security Hearing)
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Filing Date: April 30, 2015) Case No.: PSH-15-0029
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Issued: August 20, 2015

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of xxxxxxxxxxxxxxxx (hereinafter referred to as “the individual”) to hold an access authorization¹ 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 fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should not be restored.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. In September 2014, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address concerns about the individual’s falsification and alcohol use. On April 6, 2015, the LSO sent a

¹ 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.

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 three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (f), (h) and (l) (hereinafter referred to as Criteria F, H and L, 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 two witnesses: one of his supervisors and his wife. The DOE counsel presented the testimony of five witnesses, including the DOE consultant psychiatrist, a DOE designated psychologist, a Personnel Security Specialist and two Managers. Both the DOE and the individual presented 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).

² Criterion F pertains to information that a person has “[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 personal 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, or proceedings conducted pursuant to § 710.20 through § 710.31.” 10 C.F.R. § 710.8(f). 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, causes, or may cause, a significant defect in his judgment or reliability.” 10 C.F.R. § 710.8(h). Finally, Criterion L relates to information that a person 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).

The individual must come forward at the hearing with evidence to convince the DOE that restoring 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 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.

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 three potentially disqualifying criteria as bases for suspending the individual’s security clearance, Criteria F, H and L. To support its reliance on Criterion F, the LSO alleges that the individual misrepresented information related to his alcohol consumption during a September 2014 PSI and misrepresented information related to his current prescribed medication during a January 2015 PSI. In addition, the LSO alleges that the individual provided “less than forthcoming” information regarding his alcohol consumption to the DOE consultant psychiatrist during an evaluation in December 2014.

From a security standpoint, false statements made by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *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*).

To support Criterion H, the LSO relies on the diagnosis of the DOE psychiatrist that the individual suffers from Unspecified Alcohol Related Disorder, and the expert’s opinion that this

condition is a mental illness that could cause a significant defect in the individual's judgment and reliability. Again, a mental condition such as Unspecified Alcohol Related Disorder can impair a person's judgment, reliability and trustworthiness. *See* Guideline I, *Adjudicative Guidelines*.

Finally, as for Criterion L, the LSO cites the individual's admissions regarding his alcohol consumption, two alcohol-related arrests, as well as the DOE psychiatrist's diagnosis of Unspecified Alcohol Related Disorder. The security concern at issue here is that 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. *See id.* at Guideline G.

IV. Findings of Fact

The individual has a history of alcohol consumption and has been involved in two alcohol-related incidents. In June 1979, the individual was arrested after becoming involved in a single vehicle accident in which he disregarded a stop sign and collided into a roadside ditch. He was arrested for public intoxication due to the fact that he was not in the vehicle at the time the police arrived. In August 1981, the individual was arrested for Driving Under the Influence of Alcohol. His blood alcohol content registered .11%. During a March 1990 PSI, the individual admitted that his alcohol use was excessive during his teen years and only became more troublesome after he joined the military, where he consumed alcohol on a daily basis. Ex. 1.

On August 12, 2014, the individual was selected for a random alcohol and drug screen. Three breathalyzer tests were given to the individual. *Id.* He registered .054% on the initial test, .049% on the second test, and .037% on the third confirmatory test. *Id.* The second test was discarded because of a procedural error. The individual was sent home following the results of the three tests. *Id.* During a PSI conducted on September 16, 2014, the individual was asked "how many breathalyzer tests were given?" *Id.* The individual answered two. When asked again "how many tests were given," the individual again answered two. *Id.* After it was revealed to the individual that the breathalyzer report indicated that three tests were given, the individual admitted to a third test. *Id.* The individual was also asked, during the 2014 PSI, about his alcohol consumption prior to his arrival at work on August 12, 2014. *Id.* He first stated that he consumed one shot of bourbon at noon prior to going to bed and that he awoke at 5:30 pm and left his house for work. After the interviewer explained to the individual that it was medically impossible for one shot of bourbon at noon to register a .054% at 7:00 pm, the individual admitted to consuming a 12-ounce coke to which he added approximately 5 ounces of bourbon prior to arriving to work. The individual also admitted that he becomes intoxicated five times a year and usually consumes twenty drinks to become intoxicated.³ *Id.*

³ In addition to these misrepresentations made during his September 2014 PSI, the individual was questioned about his current prescribed medication during a January 2015 PSI. During this PSI, the individual indicated that he was

On November 20, 2014, the DOE psychiatrist evaluated the individual. In his report dated December 4, 2014, the DOE psychiatrist concluded that the individual suffers from Unspecified Alcohol Related Disorder which may cause a significant defect in the individual's judgment or reliability. Ex. 5. The DOE psychiatrist further concluded that "[the individual] is less than forthcoming about the amount he drinks, past or present, so I am unable to give him a diagnosis of Alcohol Disorder." He added that the individual indicates no need or willingness for rehabilitation. *Id.*

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)⁴ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored. I cannot 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. Criterion F

The key issue under Criterion F is whether the individual has brought forward sufficient evidence to demonstrate that he can now be trusted to be consistently honest and truthful with the DOE. In considering this question, I found that the nature of the individual's misrepresentations was serious. The individual's lack of candor concerning his alcohol and prescribed drug use could increase his vulnerability to coercion or blackmail and raises important security concerns. The DOE must rely on individuals who are granted access authorization to be honest and truthful. This important principle underlies the criteria set forth in 10 C.F.R. § 710.8(f).

During the hearing, the individual was questioned about the conflicting answers he provided during a number of interviews including his September 2014 PSI. Transcript of Hearing (Tr.) at

taking just two medications, Celebrex and Prilosec. However, when confronted with a positive test for opiates, the individual amended his answer and admitted to taking Tylox (Oxycodone) for his arthritis. He stated that it was prescribed to him by his doctor in November 2014.

⁴ 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.

178. He testified that prior to his August 2014 random alcohol and drug screen, he had one glass of coke and added bourbon to it. *Id.* The individual further testified that he was not paying attention to the amount of bourbon he was adding to his drink or to his consumption. He testified that when the interviewer, during the September 2014 PSI, asked him to quantify the amount of bourbon he drank, he felt nervous, anxious and “flustered.” *Id.* at 183. The individual stated that he just gave a random number, five ounces of bourbon, because he wanted to be cooperative. *Id.* He testified that he did not intentionally misrepresent the amount of alcohol he consumed prior to his random screen, but rather he was nervous and confused about the questions. *Id.* Likewise, when the interviewer questioned the individual about the number of breathalyzer tests he was given during his random screen, the individual testified that he believed he was given only two tests since one of them was discarded due to a procedural error. *Id.* at 187. He stated that again he was not trying to mislead the interviewer during his PSI. In addition, when asked about how often he gets intoxicated in a year, the individual testified that he did not know what to say and just guessed when he told the interviewer that he gets intoxicated five times a year and consumes twenty drinks to become intoxicated. The individual reiterated that he was trying to be cooperative and not trying to provide misleading answers. *Id.* at 189-190. He also testified that he was not trying to hide anything when questioned about his alcohol use, alcohol-related incidents and medication by the DOE psychiatrist. *Id.* at 198-200. In addition, the individual acknowledged that he should have been more forthcoming with the DOE designated psychologist about the amount he drank on the day of his random alcohol test. *Id.* at 200.

To determine whether the individual has mitigated the Criterion F concerns, I considered the relevant factors set forth in Adjudicative Guideline E. I find that two of the relevant factors apply in this case. First, the individual credibly testified that the responses to questions regarding his alcohol use as well as questions regarding his medication were guesses he made and that he was unsure as to how to answer the questions. He also credibly testified that he was anxious and nervous during his interviews and gave answers in an attempt to be cooperative. The individual convinced me that, although he may have been in denial about his alcohol consumption, he did not intentionally try to mislead the DOE in his responses. Under these circumstances, I believe the individual’s behavior is unlikely to recur and does not cast doubt on his reliability, trustworthiness, or good judgment. *See Adjudicative Guidelines* at ¶ 17(c). Second, the individual has acknowledged his behavior with respect to his responses during his PSIs and has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress. During the hearing, the individual was open and candid about his alcohol use as well as his confusion regarding what was being asked of him during his PSIs and evaluation with the DOE psychiatrist. *See id.* at ¶ 17(c), (d). Again, I find that this behavior is unlikely to recur. Accordingly, I conclude that the security concerns raised under Criterion F have been sufficiently resolved.

B. Criterion H

The individual does not dispute the DOE psychiatrist's diagnosis of Unspecified Alcohol Related Disorder. Therefore, the focus of the analysis of the Criterion H concerns will be on whether the individual has demonstrated adequate evidence of rehabilitation or reformation from Unspecified Alcohol Related Disorder.

During the hearing, the individual testified that he has abstained from alcohol since January 2015. He further testified that although he doesn't believe Alcoholics Anonymous (AA) is the right "fit" for him, he has attended (AA) on a regular basis since February 2015. Tr. at 194. The individual stated that he has also attended ten counseling sessions through his employer's Employee Assistance Program. According to the individual, he has made positive changes since January 2015 and believes the random alcohol and drug screen was a "wake up call" for him. He testified that he is also taking medication to help with his anxiety. Ex. F. The individual further testified that he is committed to remaining abstinent from alcohol. During the hearing, the individual also offered the testimony of one of his supervisors and his wife. The supervisor testified that he has known the individual for 31 years and that the individual is one of his superior employees. He further testified that he did not know the individual drank alcohol and that the individual's random alcohol and drug screen results appeared to be out of character for the individual. He also believes the individual is an honest person. The individual's wife, who has been married to the individual for 32 years, testified that she has only known the individual to be a social drinker. She corroborated the individual's testimony that he last consumed alcohol on January 1, 2015. The individual's wife also testified that the individual has never blacked out. She stated that he is an honest person who made a mistake.⁵

In addition to the individual's witnesses, the DOE Counsel offered the testimony of a DOE designated psychologist who performs Fitness for Duty exams as part of the Human Reliability Program (HRP). The DOE psychologist first met the individual in 2004 as a member of the HRP. Ex. 7; Tr. at 57. She evaluated the individual for Fitness for Duty following his positive random alcohol test. *Id.* At the time of her evaluation, the DOE psychologist found that the individual's probability of having a substance use disorder to be low, and further that the individual's positive alcohol test appeared to have been an isolated occurrence. *Id.* However, the individual told her that the night prior to the random alcohol test, he drank a single shot of bourbon and then went to sleep. During the hearing, the DOE psychologist testified that had she known the amount of alcohol the individual actually consumed prior to this random alcohol test

⁵ Two other managers, including the individual's direct supervisor, testified during the hearing. Both testified that aside from the individual's random alcohol test result, the individual is a solid employee and an honest and trustworthy person.

she would have been concerned from an HRP standpoint and would have recommended that the individual be evaluated off-site by a substance abuse expert. *Id.* at 61. She further testified that the individual never gave her any indication that he was a heavy drinker. *Id.* at 62. According to the DOE psychologist, the individual's history of drinking perhaps five shots of bourbon prior to work is suggestive of tolerance, i.e, the repeated usage of large quantities of alcohol. *Id.* at 63. She noted that the individual may be in denial about his alcohol usage. *Id.* at 65.

Finally, the DOE psychiatrist listened to the testimony at the hearing before testifying himself. He testified that, during his evaluation, the individual gave inconsistent statements regarding the amount of alcohol he consumed and because he could not quantify the individual's consumption, he could not give him a diagnosis of Alcohol Abuse Disorder. *Id.* at 121. The DOE psychiatrist further testified that he believes the individual has a problem with tolerance and reiterated that he has not been forthcoming with his past history of alcohol consumption. Although the individual is in treatment with a counselor and has been attending AA meetings, he believes the individual has not yet achieved adequate rehabilitation and that he still has a mental condition that causes a significant defect in his judgment and reliability. According to the DOE psychiatrist, the individual should maintain abstinence for a period of one year. *Id.* at 138, 141, 154.

In the administrative process, Administrative Judges accord deference to the expert opinion of psychiatrist, psychologist and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing*, Case No. TSO-0728 (2009).⁶ At the outset, I am persuaded by the testimony of the DOE psychiatrist that the individual has not yet achieved adequate evidence of rehabilitation. Moreover, I find that none of the mitigating factors outlined in the Adjudicative Guidelines apply in this case. *See Adjudicative Guidelines*, Guidelines G and I, ¶ 23 and ¶29, respectively. For example, the individual's past problematic alcohol use is recent and although he now acknowledges that he has an alcohol problem and has taken actions to overcome his problem, he has not yet established a pattern of abstinence to ensure a low risk of relapse. In addition, the DOE psychiatrist has not given the individual a favorable prognosis. *See Adjudicative Guidelines* at Guideline G , ¶ 23(a)-(d). Moreover, with regard to Guideline I, the DOE psychiatrist's opinion that the individual still has a current alcohol problem does not allow me to find mitigation of the individual psychological condition. In short, the individual has not yet established adequate evidence of rehabilitation, and therefore I am unable to make a favorable predictive assessment of his future behavior with respect to his alcohol use. For these reasons, I find that the individual has not yet mitigated the DOE's security concerns under Criterion H.

⁶ 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>.

C. Criterion L

The DOE's concerns under Criterion L are that 1) the individual reported to work under the influence of alcohol on August 12, 2014, registered .054% on a Breathalyzer and was sent home from work; 2) in his September 2014 PSI, the individual stated that he becomes intoxicated five times a year and usually consumes 20 drinks to become intoxicated, and in a 1990 PSI, he admitted that his alcohol use was excessive in his teen years and during the military; 3) the individual has had two alcohol-related arrests (in 1979 and in 1981); and 4) the individual was diagnosed with Unspecified Alcohol Related Disorder.

Among the factors which could serve to mitigate the security concerns raised by the individual's lack of judgment and criminal conduct are: (1) the passage of time, the infrequency of the behavior, or that the behavior happened under such unusual circumstances that it is unlikely to recur in the future; (2) the individual has acknowledged the behavior or has taken positive steps to alleviate the factors that caused untrustworthy, unreliable behavior and such behavior is unlikely to recur; (3) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and (4) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations. *Id.* at ¶ 17 (c), (d), (e) and (g). In this case, although the individual has acknowledged his behavior with respect to his alcohol use and has taken some positive steps to alleviate the factors that caused his behavior, all of these concerns are related to the individual's alcohol problem and are intertwined with the LSO's concerns under Criterion H which have not yet been mitigated. I cannot conclude at this time that the individual's conduct is unlikely to recur in the future. After considering the "whole person," including the individual's unresolved alcohol problems. I am not yet convinced that the DOE can rely on the individual's ability to make sound judgment calls regarding the safeguarding of classified information. *See Adjudicative Guidelines* at (2)a. I therefore find that the individual has not sufficiently mitigated the LSO's concerns under Criterion L.

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 Criterion F, H and L. 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 mitigate the security concerns associated with Criterion F. However, I cannot find that the individual has brought forth

convincing evidence to resolve the security concerns associated with Criteria H and L. I therefore cannot 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 not 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: August 20, 2015