



(DOE psychologist) for a forensic mental health evaluation, after which the DOE psychologist concluded that the individual suffers from Alcohol Abuse. On April 16, 2015, 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 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 to request an administrative review hearing, and I was appointed the Administrative Judge in the case. At the hearing, the individual presented his own testimony and that of five other witnesses, and the LSO presented the testimony of one witness, the DOE psychologist. In addition to the testimonial evidence, the LSO submitted eight numbered exhibits into the record and the individual submitted 19 exhibits, identified as Exhibits A through S. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic 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 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 evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an

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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).

individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **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 suffers from Alcohol Abuse, a mental condition that, in his opinion, causes or may cause significant defects in the individual's judgment and reliability. In addition, the LSO cites the individual's December 10, 2014, arrest for Driving Under the Influence, his admission during the January 6, 2015, PSI that he had driven while intoxicated about six times within the previous year, and his statement during the February 26, 2015, psychological evaluation that he might have driven while intoxicated a dozen times in the previous two 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**

Throughout his adult life, the individual has consumed beer casually and socially, but rarely to excess. He is also a hard worker, who tends to bring his workday stresses home with him and controls them through physical, recreational activity. Following an emergency appendectomy in December 2013, he resolved to relax more and have more fun, and began drinking beer, primarily locally brewed craft beers, more frequently and in greater amounts. Tr. at 56-58. During 2014, when he went out to dinner with his wife, he would commonly drink one beer before the meal, one with the meal, and one after the meal. He generally limited himself to three beers in an evening, which he believed prevented him from becoming intoxicated. The craft beers he consumed, however, are generally served in pints and have a higher alcohol content than standard beers. On these occasions, his wife, a non-drinker, would drive them home. He admits that on some

occasions he exceeded his three-beer limit, and on some of those occasions, when out without his wife, drove himself home. *Id.* at 58-60.

On the evening of the arrest, he had met his adult son at a restaurant where he had his customary three pints of craft beer with his meal while they caught up on each other's lives. On his way home after dinner, he decided to stop at a bar to relax further, and ultimately drank three more pints of beer over 90 minutes, without consuming any additional food. He then got in his car and started driving home. Along the way, the local police pulled him over for failing to stay in his lane, administered a field sobriety test, which he failed, and placed him under arrest. Two breathalyzer tests reflected a breath alcohol content of .16 and .14g/210L, roughly twice the legal limit. *Id.* at 60-61.

Following the arrest, the individual immediately reported the event to his employer and voluntarily sought help from his site's employee assistance program (EAP). He stopped drinking alcohol immediately after the night of his arrest, and has maintained his abstinence since then. *Id.* at 62-63, 65, 79. His EAP counselor testified at the hearing, emphasizing that the individual had come to EAP voluntarily and sincerely, concerned about his increasing alcohol consumption becoming a "slippery slope" that might take him in a direction he did not want to go. *Id.* at 25, 29. The EAP counselor engaged the individual in an alcohol education and awareness program, which the individual completed, and the counselor met with him for a total of eight sessions. *Id.* at 25-26. The individual complied with all court-ordered and DOE-ordered requirements that arose from the arrest, including abstaining from alcohol and frequent alcohol and drug screens, some of which were accomplished by means of a device into which he was required to breathe every four hours for several weeks. *Id.* at 63; Ex. 4 (Psychological Assessment Report) at 3.

The DOE psychologist evaluated the individual in February 2015. He determined that the individual met the criteria for Alcohol Abuse as set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association*, Fourth Edition Text Revised (DSM-IV-TR). Ex. 4 at 5. He based his opinion on the individual's report of his drinking behavior over the course of the two previous years, including the individual's estimate that he might have driven while intoxicated a dozen times during that period. *Id.* at 3, 5. While he stated that the individual's Alcohol Abuse was a condition that could cause significant defects in judgment or reliability, he also stated that the individual had no other "diagnosable psychopathology." *Id.* at 5. He was impressed with the individual's honesty and integrity regarding his admissions of alcohol use and his "soundly reasoned commitment to abstain from drinking in the future." *Id.* Because the individual appeared to have benefited from the EAP education program, the DOE psychologist did not recommend additional training or counseling, or even participation in Alcoholics Anonymous. He stated that "[a]dequate evidence of his reformation would be demonstrated if [the individual] could remain abstinent for a total of six months from his sobriety date" of December 10, 2014. *Id.*

About five months into his period of abstinence, the individual sought an independent assessment of his progress. A therapist with significant experience in substance abuse issues testified at the hearing that the individual explained to him about the DUI arrest and the corrective steps he had taken, including his work with the EAP and his

abstinence. *Id.* at 35-36. The therapist believed that the arrest was a wake-up call for the individual; until then he had not realized the impact his increasing alcohol consumption had on his functioning. *Id.* at 39. The therapist determined that there was no need for additional treatment, agreed with the DOE psychologist's evaluation, and concluded that the individual would probably have no future problems with alcohol use as long as he continued to follow his healthful lifestyle, which includes physical recreation and good family and social support systems. *Id.* at 37-38.

Two supervisors and a long-time friend also testified at the hearing. The supervisors attested to the individual's excellent work ethic, attendance, character, and value to their organization. *Id.* at 16, 51. They also spoke highly of the individual's openness in communicating the details of his arrest and its consequences to his staff, co-workers, and supervisors. *Id.* at 18-19, 22, 52, 54. The friend, who sees the individual socially a few times each week, and formerly drank beer with him on occasion, confirmed that the individual has not consumed any alcohol since December 2014, even at events where alcohol was available, and stated that the individual removed all alcohol from his home and from his weekend cabin. *Id.* at 41-44, 47-48.

In his testimony at the hearing, the DOE psychologist expressed his opinion that the individual had met all the recommendations that he had set forth in his evaluative report. He also stated that the individual is, in his opinion, a person of strong character. *Id.* at 81. He emphasized that he had not recommended permanent abstinence, but rather a period of six months of abstinence to demonstrate control over drinking. *Id.* at 82. While maintaining abstinence would be optimal, and the individual appeared to be content with that option, the DOE psychologist stated that the individual's prognosis for consuming alcohol in a controlled fashion, without becoming intoxicated, would be "very high," and his prognosis for continued abstinence would be "nearly as high." *Id.* at 82-83.

## **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's access authorization should be restored. I find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

I find that the individual was properly diagnosed as suffering from Alcohol Abuse. Nevertheless, the record, in particular the testimony of the individual, his EAP counselor, the therapist who performed an independent evaluation, and the DOE psychologist, establishes that the individual has completed six months of abstinence<sup>3</sup> and an amount of alcohol education that satisfies all of the experts who testified at the hearing. The concurrence of the mental health experts regarding his current status demonstrates to me

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<sup>3</sup> The hearing was convened two days before the completion of the six-month period.

the confidence they have in the individual's progress through treatment and his motivation to remain sober at all times. Furthermore, I am convinced that the individual has learned a great deal as a result of his December 2014 arrest, both through alcohol education and through enduring the personal and financial consequences of his actions, and is highly motivated to avoid a similar situation in the future. I have taken into consideration a number of mitigating factors in his favor, specifically his acknowledgment of his alcohol problem, his abstinence, his voluntary participation in a treatment program, and the DOE psychologist's favorable prognosis. Adjudicative Guidelines at Guideline G, ¶ 23. After considering all the testimony and written evidence in the record, I am 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 brought forth sufficient evidence to resolve the security concerns associated with these criteria. I therefore find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be restored.

William M. Schwartz  
Administrative Judge  
Office of Hearings and Appeals

Date: July 24, 2015