

examination by a DOE contractor psychologist (DOE Psychologist).² Exhibit (Ex.) 11; Ex. 4; Ex. 5.

In a February 2016 letter (Notification Letter), the LSO informed the Individual that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance and that his security clearance was suspended. Ex. 1. The Notification Letter explained that that the derogatory information fell within the purview of three potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (j) and (l) (Criteria H, J, and L, respectively).³

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. The DOE submitted 12 Exhibits (Exs. 1-12) into the record and presented the testimony of the DOE Psychologist. At the hearing, the Individual presented his own testimony and the testimony of a licensed peer support worker (LPSW) from his treatment provider along with four Exhibits (Exs. A-D). *See* Transcript of Hearing, Case No. PSH-16-0021 (“Tr.”).

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 (1998) (“clearly consistent with the national interest standard for granting security clearances indicates “that security determinations should err,

² The DOE Psychologist’s November 2015 report regarding the Individual found that he suffered from Alcohol Abuse and that the Individual had not, at the time of the examination, demonstrated sufficient evidence of rehabilitation or reformation. Ex. 4 at 8. She also found, that given the Individual’s chronic and recent alcohol-related problems, the Individual should remain abstinent from alcohol for a period of 24 months supported by frequent, random alcohol testing. Ex. 4 at 8. Further, the DOE Psychologist stated that the Individual should participate in an intensive outpatient treatment program for 12 months followed by an aftercare program of an additional 12 months. Ex. 4 at 8.

³ Criterion H refers to information indicating that an individual has “[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 references information showing that an individual 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). Criterion L describes information demonstrating that an individual 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).

if they must, on the side of denials”); *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).

An individual must come forward 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). Thus, an 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.* 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 Classified Information, The White House (December 19, 2005) (Adjudicative Guidelines).*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites Criteria H, J, and L as the basis for suspending the Individual’s security clearance. The LSO cites, as Criteria H and J derogatory information, August 2014 and November 2015 evaluative reports from the DOE Psychologist opining that the Individual suffers from Alcohol Abuse.⁴ Ex. 1; *see* Ex. 4; Ex. 5. Also cited as Criteria H and J derogatory information was the Individual’s arrest in July 2015 for Aggravated DWI and the Individual’s history of other alcohol-related arrests.⁵ Ex. 1. Excessive alcohol consumption often leads to the exercise of

⁴ The Individual was arrested in May 2014, for DWI. The LSO subsequently suspended the Individual’s access authorization after conducting a personnel security interview with the Individual in June 2014, and receiving an August 2014 report from the DOE Psychologist opining that the Individual suffered from Alcohol Abuse and that the Individual required a 12 month period of treatment and abstinence from alcohol. *See* Ex. 5 at 9-10. Pursuant to a request by the Individual, OHA conducted an Administrative Review hearing regarding his eligibility to hold an access authorization. The OHA Administrative Judge who heard the case determined that the Individual’s access authorization not be restored, in part, because the Individual had not completed the DOE Psychologist’s recommended 12 months of abstinence and treatment. The Individual’s clearance was later restored.

⁵ The Individual had been arrested in May 2014 for Aggravated DWI and Careless Driving, in January 2012 for Aggravated Assault, Aggravated Battery and False Imprisonment against a Household member, and in August 1991 for DWI and Careless Driving. Ex. 1.

questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. Adjudicative Guidelines, Guideline G, at ¶ 21. Further, certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. Adjudicative Guidelines, Guideline I, at ¶ 27.

The LSO informed the Individual that his history of arrests, described above and including a 1988 arrest for Possession of a Stolen Vehicle and Tampering with a Motor Vehicle, constituted a pattern of criminal conduct falling within the type of derogatory information described under Criterion L. Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations. Adjudicative Guidelines, Guideline J, at ¶ 30.

IV. Findings of Fact

Prior to his July 2015 DWI arrest, the Individual had been abstinent from alcohol for approximately one year. Tr. at 45. After this arrest, the Individual sought help with his alcohol problem and completed a 12 week alcohol education program in December 2015. Tr. at 54-55. However, the Individual believed that he needed a program where he could discuss his personal issues. Tr. at 56. The Individual began to attend a peer support program (PSP). The Individual has worked with the PSP since March 2016. Tr. at 56. When the Individual sought help at the PSP, he asked if he could work with a person instead of attending a group and he began to work individually with his LPSW. Tr. at 56-57. At the PSP, the Individual learned how to “say no” when offered alcohol. Tr. at 57. The Individual believes that he now recognizes that he has an alcohol problem and is not now embarrassed by this fact. Tr. at 58. The Individual is motivated to be abstinent because “I need my job more than alcohol.” Tr. at 58-59. He believes that if he had a personal crisis in the future he could contact his LPSW at any time. Tr. at 56.

The LPSW testified that the PSP program is an “evidence-based” program which helps individuals to “reach recovery.” Tr. at 16. The PSP works with individuals on the eight dimensions of wellness as defined by the Substance Abuse and Mental Health Administration, an agency within the U.S. Department of Health and Human Services. The LPSW testified that the Individual has not consumed alcohol for the prior 10 months. Tr. at 19, 21. In meeting with the Individual, the LPSW has been working with the Individual on relapse prevention, conflict resolution, and grief and loss issues. Tr. at 17-18. He meets with the Individual for approximately one hour per week. Upon reading the DOE Psychologist’s November 2015 report, recommending that the Individual attend an intensive outpatient program, the LPSW stated that the PSP could be adjusted so that the Individual could meet with him for two hours a week. Tr. at 23.

The LPSW testified that, for the Individual not to return to a pattern of alcohol misuse, the Individual needs to develop a new network of friends. Tr. at 27. Additionally, the LPSW believes that the largest problem the Individual deals with is his tendency to hold problems within and not

share them with others. Tr. at 27. The LPSW notes that the Individual's current girlfriend is a non-drinker and provides a positive impact on the Individual's life. Tr. at 28. Overall, the LPSW believes that the Individual presents a "very low risk" for relapse. Tr. at 25-26.

The DOE Psychologist testified that the PSP that the Individual was currently attending did not qualify as an intensive outpatient program that would comply with her recommendation for treatment. Tr. at 63-64. Significantly, the PSP did not use licensed mental health professionals to provide treatment. Tr. at 64. Further, the Individual had not completed her recommended two-year period of treatment and abstinence. Tr. at 64. The DOE Psychologist also noted that the initial program that the Individual attended was an alcohol education group which is the lowest level of intervention for substance abuse issues and there is no evidence of such a program's effectiveness in treating substance abuse disorders. Tr. at 65-66. Given the deficiencies in the Individual's treatment program and the relatively limited time he has been in treatment, the DOE Psychologist could not conclude that, at the date of the hearing, the Individual was rehabilitated from his alcohol misuse problem. Tr. at 75.

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 security clearance should not be restored at this time.

A. Criteria H and J

The Criterion H and J security concerns center on the DOE Psychologist's determination that the Individual suffers from Alcohol Abuse and the Individual's history of alcohol-related criminal offenses. In mitigation, the Individual has presented significant evidence regarding his excellent work performance. *See* Ex. C; Ex. D. Further, the Individual testified that he has accepted the fact that he has an alcohol problem. From the testimony, I find that the Individual has been proactive in seeking treatment. The Individual has also presented an August 2015 and April 2016 medical evaluation for work assessments from a licensed psychologist (OM Psychologist) in his facility's occupational medicine department. Ex. A. The April 2016 assessment reports that alcohol test results for the Individual have been negative since July 2015. Ex. A at 3.

Notwithstanding the Individual's evidence, I find that the DOE Psychologist's testimony regarding the state of the Individual's treatment and rehabilitation to be convincing on the issue of the state of the Individual's rehabilitation from Alcohol Abuse. The Individual's history of alcohol-related incidents and his prior unsuccessful treatment for Alcohol Abuse after the May 2014 DWI arrest, support the DOE Psychologist's assessment that two years of treatment and abstinence are required to demonstrate rehabilitation. I also find that the Individual's current PSP is not sufficiently rigorous to provide the Individual with treatment sufficient to resolve the security concerns arising

from the Individual's diagnosis of Alcohol Abuse. While the LPSWs at the Individual's PSP receive a week of training, and licensing from the State, there does not appear to be significant oversight by a licensed mental health practitioner such as a psychologist or psychiatrist. See Tr. at 36 (requirement for one week of training plus periodic continuing education requirements for LPSWs). This finding is supported by the Individual's April 2016 assessment by the OM Psychologist where he gives his opinion that that the Individual's PSP does not qualify as an intensive outpatient program since licensed mental health professionals do not provide the treatment.⁶ Ex. A at 3. While I do not offer an opinion regarding the effectiveness of PSPs, I find the DOE Psychologist's testimony regarding the Individual's condition to be much more persuasive than that of the LPSW.⁷ Further, I find that none of the mitigating factors listed in the Adjudicative Guidelines for alcohol consumption (Guideline G) or psychological conditions (Guideline I) are applicable in this case. See Adjudicative Guidelines, Guideline G at ¶ 23; Adjudicative Guidelines, Guideline I at ¶ 29. For the above stated reasons, I cannot conclude that the Individual has fully resolved the security concerns raised by the DOE Psychologist's report or his history of alcohol-related arrests.

B. Criterion L

The Criterion L security concerns arise from the Individual's criminal history of DWI arrests as well as arrests in 2012 for Aggravated Battery against a Household Member and False Imprisonment, and a 1988 arrest for possession of a Stolen Vehicle and Tampering with a Motor Vehicle. Alcohol has played a significant role in his DWI arrests and the 2012 arrest for False Imprisonment. See Ex. 11 at 113-14; Ex. 12 at 77-78. As discussed above, I cannot find that, at this time, the Individual is rehabilitated from his alcohol problem. Nor can I find that any of the mitigating factors regarding criminal conduct referenced in the Adjudicative Guidelines are applicable in this case. Adjudicative Guidelines, Guideline J at ¶ 32. Consequently, I cannot find that the security concerns arising from his pattern of alcohol-related criminal offenses have been resolved. See *Personnel Security Hearing*, Case No. PSH-16-0011, *slip op.* at 10 (2016).

VI. Conclusion

⁶ There is significant evidence that the Individual did not receive adequate advice when he approached officials at his facility for advice and guidance as to what kind of treatment he should seek for his alcohol problem. Tr. at 29, 50, 69-71. This problem was probably aggravated by the fact that the Individual has some difficulty with English. Tr. at 50, 69-71. Nevertheless, I cannot consider the fact that the Individual was given inadequate information regarding treatment programs as a mitigating factor in this case. My jurisdiction is limited to making an assessment of the Individual's eligibility to possess an access authorization as of the date of the hearing. See 10 C.F.R. § 710.27(a); 10 C.F.R. § 710.7. Even if I could consider this as a mitigating factor, the Individual would not have completed the recommended 24 month program of treatment and abstinence.

⁷ In the April 2016 assessment, the OM Psychologist opines that "time and continued testing for alcohol" is the only way to be certain of the Individual's commitment to an alcohol-free lifestyle. Ex. A at 3. The OM Psychologist also stated in his April 2016 assessment that the Individual "will need to complete another course of treatment with a licensed mental health provider." Ex. A. at 3.

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, J and L 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 security concerns raised by the Criteria H, J and L derogatory information recorded in the Notification Letter. Thus, I cannot conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, I find that the Individual's access authorization should not be restored at this time.

Richard A. Cronin, Jr.
Administrative Judge
Official of Hearings and Appeals

Date: June 22, 2016