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March 17, 2008

OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: July 27, 2007
Case Number: TSO-0522

This Decision concerns the continued eligibility of XXXXXXXXXXXX(hereinafter referred to as "the individual") to hold an access authorization (or "security clearance") under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should not be restored at this time.

I. Background

The individual is employed by a Department of Energy (DOE) contractor and held a security clearance as a condition of his employment. In August 2005, the individual informed DOE of an alcohol-related arrest. In order to resolve the security concern arising from the arrest, the local DOE security office (LSO) conducted a Personnel Security Interview (PSI) with the individual in May 2006. The PSI did not resolve the concern and in February 2007, a DOE consultant-psychiatrist evaluated the individual. The psychiatrist opined that the individual has been a user of alcohol habitually to excess and that he had met the diagnostic criteria for alcohol abuse between October 2005 and October 2006. According to the psychiatrist, alcohol abuse is an illness which causes or may cause a significant defect in the individual's judgment or reliability.

In June 2007, the LSO informed the individual how to proceed to resolve the derogatory information that had created a doubt regarding his continued eligibility for access authorization. Notification Letter (June 19, 2007). The Notification Letter stated that the derogatory information regarding the individual falls within the purview of 10 C.F.R. § 710.8 (h) and (j) (Criteria H and J). The LSO invoked Criterion H based on information in its possession that the individual has an illness or mental condition that causes or may cause a significant defect in his judgment or reliability. The LSO invoked Criterion J on the basis of information that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. 10 C.F.R. § 710.8 (j). In this regard, the Notification Letter cites the diagnosis of the DOE consultant-psychiatrist that the individual suffered from alcohol abuse and that he has been

a user of alcohol habitually to excess. Alcohol abuse, in the opinion of the DOE consultant-psychiatrist, is an illness or mental condition that causes or may cause a significant defect in the individual's judgment or reliability. 10 C.F.R. § 710.8 (h).

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). The Director of OHA appointed me as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the DOE consultant-psychiatrist (DOE psychiatrist) testified on behalf of the agency. The individual testified on his own behalf and also elected to call his girlfriend, his supervisor, his sister and a friend as witnesses. The transcript taken at the hearing shall be hereinafter cited as "Tr." Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." Documents submitted by the individual shall be cited as "Ind. Ex."

II. Analysis

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates that security determinations should err, 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).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. 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): 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 the 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 continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored at this time because I cannot conclude that such a restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

The individual began drinking alcohol at the age of 18. Ex. 11 (PSI) at 26. By his own account, he drank infrequently and never to the point of intoxication. In August 2001, at the age of 19, the individual began working for the contractor. Ex. 10. In February 2002, the contractor requested a clearance for the individual and DOE granted the request. Ex. 4. He continued to drink moderately (once every two or three months) until he turned 21, and then increased the frequency of his drinking to once a month. He got intoxicated a couple of times. PSI at 33. In 2004, he turned 22 and increased his drinking to twice a month, usually sharing a bottle of whiskey with four or five friends. *Id.* at 29. He got intoxicated every time he drank. *Id.* at 34.

In July 2005, the individual attended a concert and drank four beers on the night of the event. After the concert, the police stopped the car he was riding in and gave him a citation for an Open Container. PSI at 24-26. In August 2005, the individual was on a road trip with a friend. On the way to their destination, they stopped at a bar and each man consumed two 16-ounce beers. They also shared a half pint of whiskey. They ate dinner that evening, and then went to a nightclub. At the club, the individual drank four or five beers, a couple of mixed drinks, and three or four shots of whiskey. *Id.* at 10. They left the bar and were stopped at a checkpoint by the police. The individual failed a sobriety test. *Id.* at 12. The officer arrested the individual and gave him a Breathalyzer test. *Id.* at 13. The test registered a blood alcohol level of 0.18, over the legal limit in that state. *Id.* The officer took the individual to jail and he was released after 10 hours of detention. *Id.* at 14. Upon release, he was told to report for a hearing in October 2005. *Id.* at 15.

The individual reported his arrest promptly to the LSO when he returned to work. Ex. 7. At the hearing, he was convicted of Driving While Under the Influence (DWI) and, because it was his first offense, the court ordered him to pay a fine, perform 24 hours of community service, attend DWI School and Victim Impact Panel, and participate in 36 hours of counseling. He completed all of the requirements and paid all fines. *Ind. Ex. 1-4*; PSI at 17. He completed the 36 hours of counseling between October 2005 and January 2006 at a local outpatient program. *Ind. Ex. 3*; PSI at 41-42. The court put him on probation until October 2006. PSI at 16-21. As part of his probation, he was ordered to abstain from alcohol for one year. However, according to the individual, he violated the terms of his release by drinking alcohol twice during the probationary period. PSI at 31; Tr. at 66.

In April 2006, the individual participated in a PSI. Ex. 11. During the PSI, he agreed to an evaluation by a DOE consultant-psychiatrist. PSI at 46-47. The consultant –psychiatrist interviewed the individual in February 2007 for two hours and completed a report of her interview. Ex. 5 (Report). She concluded that the individual had been a user of alcohol habitually to excess, and that he also met the criteria for alcohol abuse through October 2006. Ex. 5 at 12. At the time of the evaluation she found that, although he had been free from criteria for alcohol abuse for four months, he did not demonstrate adequate evidence of rehabilitation or reformation from alcohol abuse. Report at 12. In order to show adequate evidence of rehabilitation, the psychiatrist recommended that the individual complete 50 hours of a professionally led substance abuse treatment program for a

minimum of six months. *Id.* In the alternative, he could meet with an individual counselor for at least six months. As adequate evidence of reformation, the psychiatrist recommended that the individual maintain one year of sobriety. *Id.* at 13. The psychiatrist noted in her report that there is no proof that alcohol abusers cannot resume controlled drinking; however, because his alcohol abuse was fairly recent and resulted in serious consequences, she recommended a minimum period of one year of abstinence as adequate evidence of reformation. *Id.*

B. DOE's Security Concerns

The excessive use of alcohol raises a security concern because of its intoxicating effect. "Because the use of alcohol at the very least has the potential to impair a user's judgment and reliability, individuals who use alcohol to excess may be susceptible to being coerced or exploited to reveal classified matters. These security concerns are indeed important and have been recognized by a number of Hearing Officers in similar cases." *Personnel Security Hearing*, OHA Case No. VSO-0417, 28 DOE ¶ 82,798 (2001), quoting *Personnel Security Hearing*, OHA Case No. VSA-0281, 27 DOE ¶ 83,030 at 86,644 (2000). In this case, the individual was diagnosed by a DOE psychiatrist as suffering from alcohol abuse and has a history of alcohol-related arrests. Therefore, DOE's security concerns are valid and the agency has properly invoked Criteria H and J in this case.

C. Hearing Testimony

1. The Individual's Witnesses

As evidence of rehabilitation and reformation, the individual presented the testimony of his girlfriend, his supervisor, his sister, and a friend. The friend testified that she has known the individual for 13 years, since middle school. Tr. at 10-11. She sees him socially once or twice a month. She acknowledged that the individual drinks when he socializes with friends, and that she has seen him intoxicated after drinking two beers and two mixed drinks. *Id.* at 11. She knew about the DWI and, at that time, the individual told her that he would change his drinking habits. As evidence of his reformation, she testified that the individual now abstains frequently in social settings. If he drinks, he first identifies a designated driver to transport him home safely. *Id.* at 13. She last saw him drink alcohol in July 2007 at a club. *Id.* at 15. At that time, he had consumed two beers, and his girlfriend drove home. She has not seen him drive after drinking. She has never seen him drink at home, even when she has dropped by unannounced. *Id.* at 16. She does not think that he keeps alcohol at home. As for the individual's attitude toward alcohol, the witness testified that the individual has never told her that he considers his drinking to be a problem. Further, he has never talked to her about his treatment program, and his family did not express any concern over his drinking. Nonetheless, she described his close family and friends as a good support system. Based on her observation of his behavior, she has concluded that the individual intends to consume alcohol in moderation in the future. *Id.* at 22.

The individual's sister testified that she last saw him drink alcohol over six months prior to the hearing. *Id.* at 26. She sees him two or three times a week, and they socialize every

couple of months. Even though there is alcohol present at those events, the individual does not drink, and she has never seen him intoxicated. *Id.* at 28. She knows that he drank alcohol a couple of times after his arrest. *Id.* at 30. He has not talked to her about his counseling, but she opined that he now realizes that he made a big mistake and is more responsible now. *Id.* at 31. She has not seen any of his relationships suffer because of his drinking and she has never told him that he drinks too much. *Id.* at 33. She has never seen him drink at home and he did not drink at family functions. *Id.* at 37. The sister described their family as close and very supportive. She testified that her brother has never told her that he thinks he had a drinking problem. *Id.* at 36. Lately, the individual does not socialize much with his friends. *Id.* at 37.

The individual's supervisor testified that he has supervised the individual for six months, considers him a good employee who works hard, and has not seen any sign of an alcohol problem. *Id.* at 40. The individual told him about the DWI, but he did not know any of the details. They do not socialize outside of the office. He believes that he would know if the individual was drinking on the job.

The individual's girlfriend testified that she has known the individual for two years and they have lived together for 18 months. The DWI occurred before they met. *Id.* at 46, 54. She last saw him drink alcohol in October 2007, three months prior to the hearing. *Id.* at 47. He drank shots of whiskey and got "a slight buzz," and she drove home. *Id.* at 48. Prior to that, she had not seen him drink in three months. *Id.* at 48. They have not had a drink together in over six months, although they have a couple of bottles of wine in the refrigerator. She explained that she has a friend who makes wine and gives her a bottle from each new batch, but that she usually gives the bottles away. *Id.* at 59. He does not drink and drive. *Id.* at 56. Sometimes when they go out, he does not drink. She does not think he has a problem with alcohol, and he has not told her that he has a problem. *Id.* at 50. He never told her about the counseling. They do not go out often. She testified that alcohol is not a big part of his life and he drinks if he is in the mood. He has not discussed his drinking with her and its effects on his career. *Id.* at 58. Twice in two years, they both drank and had someone drive them home, most recently seven months prior to the hearing.

2. The Individual

At the hearing, the individual described his drinking during 2004 and 2005, prior to his DWI arrest. He typically drank four shots and four beers twice a month, and was intoxicated each time. *Tr.* at 64. His heaviest drinking occurred in the summer of 2005. *Id.* at 64. As a condition of his DWI release, the court ordered him to abstain from alcohol for one year, from October 2005 to October 2006. *Id.* at 64. However, he violated the conditions of his release because he drank alcohol twice that year while socializing with friends who were also consuming alcohol. *Id.* at 73. Now that he looks back at his behavior, he thinks that he had a problem with alcohol, although at the time he did not think his drinking was problematic. He admitted that he drank too much, and explained that he drank to be sociable and also to enjoy himself. *Id.* At 67. During the three months of court-ordered counseling, he did not drink. *Id.* at 73. However, during the 15 months from October 2006 to the date of the hearing, he drank three times. *Id.* at 68. His heaviest consumption was in

the summer of 2007, when he drank three beers in 12 hours during a concert. Each of the five times that he has consumed alcohol since his October 2005 arrest, he “got a buzz.” *Id.* at 72. He last consumed alcohol three months prior to the hearing. *Id.* at 78.

The individual testified that he attended an outpatient program and DWI school, both by court order. *Id.* at 74. He completed 14 group sessions (36 group counseling hours). *Id.* at 74; Ex. 3. See also Ind. Ex. 1. During counseling sessions, the counselors tried to convince the group members to abstain. *Id.* at 72. Although the individual admits that he had an alcohol problem prior to summer 2005, he now believes that he can control his drinking because he has not exceeded his self-imposed drinking limits since his DWI. *Id.* at 77. He testified that he has a good support system and that his alcohol use has not caused any relationship problems. *Id.* at 79-80. He did not listen to his support system prior to August 2005, but now he understands what they were trying to tell him. His mother told him not to drink before the DWI and since his arrest, his friends have warned him of the consequences. He admits that it is difficult to speak to his parents about alcohol, and that he is “trying to forget about everything.” *Id.* at 89. He drank more prior to his arrest because he did not have the responsibilities that he now has -- e.g., his girlfriend, his house, their cars, and his relationship. *Id.* at 81. Nonetheless, he contends that he would not revert to problem drinking if he broke up with his girlfriend or did not get his clearance back because he learned a lesson from the DWI and the suspension of his clearance. *Id.* at 82. According to the individual, he has been drinking responsibly since his arrest in August 2005, two years prior to the hearing, and he knows how to stop drinking. *Id.* at 89.

3. The DOE Psychiatrist

The DOE psychiatrist was present during the entire proceeding and testified at the end after listening to all of the testimony. The psychiatrist reaffirmed her original diagnosis -- that the individual met the criteria for alcohol abuse until October 2006. Tr. at 90. She was very surprised when the individual told her during his evaluation in February 2007 that he did not believe he had a problem with alcohol. *Id.* at 92. She considered this a sign of his immaturity, especially because he began to drink more instead of less after he was granted a clearance. *Id.* at 92. After the evaluation, the psychiatrist recommended that the individual attend additional counseling because she concluded that the court-ordered alcohol counseling did not provide him the necessary insight into his problematic drinking. *Id.* at 91. She found that he was influenced by his friends, and recommended that he abstain in order to demonstrate that the risk of recurrence of his problem drinking is low. *Id.* at 93. She contends that she was actually very lenient in assessing his case because she attributed his minimization to lack of insight and not dishonesty. *Id.* at 94. After listening to the witnesses, the psychiatrist noted her concern that his family and friends did not know about his Open Container citation and that he had never discussed his experiences at counseling with them. She believes that his family needs alcohol awareness education also. *Id.* at 96.

On the positive side, the psychiatrist agreed that four of the five times that he has used alcohol since his DWI could be considered responsible use. *Id.* at 99. In addition, the individual no longer meets the criteria for alcohol abuse, and thus he no longer has an

illness or mental condition that causes a significant defect in his judgment.¹ *Id.* at 105. According to the psychiatrist, there was no evidence of a regular pattern of uncontrolled drinking. *Id.* at 99. Nonetheless, she concluded that the individual has not shown adequate evidence of either rehabilitation or reformation. She testified that he is “in the very early stage of reformation,” and recommended that he abstain for an additional six months in order to lessen his risk of relapse. *Id.* Even though he has abstained for periods of up to seven months since his DWI, the psychiatrist argued that this behavior carried little weight because he had experienced short periods of abstinence in the past followed by a relapse into problem drinking. *Id.* at 103-104. Consequently, she does not have confidence that there is a low risk of recurrence of his problem drinking. *Id.* at 104. As for rehabilitation, she concluded that the individual needs meaningful individual therapy, such as individual counseling with his employer’s mental health provider, in order to achieve adequate rehabilitation. *Id.* at 100, 102. The psychiatrist explained that time can often be the strongest mitigating factor, and that the individual needs more time to demonstrate rehabilitation or reformation. *Id.* at 104.

D. Mitigation of Security Concerns

The witnesses offered credible testimony to support the individual’s argument that his current behavior presents an acceptable risk to security. They described him as a moderate drinker who no longer drives after drinking. The individual also presented documentation from a local substance abuse program that confirmed his successful completion of the court-ordered program.

1. Criterion H – Illness or Mental Condition

The DOE psychiatrist testified that the individual did not meet any of the diagnostic criteria for alcohol abuse after October 2006. Tr. at 105. In her Report, she stated that alcohol abuse was the illness or mental condition that gave rise to the Criterion H concern that the individual may have a significant defect in his judgment or reliability. Because he no longer suffered from alcohol abuse, she concluded that he no longer had an illness or mental condition that could cause such a defect in his judgment or reliability. I therefore find that the individual has mitigated the security concern regarding Criterion H.

2. Criterion J – Alcohol Abuse and Excessive Use of Alcohol

In a Part 710 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. See *Personnel Security Hearing*, OHA Case No. TSO-0491, 29 DOE ¶ 83,077 (2007) (finding of rehabilitation and reformation from habitual use of alcohol under Criterion J); *Personnel Security Hearing*, OHA Case No. TSO-0494, 29 DOE ¶ 83,071 (2007) (finding of no rehabilitation or reformation from habitual use of alcohol under Criterion J). In this case,

¹ “In order for an abuse criterion to be met, the substance-related problem must have occurred repeatedly during the same 12-month period or been persistent.” *Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR)* DSM-IV at 198. According to the psychiatrist, the individual no longer met the diagnostic criteria for alcohol abuse after October 2006. Report at 12.

the DOE psychiatrist testified that at the time of the hearing, the individual no longer met the criteria for a diagnosis of alcohol abuse and that many experts believe that alcohol abusers can practice controlled drinking.² Nonetheless, she concluded that the individual was in the “very early stages of reformation” from his excessive drinking.³ The psychiatrist found that she cannot describe his risk of relapse as low because he has not shown that his current pattern of responsible drinking is permanent and because he did not develop insight into his alcohol problem after attending a 12-week alcohol treatment program.

I conclude that the individual has provided some mitigation of the security concern associated with his alcohol use. For example, it is to his credit that he no longer drives after he drinks, and that he has consumed alcohol responsibly on four of the last five occasions that he has consumed alcohol. However, even though the individual no longer has a diagnosis of alcohol abuse, he still displays an unacceptable risk of relapse into problem drinking. I agree with the psychiatrist that he shows little insight into the excessive drinking that brought him to this proceeding. Since his arrest he has exhibited a level of minimization that I attribute to the absence of meaningful alcohol counseling. During his psychiatric evaluation in 2007, he told the psychiatrist that he did not think he had a drinking problem. At the hearing almost one year later, he testified that he had a problem in 2005, implying that his alcohol problem has been resolved. When asked about his drinking during the one year probationary period (October 2005-October 2006) when he was ordered to abstain from alcohol, he responded as follows:

Q. Okay. Why did you drink even though you knew you weren't supposed to?

A. I don't know. I just did it because I was out with friends, I guess, and they were having drinks, so I did too.

Q. Did you – when you drank those two times, did you think about, I shouldn't be doing this, or did that occur to you after, or at any time?

A. It went through my mind, but I did it anyway.

Tr. at 66.

This exchange confirms the individual's lack of insight. Despite a recent arrest, 36 hours of alcohol education, and a court order to abstain, the individual violated the conditions of his release by drinking alcohol twice. I also considered the testimony of the individual that he “got a buzz” each time he drank alcohol after his DWI arrest. *Id.* at 72. The consumption of alcohol to the point of impaired judgment or reliability not only confirms that he had not absorbed the lessons of the alcohol counselors who taught the value of abstinence, but

2 The Revised Adjudicative Guidelines state that a pattern of “responsible use” is a condition that could mitigate the security concerns of a diagnosis of alcohol abuse. Revised Adjudicative Guidelines, ¶ 23(b).

3 The psychiatrist opined in her Report that the individual had been a user of alcohol habitually to excess from 2003-2005. Report at 12.

also reflects a continuing security concern. Finally, the individual exhibits an uncomfortable level of denial by refusing to discuss his alcohol treatment with his family and friends, even though he describes his relationship with his family as close. He testified that he has difficulty talking to his parents about alcohol and wants to “forget about everything.” Tr. at 86-89.

After evaluating the evidence in this case, I find that the argument of the DOE psychiatrist is persuasive and that the individual has not sufficiently mitigated the security concerns of Criterion J at this time. 10 C.F.R. § 710.8 (j). I agree with the DOE psychiatrist that an additional six months of abstinence or six months of individual counseling is required to find adequate evidence of rehabilitation or reformation from his excessive use of alcohol.

IV. Conclusion

The individual has successfully mitigated the security concern of Criterion H. However, in view of Criterion J and the record before me, I cannot find that restoring the individual’s access authorization prior to fulfilling the psychiatrist’s requirement of an additional six months of abstinence or individual therapy 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 at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: March 17, 2008