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July 17, 2009

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Hearing Officer's Decision*

Case Name: Personnel Security Hearing

Filing Date: March 26, 2009

Case Number: TSO-0721

This Decision considers the eligibility of XXXXX (the individual) to hold an access authorization 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 I explain below, the Department of Energy (DOE) should not grant the individual an access authorization.

**I. Background**

The individual's employer requested an access authorization for the individual, and the local security office (LSO) issued him a Notification Letter with a Statement of Charges that cites a Criterion J security concern stemming from the individual's alleged Alcohol Abuse. The LSO alleges that:

- 1) At age 14 or 15, the individual first drank alcohol;
- 2) By age 17, he regularly drank alcohol;
- 3) At age 19, he drank 8-10 beers and was arrested for under-age drinking;<sup>1</sup>
- 4) By age 20, on the weekends he drank "close to 20 beers a night";
- 5) At age 20, he drank 3 beers in an hour, drank 6 or 7 more beers while driving, and was arrested for Driving Under the Influence (DUI);

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<sup>1</sup> The Statement of Charges also alleges that on a February 2007 electronic Questionnaire for National Security Positions, the individual failed to list his arrest for under-age drinking. I did not include his omission in my summary because the Statement of Charges does not include a Criterion F security concern for "[d]eliberately . . . ommitt[ing] significant information from a Personal Security Questionnaire. . . ." 10 C.F.R. § 710.8(f).

- 6) At age 21, in 2001, his DUI arrest prompted him to complete an alcohol treatment program. The program recommended that he participate in Alcoholic Anonymous (AA), but he did not. He resumed drinking and has not tried to stop;
- 7) At age 24, in 2004, he was arrested for public intoxication;
- 8) He drinks “on the weekends,” when he has “12 to 18 beers.” He does not intend to get intoxicated, but he does so twice a month because he “get[s] carried away”;
- 9) He does not believe he has an alcohol problem because he has friends who drink more than he does; and
- 10) When the individual was 28, in August 2008, a DOE-consultant psychologist diagnosed him with Alcohol Abuse. The DOE-consultant psychologist noted that his “incontrovertible history of alcohol abuse . . . rais[es] the concerns outlined in Guideline G of the Adjudicative Guidelines.”

DOE Exh. 2 (Notification Letter and Statement of Charges, Feb. 23, 2009).

The individual requested a hearing to respond to the LSO’s security concern, and I conducted the hearing on May 14, 2009. The individual represented himself. He testified and called the following witnesses: his mother and his friend. The DOE counsel called the DOE-consultant psychologist.

At the hearing, the individual and the DOE counsel stipulated that the allegations in the Notification Letter are true, except for whether the individual suffers from Alcohol Abuse. Tr. at 10. Therefore, at the hearing we heard testimony whether the individual suffers from Alcohol Abuse.

## **II. Summary of Hearing Testimony**

### **A. The Individual**

The individual testified that although he has a history of Alcohol Abuse, he does not currently suffer from Alcohol Abuse. His arrests occurred when he was “young” and he has “changed” his “ways” – he recently got engaged, became a father, bought a house, and arrives at work promptly. *Id.* at 10, 18. Nor does he drink Sunday through Thursday, a pattern he has maintained for close to two years. *Id.* at 11, 17.

On most weekends, the individual drinks a total of 12-18 beers. *Id.* at 11-12. He also testified that since he spoke with the DOE-consultant psychologist, he reduced his drinking to 12 beers a weekend. *Id.* at 14-15. And later he testified that since learning two weeks ago that he has a seven-month-old-son, he drinks less than 12 beers a weekend. *Id.* at 18-19. He plans to file for joint custody so that he can have his son every Thursday through Sunday. That will “probably . . . end” his “drinking right there altogether” because he does not intend to drink around his son. *Id.* at 18.

The individual's drinking is not "binge drinking" but "responsible drinking" because he drinks at home and spreads his drinks out over six or eight hours. *Id.* at 12, 15. He was last intoxicated about four or five months before the hearing. *Id.* at 15. The individual keeps beer in his house. *Id.* at 19-20. He still sees his drinking friends, and they drink "quite a bit more" than he does. *Id.* at 14. He does not drive after he drinks. *Id.* at 15.

At age 21 (in 2001), the individual attended a week-long alcohol inpatient treatment program. *Id.* at 13, 59. The program recommended that he follow-up with AA treatment. He did not because he "felt like [he] could handle it on his own." *Id.* at 59. In 2003, he achieved his longest period of sobriety since he began drinking regularly at age 17 – five to seven months. He did not crave alcohol, but started drinking again because he moved closer to his friends. His drinking "gradually picked back up." *Id.* at 21.

Then at age 24 (in 2004), the individual was arrested for public intoxication, which was the "breaking point" that inspired the current, gradual reduction in his drinking. *Id.* He has not again tried to stop drinking entirely, nor has he had any treatment, besides two visits with an outpatient therapist, whom he decided to see when the DOE raised a security concern about his drinking. *Id.* at 22, 59. He does not plan on continuing to see the therapist because he cannot afford a recent increase in the insurance co-pay. *Id.* at 16.

If the individual ever wanted to, he could turn to a network of friends for support. One of those friends came to testify on his behalf, although the individual has never told him that he has a desire to cut back. *Id.* at 23.

#### B. The Individual's Mother

The individual's mother testified that when the individual was 20 (in 2000), he "greatly reduced" his drinking. *Id.* at 25. Since then, she has not seen that his drinking has affected him negatively. *See id.* at 27. He "has become much more mature and responsible." *Id.* at 25-26. Sometimes he drinks, although he no longer drinks to intoxication. He "usually" drinks no more than one beer, and he "pours out the end of it." *Id.* at 24-25. Now that he has a child, he desires to stop drinking entirely. *Id.* at 27.

When the individual was living at home, his mother did not know that he was drinking or had a drinking problem until he got a DUI. *Id.* at 28-29. Now that he is not living at home, she sees him on the weekends occasionally. *See id.* at 24.

#### C. The Individual's Friend

The individual and his friend have known each other since 2003, when they both worked for another company. *Id.* at 31. They speak every day and visit about two weekends a month. *Id.* at 38. In 2004, the individual's friend noticed a change in the individual's drinking habits – he cut back on the number of days a week that he drinks. *Id.* at 36-37. In the past year, he has not seen the individual drink on a weekend. *Id.* at 39. "Nowadays" the individual does not drink. *Id.* at 33-34.

The individual and his friend now work at the same company. *Id.* at 30. They worked in the same department for about a year, and the individual’s friend trained him, although they no longer work in the same department. *Id.* He has never seen the individual intoxicated at work. *Id.* at 31.

D. The DOE-Consultant Psychologist

The individual still suffers from Alcohol Abuse. *Id.* at 46, 49. The DOE-consultant psychologist based the diagnosis on the quantity that he drinks and the consequences. *Id.* at 54.

The individual has not demonstrated that he has his drinking problem under control – given his history, he must abstain for at least a year. *Id.* at 50-51. Nor does he have a sufficient network to support his sobriety – he has not spent time building relationships with people who also abstain. *Id.* at 46-47. He must participate in AA, where members have a “deep accountability” to each other and a “lifestyle that supports abstinence.” *Id.* at 47, 49.

The individual has avoided consequences from drinking for at least five years, but that does not show recovery. *Id.* at 54. He still drinks a very large number of beers despite his new responsibilities, which suggests that he has a tolerance, he is part of a culture of alcohol abuse or dependence, and that his drinking will once again be problematic. *Id.* at 46, 54-55. The individual has a “very, very high probability” of returning to his former level of drinking and suffering further consequences. *See id.* at 47, 52.

The “blessings” in the individual’s life – his fatherhood, engagement, and home purchase – are not insurance that he will not abuse alcohol because they are also burdens that may exacerbate his drinking. *Id.* at 53.

### III. Legal Standard

In order to grant or restore an individual’s access authorization, the Hearing Officer must find that the grant or restoration “will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. §§ 710.7(a), 710.27(a); *see also Dep’t of the Navy v. Egan*, 484 U.S. 518, 528 (1988). In order for the Hearing Officer to make this finding, the individual must resolve the security concerns that the DOE identifies in its Notification Letter. *See, e.g., Personnel Security Hearing*, Case No. TSO-0586 (2008).<sup>2</sup>

The individual must resolve the DOE’s security concerns by presenting evidence to rebut, refute, explain, extenuate, or mitigate the allegations supporting the DOE’s security concerns. *See, e.g., Personnel Security Hearing*, Case No. TSO-0598 (2008). The

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<sup>2</sup> OHA decisions may be accessed by entering the case number in the search engine on the OHA website, [www.oha.doe.gov](http://www.oha.doe.gov).

individual must present corroborating evidence to support his or her efforts to resolve the DOE's security concerns. *See Personnel Security Hearing*, Case No. TSO-0693 (2009).

The individual has the burden to resolve the DOE's security concerns because once the DOE finds a security concern, "[T]here is a strong presumption against granting a[n access authorization]." *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990). "[D]eterminations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see also* 10 C.F.R. § 710.7(a) ("Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security.").

The Hearing Officer considers "all relevant information, favorable and unfavorable," to issue a decision that is "a comprehensive, common-sense judgment." 10 C.F.R. § 710.7(a). The Hearing Officer shall consider the following factors: witness demeanor and credibility; the authenticity and accuracy of documentary evidence; the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledge and 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 behavior changes; the motivation of the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *Id.* at §§ 710.7(c), 710.27(a)-(b).

#### IV. Analysis

The Notification Letter presents a Criterion J security concern stemming from the individual's alleged Alcohol Abuse. The individual attempted to resolve the LSO's concerns by presenting adequate evidence of rehabilitation and reformation. I find that the individual has not done so.

First, I agree with the DOE-consultant psychologist that to show rehabilitation and reformation, the individual must abstain for a year and participate in AA. The individual previously tried to control his problem himself, only to abstain for several months (his longest period of sobriety since he began drinking), resume drinking, and suffer another arrest.

Second, I agree with the DOE-consultant psychologist that the individual is at risk for suffering further alcohol-related consequences. His last arrest occurred after he rejoined his drinking friends and increased his drinking. The individual still associates with the same friends. Moreover, the individual lacks a network of sober friends to help him control his drinking.

Third, the individual was not a credible witness. His estimation of his drinking decreased throughout the hearing, in response to questions.

Fourth, the individual's two witnesses did not corroborate his reduced drinking. His mother and his friend both testified that the individual drinks little, if at all. Their

descriptions of his drinking do not match his own description, which suggests that they are unfamiliar with his drinking.

## **V. Conclusion**

Because the individual has not resolved the LSO's Criterion J security concern, I find that the DOE should not grant the individual an access authorization.

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

David M. Petrush  
Hearing Officer  
Office of Hearings and Appeals

Date: July 17, 2009