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September 25, 2009

**DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 25, 2009

Case Number: TSO-0728

This Decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization¹ (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 be denied.

I. Background

The individual is an applicant for a DOE security clearance. On April 11, 2007, the individual completed and signed a Questionnaire for National Security Positions (QNSP or Ex. 8) in which he disclosed excessive alcohol use while he was in college. Based on concerns arising from the individual's disclosure, the local DOE security office (LSO) conducted a Personnel Security Interview (PSI or Ex. 9) with the individual in October 2008. The PSI did not resolve the concern and the LSO referred the individual to a DOE Consultant-Psychiatrist (DOE psychiatrist) for a psychiatric evaluation. The DOE psychiatrist evaluated the individual in November 2008 and memorialized his findings in a report dated November 27, 2008. (Psychiatric Report or Ex. 6). Based on his findings, the DOE psychiatrist concluded that the individual met the criteria for Alcohol Dependence, in Early Partial Remission, pursuant to the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, 4th edition, Text Revised (DSM-IV-TR). *Id.* at 8-9. The DOE psychiatrist opined that this is a condition which causes, or may cause, a significant defect in the individual's judgment or reliability. *Id.*

On March 25, 2009, the LSO sent a letter (Notification Letter) advising the individual that it possessed 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

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).

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).²

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. On April 1, 2009, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. I subsequently convened a hearing within the time prescribed in the regulations. At the hearing, the individual presented his own testimony and that of four witnesses. The DOE psychiatrist testified on behalf of the agency. In addition to the testimonial evidence, the DOE submitted ten exhibits into the record and the individual tendered nine exhibits. 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 the agency’s exhibits and shall be cited as “Ex.” Documents submitted by the individual shall be cited as “Ind. Ex.”

II. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites two criteria, Criteria H and J, as bases for denying the individual’s application for a security clearance. With regard to Criterion H, the LSO cites the diagnosis of the DOE psychiatrist that the individual meets the criteria for Alcohol Dependence in Early Partial Remission. Ex. 1. As for Criterion J, the LSO relies on the DOE psychiatrist’s opinion and the following information: (1) the individual admitted to experiencing six blackouts from ages 18 to the present after consuming six or more drinks; (2) the individual’s most recent blackout occurred in December 2007 when he went to a party and drank an unrecalled amount of rum and coke over a three-hour period; and (3) the individual admitted that he was fearful of what things may have occurred while he experienced blackouts. *Id.*

I find that the information set forth above constitutes derogatory information that raises questions about the individual’s mental health under Criteria H and his alcohol use under Criterion J. The security concerns associated with Criteria H and J are as follows. As for Criterion H, a mental illness such as an alcohol disorder can cause a significant defect in a person’s psychological, social and occupational functioning which, in turn, can raise concerns from a security standpoint about possible defects in a person’s judgment, reliability, or stability. *See* Guideline I 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 (*Revised Adjudicative Guidelines*). With regard to Criterion J, the excessive consumption of alcohol itself 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 id.* at Guideline G. The excessive use of alcohol also raises a security concern because of its intoxicating effect. “Because the use of

² Criterion H relates to information that a person 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 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 licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j).

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*, Case No. VSA-0281 (2000).³

III. Findings of Fact

The individual had his first "taste" of alcohol when he was 14 years old. Ex. 9 at 20-21. He didn't drink alcohol again until his senior year of high school, when he had a "sip" of vodka. *Id.* The individual graduated from high school in June 2002 and was awarded an academic scholarship to attend college. Ex. 8 at 8; Tr. at 88-89.

The individual's alcohol consumption increased as he entered his freshman year of college. Ex. 9 at 22-23. As an 18-year-old student, the individual drank a six-pack of light beer on the weekends. *Id.* at 23-24. He knew that underage drinking was illegal but claims that he wanted to have fun. *Id.* at 24. During the first month of college, the individual joined a fraternity and began drinking four to six mixed drinks of whiskey or rum and coke over a period of three to four hours, once a week. Tr. at 90; Ex. 9 at 24-27. During this time, the individual became intoxicated once a month and sometimes on special occasions. Ex. 2 at 2. He estimated that it took three to four drinks for him to become intoxicated. *Id.* Over the next eight months, his consumption slowed down because the individual became involved in a serious relationship. Ex. 9 at 24. He spent more time with his girlfriend and drank a beer only "once a month" because he knew he had to study. *Id.* at 25-26.

In 2004 to 2005, at ages 20-21, the individual drank alcohol once during the week and once on the weekends. Ex. 9 at 30-31. If he drank during the week, the individual recalled consuming two mixed drinks before going to the bar and two more while at the bar. *Id.* On the weekends, he consumed three to four mixed drinks and became intoxicated once or twice a month. *Id.* From 2006 until 2007, at ages 22-23, the individual's alcohol consumption stayed the same. *Id.* at 31-32. He graduated in May 2007. Tr. at 92; 96; Ind. Ex. H.

From January 2008 to October 2008, the individual consumed two to three beers during the week or on the weekends. Ex. 2 at 2. He became intoxicated once a month after drinking two to three mixed drinks. *Id.* at 2. The individual estimated that he was intoxicated at least six times from April 2008 when he turned 24, until October 2008. *Id.* at 2. He admitted that he blacked out six times from age 18 to 24 after consuming "...two mixed drinks more than six." *Id.* at 2. The last time that the individual blacked out was in December 2007, when he arrived at a party. Tr. at 125; Ex. 2 at 2. In order to "catch up," to other guests at the party, he drank an unrecalled amount of rum and coke over a three-hour period. Ex. 2 at 2.

IV. Regulatory Standard and the Individual's Burden

³ Decisions issued by the Office of Hearings and Appeals (OHA) after November 19, 1996, 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>.

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). 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).

The individual must come forward at the hearing with evidence to convince the DOE that granting him an 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 individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

V. Analysis

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 be denied because I cannot conclude that granting the access authorization 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. Diagnosis of Alcohol Dependence

There are competing expert views on whether the individual suffers from alcohol dependence. In the Psychiatric Report, the DOE psychiatrist opined that the individual met the criteria for Alcohol Dependence in Early Partial Remission. Ex. 6 at 9. He explained in detail in the Psychiatric Report how the individual met three of the seven criteria.⁴ Ex. 6 at 5-6. First, the

⁴ The DOE psychiatrist did not administer any “paper and pen” tests to the individual. Tr. at 169. The DOE

DOE psychiatrist noted that at one point in his life, the individual developed a pattern of tolerance, or increasing the amount of alcohol to achieve the same effects that he had been drinking during his college years (Criterion 1).⁵ *Id.* Second, the DOE psychiatrist opined that the individual demonstrated a certain degree of lack of control of drinking, as there had been times when he drank more than he intended to (Criterion 3). *Id.* Lastly, the individual lost consciousness when he experienced blackouts, a phenomenon which the DOE psychiatrist grouped under significant loss of important social, occupational, or recreational activities (Criterion 6). *Id.*

The DOE psychiatrist was present during the entire proceeding and listened to all of the testimony in the case before testifying. Tr. at 171. He remained firm in his diagnosis of the individual. *Id.* at 174-176. The DOE psychiatrist testified that while the individual does not have a “flagrant” diagnosis of Alcohol Dependence, he affirmed that the individual met three of the seven criteria set forth in the DSM-IV-TR that are needed for that diagnosis. Tr. at 170. In reaching this conclusion, he underscored the significance of the multiple alcohol-induced blackouts experienced by the individual as a significant indicator supporting the diagnosis of Alcohol Dependence. *Id.* at 170; 174. The DOE psychiatrist also expressed concern that individual is in denial about his problematic and excessive alcohol use. *Id.* at 174.

In challenging the diagnosis of Alcohol Dependence, the individual presented the testimony of a psychologist⁶ and therapist⁷, who both concluded that the individual does not currently meet the criteria for diagnosis of Alcohol Dependence, as specified in the DSM-IV-TR. Tr. at 75-76; 162. The individual also submitted an evaluation conducted by a university psychological clinic.⁸ Ind. Ex. C.

The individual’s psychologist evaluated the individual in May 2009 and administered a structured interview survey and the Substance Abuse Subtle Screening Inventory (SASSI). Tr. at 141-142. The individual’s psychologist testified that of the seven criteria enumerated for a diagnosis of substance dependence in the DSM-IV-TR, the individual possibly met one of them.

psychiatrist explained that he does have diagnostic tools at his disposal but, in his opinion, self-reporting poses several difficulties that compromise many of the aspects of psychological testing. *Id.* at 169-170. While he does not discount the findings of the Substance Abuse Subtle Screening Inventory (see discussion in test below), motivational interviews and other forms of psychological testing that the individual has undergone, he has taken a clinical approach towards diagnosing the individual and determining the most appropriate means of treatment. *Id.* at 170.

⁵ Physiological dependence on alcohol is indicated by evidence of tolerance or symptoms of withdrawal. DSM-IV-TR at 213.

⁶ The individual’s psychologist is a licensed clinical psychologist with an extensive background in substance abuse training and treatment. *Id.* at 139; Ind. Ex. E. He currently works as a Lead Staff Psychologist for a DOE Contractor and in that capacity examines employees to determine their fitness for duty. Tr. at 139-140; Ind. Ex. E.

⁷ The individual’s therapist is a licensed clinical social worker and primary group therapist. *Id.* at 16-17. She met with the individual on three occasions from May 29 to June 5, 2009, and memorialized her findings in an undated report. Ind. Ex. G.

⁸ The individual submitted a report conducted from a university psychological clinic. Ind. Ex. C. Because there was no opportunity to cross-examine the evaluator, I will accord this document only neutral weight.

Id. at 148. With regard to first criterion, the individual's psychologist opined that the individual's increased alcohol consumption did not cause him to develop a pattern of tolerance for alcohol. *Id.* at 147. In his opinion, doubling one's alcohol consumption by changing from beer to mixed drinks does not meet the DSM-IV-TR definition of markedly increased amounts. *Id.* He believed, however, that the individual possibly met criterion three but questioned whether his drinking three or four mixed drinks at fraternity parties was more than he intended to drink on those occasions. *Id.* Regarding criterion six, the individual's psychologist recognized that "once a year" the individual clearly drank more alcohol than he intended but noted that there was no evidence that the individual reduced or gave up important social, occupational or recreational activities as a result of his drinking. *Id.* He further noted that while he understands the DOE psychiatrist's concerns regarding the individual's blackouts, he believes that if the individual suffered from Alcohol Dependence, he would have been so diagnosed in college given his drinking habits at the time. *Id.* at 162; 164. The individual's psychologist concluded that from 2002-2007, the individual may have been what he termed an "episodic binge drinker" but maintained that, in his opinion, the individual currently does not have a problem with alcohol. *Id.* at 143; 162.

The individual's therapist also opined at the hearing that the individual does not suffer from Alcohol Dependence. *Id.* at 54. She based her opinion on having met with the individual and speaking with his girlfriend in addition to having reviewed the assessment that the individual obtained from a university psychological clinic (Ind. Ex. C) and the November 2008 psychiatric report from the DOE psychiatrist. Tr. at 52; 55. As part of her evaluation, the individual's therapist also administered a battery of tests.⁹ *Id.* at 52. With regard to the latter, she stated that none of the tests revealed that the individual suffered from Alcohol Dependence.¹⁰ *Id.* at 52-54.

After carefully reviewing the testimony and evidence in record, I find that facts in record support the DOE psychiatrist's diagnosis of Alcohol Dependence. I reached this conclusion for several reasons. First, the individual reported that he consumed three to four beers and then switched to mixed drinks. Ex. 9 at 27-30. Based on the facts in record, I am convinced that by changing the type of alcohol he consumed, the individual developed a higher tolerance for alcohol during college. Second, the individual estimated that he was intoxicated at least six times from April 2008 until October 2008, drinking six or more mixed drinks on each occasion. *Id.* at 38. I note that these periods of intoxication occurred less than one year ago. Even if I believed that this behavior doesn't meet criterion three, by his own account, the individual recalled that on many

⁹ The tests that she administered included pen and pencil tests, questionnaires, the Self Administered Alcohol Screening Test (SAAST), the Depression Screening Tool and the Client Motivation for Therapy Scale (CMTS). *Id.* at 52. She described the SAAST as excellent companion measurements for diagnosing alcohol abuse and monitoring the effectiveness of treatment for alcohol. Tr. at 57. She explained that a score of "seven" on the SAAST indicates that an individual suffers from alcohol dependency and noted that the individual scored a "two" on his May 2009 test, reflecting that his current alcohol consumption (if there is any) does not rise to the level of alcohol dependency. *Id.*

¹⁰ She did, however, opine that the individual may suffer from an Adjustment Disorder as defined by the DSM-IV-TR. Tr. at 74-79. She based this opinion on the interaction she had with the individual, as well as the stress and anxiety he has experienced over the past three months. *Id.* Because the DOE did not cite any mental health concerns other than alcohol dependence in its Notification Letter, I make no findings with regard to any other mental conditions from which the individual may suffer.

occasions he had consumed more alcohol than he initially intended. Ex. 6 at 5; Ex. 9 at 36. Finally, in the Psychiatric Report, the DOE psychiatrist noted, among other things, that the individual continued to consume alcohol at the time of the evaluation, and highlighted the fact that the individual had experienced his sixth blackout in five years, with the last occurring one and one-half years prior to the evaluation. Ex. 6 at 4; Tr. at 174. The individual's multiple blackouts demonstrate that the individual spent a great deal of time intoxicated which seems to suggest that he had less time to enjoy social, occupational or recreational activities. In the end, after weighing the testimony and opinion of all the experts, I am persuaded that the facts in record support the DOE psychiatrist's diagnosis of Alcohol Dependence.

B. Rehabilitation and Reformation

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing*, TSO-0430 (2007); *Personnel Security Hearing*, Case No. VSO-0244 (1999); *Personnel Security Hearing*, Case No. VSO-0154 (1997), *Personnel Security Hearing*, Case No. VSA-0154 (1998). Therefore, I must consider whether the individual has submitted sufficient evidence of his rehabilitation or reformation to resolve the security concerns raised by his diagnosis of Alcohol Dependence under both Criteria H and J. In the end, I must exercise my common sense judgment in determining whether an individual's access authorization should be granted after considering the applicable factors set forth in 10 C.F.R. § 710.7(c).

While I think that it is a good sign that the individual has proactively sought alcohol education and therapy, there is no evidence in record that supports the notion that the individual has been reformed or rehabilitated within a four-month period of time. Throughout the hearing, the DOE psychiatrist vacillated in his opinion before concluding that with four months of sobriety and limited participation in Alcoholics Anonymous (AA), the individual had been adequately reformed from his Alcohol Dependence. Tr. at 176-178; 181-184. In his reluctance to conclude that the individual had been adequately reformed, the DOE psychiatrist recommended continued monitoring by the individual's psychologist. *Id.* at 177-179. He also emphasized that, with regard to the individual's rehabilitation, he is willing to rely on monitoring¹¹ with the individual's psychologist to "assure that we are safe." *Id.* at 179; 181.

As an initial matter, there are some aspects of the DOE psychiatrist's testimony that I found to be troubling. At the hearing, the DOE psychiatrist testified that the individual was "very early in the context of choosing a sober lifestyle" and remains at "high risk for future problems." *Id.* at 174. In the face of these statements, it is inconsistent that he would find adequate rehabilitation and reformation from Alcohol Dependence after only four months of sobriety. Even if I accept February 2009 as the time of the individual's last drink, as did the DOE psychiatrist, I must find

¹¹ As a condition of his employment, the individual is required to enroll in the DOE's Human Reliability Program (HRP), 10 C.F.R. Part 712. Tr. at 179. The HRP is a security and safety reliability program designed to ensure that individuals who occupy positions affording access to certain materials, nuclear explosive devices, facilities, and programs meet the highest standards of reliability and physical and mental stability. *Safeguards and Security Program References*, Department of Energy Manual No. 470.4-7, Section A 27 (2005). As a condition of this program, the individual must submit to annual random drug and alcohol testing in addition to a full psychological evaluation. Tr. at 179.

that not enough time has elapsed for the individual to prove his reformation. Furthermore, the DOE psychiatrist did not clearly explain why he believed that the individual was rehabilitated. At the hearing, the DOE psychiatrist accorded much weight to the testimony of the individual's psychologist who performs "fitness for duty" psychological evaluations for the DOE contractor at the site where the individual worked. *Id.* at 176. This is why I believe that his decision to "reluctantly" find that the individual had been rehabilitated from his diagnosis of Alcohol Dependence after only four months of demonstrated sobriety was in error.

In the administrative review process, Hearing Officers accord deference to the expert opinions of mental health professionals regarding the issue of rehabilitation or reformation. *See Personnel Security Hearing*, Case No. TSO-0562 (2008), *Personnel Security Hearing*, Case No. TSO-0462 (2007). The DOE does not have a set policy on what constitutes rehabilitation and reformation from an alcohol diagnosis, but instead makes a case-by-case determination based on the available evidence. There are instances where Hearing Officers do not agree with the opinions of experts. Recently, an OHA Hearing Officer disagreed with a DOE expert and granted an access authorization. *See, e.g., Personnel Security Hearing*, Case No. TSO-0751 (2009) (an OHA Hearing Officer accorded little weight to the testimony of the DOE consultant psychiatrist in finding that the diagnosis of Alcohol Dependence was not clearly supported by facts in record). Thus, Hearing Officers are often required to exercise common sense judgment when evaluating the expert testimony before them.

In making a determination as to whether the individual has been rehabilitated from Alcohol Dependence, I found that there are a number of factors that weigh heavily against the individual. First, at the time of the hearing, the individual had been abstinent for four months, which was far short of the sobriety time recommended by the DOE psychiatrist in his report.¹² Even if the individual were to submit to ongoing monitoring, I must look at a fixed period of time when making a determination. *Tr.* at 181. Second, it appears that the individual has failed at prior attempts at sobriety. By his own account, the individual has been able to remain abstinent for only two to three months at a time. *Id.* at 126; Ex. 6 at 6. Third, the individual's close friends in his support network consume alcohol. *Tr.* at 129. Fourth, the individual continues to associate with some of his fraternity brothers who consume alcohol. *Id.* at 119. Finally, the individual's roommate consumes alcohol and keeps alcohol in their home. *Id.* at 46.

Notwithstanding these negative factors, the individual's experts believe that the individual's prior alcohol use is no longer a concern. *Id.* at 75-76; 162; 182. However, during the hearing, the DOE psychiatrist remained concerned because of the individual's December 2007 blackout and only four months of demonstrated sobriety. *Id.* at 175; 183. His concerns also remained because the individual continues to associate with his fraternity brothers who currently drink alcohol. *Id.* at 175-176. Based on the testimony and evidence in record, I am convinced that the individual remains at risk for future problems with alcohol. *Tr.* at 174. Using my common sense

¹² In cases involving a diagnosis of Alcohol Dependence, a period of nine months is atypical in determining whether an individual has been rehabilitated or reformed. The fact that the DOE psychiatrist recommended that the individual remain sober for an "approximate" period of nine months underscores his belief that the individual does not have a "fragrant" diagnosis of Alcohol Dependence. *Tr.* at 170.

judgment, I cannot find that the individual has demonstrated adequate rehabilitation or reformation from Alcohol Dependence.

VI. Conclusion

Based on the foregoing, I find that the individual has failed to bring forth sufficient evidence to mitigate the security concerns under Criteria H and J. After considering all of the testimony and evidence, I cannot find that granting 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 be denied. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Avery R. Webster
Hearing Officer
Office of Hearings and Appeals

Date: September 25, 2009