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July 27, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 15, 2009

Case Number: TSO-0735

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter "the Individual") for access authorization. This decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual should receive access authorization.¹ For the reasons detailed below, it is my decision that the Individual should not be granted access authorization.²

I. APPLICABLE REGULATIONS

The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." Under Part 710, the Department of Energy (DOE) may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After such derogatory information has been received and a question concerning an individual's eligibility to hold an access authorization has been raised, the burden shifts to the individual to prove that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *See* 10 C.F.R. § 710.27(a). The ultimate decision concerning eligibility is a comprehensive, common sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a).

¹ Access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

² 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>.

II. BACKGROUND

The Individual's employer, a contractor at a DOE facility, requested that the Individual be granted access authorization. As part of the procedure to receive a clearance, the Individual submitted a SF-86 form, "Questionnaire for Sensitive Positions" (QSP), dated in December 2007, in which he disclosed that he had several delinquent financial accounts and had smoked marijuana in 2005. Subsequent investigation uncovered that the Individual had an extensive history of delinquent financial accounts.

To resolve the concerns raised by the Individual's delinquent financial accounts and marijuana and alcohol use, the DOE facility's local security office (LSO) conducted a Personnel Security Interview (PSI) with the Individual in July 2008. During the PSI, the Individual admitted that he had been sent to a workplace infirmary because his supervisor had smelled alcohol on his breath. He also described himself as "an alcoholic" and stated he intended to quit using alcohol.

The Individual was also referred to a DOE-contractor Psychiatrist (DOE Psychiatrist) for examination. In September 2008, the Individual was examined by the DOE Psychiatrist. In his October 2008 evaluative report (Report), the DOE Psychiatrist diagnosed the Individual as suffering from Attention Deficit Hyperactivity Disorder (ADHD) and Alcohol Abuse "by history." Exhibit (Ex.) 4 at 6. He also opined that the Individual had been a user of alcohol habitually to excess. Ex. 4 at 6. In the Report, he opined that the Individual's ADHD and its associated affect on the Individual's impulsivity could cause impaired judgment or reliability. He recommended that the Individual "could benefit from six or eight sessions with an ADHD-type coach to help him gain even better understanding of the disorder and learning [sic] even better coping mechanisms." Ex. 4 at 7. With regard to his diagnosis of Alcohol Abuse and his determination that the Individual had used alcohol habitually to excess, the DOE Psychiatrist found that the Individual had used alcohol responsibly for the past 18 months and that the Individual had obtained sufficient insight into his alcohol misuse such that no rehabilitation was needed. He further stated his opinion that the probability of an alcohol misuse by the Individual in the future was low. Ex. 4 at 6.

Because neither the PSI nor the psychiatric examination resolved the derogatory information related to his history of delinquent financial accounts, his misuse of marijuana and alcohol, or the diagnosis of ADHD, the processing of the Individual's application for a security clearance was suspended and the LSO requested an administrative review regarding the Individual's eligibility for a clearance. Subsequently, the Individual was issued a notification letter in March 2009 (Notification Letter).³ Ex. 3.

³ Despite the DOE Psychiatrist's opinion that the Individual did not need to undergo treatment for his Alcohol Abuse, the LSO listed the Individual's misuse of alcohol as a concern under Criterion H, 10 C.F.R. § 710.8(h), based upon the Individual's answers in the PSI and the possibility that the Individual failed to give the DOE Psychiatrist accurate answers. Ex. 3 (Statement of Charges) at 4.

In the Notification Letter, the Individual was informed that his numerous delinquent financial accounts constituted derogatory information under Criterion L.⁴ Additionally, the fact that the Individual submitted a Personal Financial Statement (PFS) to the LSO that indicated that he had significant net income, yet chose not to pay his outstanding debts, was deemed to constitute Criterion L derogatory information.

The Notification Letter stated that the DOE Psychiatrist's diagnosis of ADHD constituted derogatory information under Criterion H.⁵ It also cited the DOE Psychiatrist's comments in the Report that the Individual's ADHD was associated with "impulsivity." Ex. 3 (Statement of Charges) at 4. While acknowledging that the DOE Psychiatrist found that Individual did not need rehabilitation from alcohol misuse, the Notification Letter cited the Individual's admission in the PSI that he considered himself an "alcoholic" and his statement that he cannot just drink "one or two" alcohol beverages. Ex. 3 (Statement of Charges) at 4. As additional Criterion H derogatory information the Notification Letter asserted that the Individual's statement to the DOE Psychiatrist that he had no alcohol-related incidents in the past 18 months may have been incorrect. Further, the Notification Letter cited the Individual's admission that in November 2007 he had been sent to a workplace dispensary because his supervisor had smelled alcohol on his breath. This incident occurred following a night when he consumed several beers and "shots" of alcohol. This incident occurred less than 12 months before the date of his interview with the DOE Psychiatrist. Ex. 3 (Statement of Charges) at 4.

The Individual's admission in the QSP and PSI that, after he left military service in April 2004, he purchased and smoked marijuana was cited as derogatory information under Criterion K.⁶ The Notification Letter noted at the time the Individual purchased the marijuana he was 30 years old, employed, and married. Ex. 3 (Statement of Charges) at 5.

A hearing was held in this matter. At the hearing, DOE presented one witness, the DOE Psychiatrist. The Individual offered his own testimony, as well as that of a supervisor and his pastor. The DOE submitted 11 exhibits (Exs. 1-8C) for the record. The Individual submitted nine exhibits (Ind. Exs. A-I). On June 23, 2009, after the transcript of the hearing was delivered to me, DOE requested that I reopen the record so that it could submit an additional item of derogatory information, a report by the Individual to the LSO stating that he had been arrested on June 21, 2009, for Driving Under the Influence. Ex. 9. I granted the DOE's request and entered the report into the record. I also provided the Individual an opportunity to respond to this new derogatory information or request that additional testimony be taken in this matter. The Individual responded by E-mail on July 6, 2009, and the record was again closed in this matter

⁴ Criterion L references information indicating that an individual is "[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. . . ." 10 C.F.R. § 710.8(l).

⁵ 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).

⁶ Criterion K refers to information indicating that an individual has "[t]rafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law." 10 C.F.R. § 710.8(k)

on July 7, 2009. Ind. Ex. J (E-mail from Individual to Richard Cronin, Hearing Officer (July 6, 2009)).

III. FACTUAL FINDINGS

The factual accuracy of the majority of events described in the Notification Letter is not challenged.

The Individual was a member of the U.S. Military from 1997 to 1999. Ex. 8A at 4. After leaving the military he began work with a communications firm. In 2002, the Individual enlisted in a National Guard unit. Exhibit 8A at 4. The Individual left National Guard service in 2004. In April 2004, the Individual was employed by another communications firm.

Sometime in 2005, a friend offered the Individual marijuana. The Individual, who had consumed several alcoholic beverages immediately prior to the offer, smoked marijuana with his friend. Over the course of a month, he smoked it on 3 to 5 occasions. Ex. 6 at 41-43; Ex. 8B at 2; Transcript of Hearing (Tr.) at 117-18.

In October 2005, the Individual left his current position to work for a third communications firm. In October 2006, the Individual accepted a position at a fourth communications firm (Firm). The Firm agreed to advance to the Individual money to pay for his relocation expenses to another state. If the Individual stayed employed with the Firm for three years, the Firm would forgo repayment of the advance. Ex. 6 at 7. In April 2007, the Individual took a position with a fifth communication firm. In November 2007, the Individual was employed by a DOE contractor. During this same month, a supervisor detected the odor of alcohol on the Individual and sent him to a company infirmary. Ex. 6 at 55-57.

A credit report obtained in December 2007 indicated that the Individual had eight financial accounts relating to loans, credit cards, student loans and other purchases in collection status including the Firm's claim against the Individual for failing to repay the relocation expenses that were forwarded to him, as well as an account from an apartment complex for a broken lease. Ex. 8C at 5-14.

At the request of the LSO, the Individual submitted a PFS dated July 2008. Ex. 5 at 1. In the PFS, the Individual recorded a monthly income of \$4,924 and a net income of \$1,784 after all monthly expenses. Ex. 5.

After examining the Individual in September 2008, the DOE Psychiatrist issued his Report in October 2008. In the Report, the DOE Psychiatrist opines that the Individual suffers from "Alcohol Abuse by history" and has been a user of alcohol habitually to excess in the past. He also stated that the Individual's responsible use of alcohol for the prior 18 months indicated that the Individual needed no rehabilitation. Ex. 4 at 6. The DOE Psychiatrist also diagnosed the Individual as suffering from ADHD. Ex. 4 at 6. In the opinion of the DOE Psychiatrist as recorder in the Report, the impulsivity associated with ADHD could cause impaired judgment or reliability. Ex. 4 at 6.

Another credit report obtained in May 2009 showed that the Individual had four accounts in collection, two from the Firm's advancement of relocation expenses (totaling \$3,502), one from the apartment complex (\$1,093) and one for medical expenses (\$58). Ex. 1 at 1. The other delinquent accounts listed in the December 2007 credit report had been either paid off or charged off by the creditor. Ex. 1 at 1-2.

V. ANALYSIS

A. Criterion L

The Criterion L concerns arise from the Individual's extensive history of unpaid debts. Excessive indebtedness and the failure to meet financial obligations are derogatory information under Criterion L. 10 C.F.R. § 710.8(1) ("circumstances which tend to show that an individual is not honest, reliable or trustworthy," including "a pattern of financial irresponsibility"); *see also* 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 F.

It is undisputed that the Individual has a history of financial delinquencies. Tr. at 96. Once a security concern exists, an individual has the obligation to resolve the concern. In the case of a history of financial delinquencies, an individual can resolve the concern by demonstrating a reformed attitude and a pattern of financial responsibility. *See, e.g., Personnel Security Hearing*, Case No. TSO-0645 (October 22, 2008).

A supervisor, who is a friend of the Individual, testified that the Individual is now living within his current financial means. Tr. at 64. He testified that approximately one and a half years ago the Individual approached him to help him make a personal budget. Tr. at 64-64. The Individual informed him that he did not have enough money to cover his monthly bills because his paycheck was being garnished. Tr. at 65. He later sat down with the Individual and set up a budget. According to this budget, the Individual had approximately \$100 per month after all obligations were accounted for. Tr. at 65.

The Individual asserts that, as of the date of the hearing, all of his student loans have been paid off, as well as a number of the other delinquent accounts. *See* Ex. 2. A number of the remaining accounts have been closed out by the creditor. *See* Ind. Ex. G. A number of the debts were created by several ex-wives, and he has had those debts cleared off his credit report. Tr. at 102-04. Additionally, he is disputing one debt to a phone company, since the debt was generated by an ex-girlfriend. Tr. at 104.

With regard to the debt to the Firm, the Individual initially testified that his intention is not to repay. Tr. at 97. The Individual conceded that the debt was legitimate and stated that the reason he did not attempt to repay the debt was because of his anger that the Firm improperly withheld money from his last three paychecks. Tr. at 98. The Individual later testified that he was eventually going to repay this debt, although he is not currently repaying the debt. Tr. at 100.

The Individual also testified regarding the current debt in collection for rent from an apartment complex. The debt arises from his breaking a one-year lease. Tr. at 101. The Individual stated his intention to set up a repayment plan and satisfy this debt. Tr. at 101.

When asked about the PFS he submitted to the LSO, which indicated that he had substantial net income to pay debts yet was not doing so, the Individual testified that when he completed the PFS, his wages were not being garnished. Tr. at 105-06. The Individual then testified that the monthly amount garnished was approximately \$160. When confronted with the fact that his claimed monthly net income in the PFS, would, after deducting the garnishment, would still leave substantial funds available to repay his debts, the Individual explained that he included in the PFS money he gets each month for service-related disabilities and used pre-tax income figures. Tr. at 108.

The Individual has also submitted a number of letters from his friends and his two witnesses. Ind. Exs. A-E. Each of the letters attested to the Individual's good character and the excellence of his service both as a civilian and as a member of the regular military and National Guard. He also testified that because of his efforts to resolve his debt problems, he has raised his credit score from approximately 495 to 592. Tr. at 143.

After reviewing all of the evidence, I find that the Criterion L concerns have not been resolved. The Individual has made significant strides in becoming financially responsible and has repaid a number of debts. However, the Individual's pattern of financial responsibility is relatively recent and was prompted in part by the garnishment of his wages. Additionally, the Individual's somewhat ambivalent attitude regarding repayment of the debt to the Firm does not demonstrate a mature attitude toward debt and therefore provides additional doubt about the Individual's reliability and trustworthiness. While I have no reason to doubt the Individual's work ethic or the quality of his past service to the Nation, his lack of a consistent pattern of financial responsibility does not allow me to conclude that the Criterion L concern is resolved.⁷

B. Criterion H

The Criterion H concerns involve the DOE Psychiatrist's diagnosis of ADHD and Alcohol Abuse, as well as his determination that the Individual had been a user of alcohol habitually to excess. Excessive use of alcohol raises a security concern due to the heightened risk that an individual's judgment and reliability may be impaired to the point that he will fail to safeguard classified matter or special nuclear material. *See Personnel Security Hearing, Case No. VSO-0733 (July 13, 2009) (Criterion J case involving alcohol misuse)*. Further, certain emotional, mental, and personality conditions can impair judgment, reliability and trustworthiness. Adjudicative Guidelines at Guideline I. Given the DOE Psychiatrist's Report diagnosing the Individual as suffering from Alcohol Abuse in remission and his determination in the Report that the Individual's ADHD could cause an impairment because of the impulsivity associated with the disorder, the LSO had sufficient grounds to invoke this criterion of derogatory information under Part 710.

At the hearing, the DOE Psychiatrist described his examination of the Individual. He arranged for the Individual to take three psychometric tests – The Minnesota Multiphasic Personality Inventory (MMPI), the Millon Clinical Multiaxial Inventory (MCMI) and the Substance Abuse

⁷ While not cited as derogatory information, the Individual admits in the PSI that he deliberately gave an OPM investigator false information regarding whether another person was with him at the time of his marijuana use. Ex. 6 at 48. When asked why he gave a false answer he stated "I don't know, cuz I ain't a rat, I guess. I don't know." Ex. 6 at 48. This lack of candor casts further doubt on the Individual's trustworthiness.

Subtle Screening Inventory (SASSI). Tr. at 18-19. He also conducted a structured mental status examination during his interview of the Individual. Tr. at 19.

The MMPI test results, which were scored by computer, indicated that the Individual was likely to be immature, self-centered, a nonconformist and a risk taker. Tr. at 24. It also indicated that the Individual may have “consciously distorted” some of his answers. Tr. at 24.

1. Alcohol Abuse and Habitual Use to Excess

The DOE Psychiatrist testified that results of the Individual’s testing and interview revealed to him that the Individual had a history of Alcohol Abuse but it was “not active” at the time of his examination nor had it been active “for a while.” Tr. at 20. In making this finding, the DOE Psychiatrist testified that he adjusted the Individual’s score on the SASSI. Tr. at 21. He adjusted the score because the Individual’s responses to various SASSI questions were not consistent with the responses the Individual gave during their interview. Tr. at 21. Without the adjustment the SASSI would have indicated that the Individual had no substance abuse problem. Tr. at 21. As an example of the scores he adjusted on the SASSI, the DOE Psychiatrist cited one SASSI question “Have you had more to drink than you intended to?” to which the Individual answered “Never.” Tr. at 21. This response was inconsistent with the responses the Individual gave during their interview, so he gave the Individual an increased score consistent with an affirmative response to the question. Tr. at 21.

The DOE Psychiatrist further testified that the Individual had admitted to him that he had past problems with alcohol, but stated in his interview that he had had no alcohol-related problems for the prior 18 months. Tr. at 26-27. The DOE Psychiatrist also stated that based upon this information he concluded that the Individual, despite his impulsivity and the fact he had not received any prior alcohol-related treatment, did not require any treatment or rehabilitation from his Alcohol Abuse. Tr. at 27. He testified that his opinion regarding the Individual’s Alcohol Abuse would change if the period in which the Individual had not consumed alcohol to excess were shorter than 18 months. When asked about the fact that a supervisor had detected the odor of alcohol on the Individual at work in November 2007, the DOE Psychiatrist indicated that, given that the Individual had only 11 months of non-problematic alcohol use at the time of his interview, he would now recommend participation in Alcoholics Anonymous (AA). Tr. at 31.

The Individual presented two witnesses who testified as to his alcohol consumption pattern. The supervisor socializes with the Individual approximately four or five times a year. The last time the supervisor had seen the Individual intoxicated was in July 2008. Tr. at 62-63, 73-74. The Individual’s supervisor testified that in the first couple of months that the Individual worked for him (the Individual’s employment began in November 2007), there were several occasions that he could smell alcohol on the Individual as he reported to work. Tr. at 68. He counseled the Individual that he could not come to work after having a large amount of alcohol the night before and the Individual stopped coming to work in such a condition. Tr. at 68. While he never took any additional action regarding this issue, another supervisor did send the Individual to the infirmary on one occasion in November 2007, since he smelled of alcohol. Tr. at 69; Ex. 6 at 55.

The Individual’s pastor testified that in January 2009 the Individual communicated his intention to stop consuming alcoholic beverages. Tr. at 82. It is his belief that the Individual is “working very hard” on being abstinent. Tr. at 81. He has spoken to the Individual many times since

January 2009 and has not smelled alcohol on his breath. Tr. at 84. He also testified to the growth in the Individual's spirituality and his work as a worship leader at their church. Tr. at 78-79, 82.

The Individual testified that he has not completely stopped consuming alcoholic beverages. Tr. at 111. His current consumption is mostly one or two beers on Fridays and Saturdays with dinner, since most weeknights he is at church working on duties related to being a worship leader. Tr. at 112, 133. He admitted telling the interviewer at his PSI that he had a problem with alcohol at one point of his life but now feels he has his alcohol problem under control. Tr. at 113. He confirmed his supervisor's testimony that the last time he was intoxicated was in July 2008. Tr. at 113.

With regard to the incident where he was sent to the infirmary, the Individual testified that he had consumed beer at a pool tournament the night before the incident. Tr. at 116. He denied being intoxicated the next morning at work but believes that if he has only a few beers he will emit the odor of alcohol in his sweat. Tr. at 116. He estimated that on the occasions his supervisor had noticed that he smelled of alcohol at work, he had consumed approximately six or seven beers over two to three hours on the night before. Tr. at 117.

He testified that he made the decision to reduce his alcohol consumption because of his employment and his increased involvement at his church. Tr. at 130. He felt "convicted" by the fact he was in a leadership role at church and had met people who went to his church at bars and did not want to be intoxicated in their presence. Tr. at 130. Consequently, he went before the congregation of the church and informed them that he consumed alcohol and smoked in bars and that he needed to "quit doing it so much." Tr. at 130-31.

The Individual also testified that he is currently seeing a clinical psychologist (Psychologist) at a Veterans Administration Center. Tr. at 109. He tries to see the Psychologist every other week but this is limited by the Psychologist's availability. Tr. at 109. He began to see the Psychologist upon receiving the Notification Letter. He talks to Psychologist about "my everyday life and about relationship issues." Tr. at 109.

The Psychologist states in writing that he has seen the Individual for three sessions and that the Individual has a history of alcohol and THC (marijuana) use, a possible diagnostic history of ADHD, financial problems and relationship issues. Ind. Ex. F. The Psychologist notes that the Individual appears to be in remission with regard to his alcohol and THC use and that these problems are not a focus of his treatment. The focus of his treatment of the Individual is on the Individual's "relationship issues and increased understanding and awareness of his role in relationship choices." Ind. Ex. F. He concludes by stating his opinion that the Individual's prognosis for continued substance abuse recovery and his progress in therapy is "excellent." Ind. Ex. F.

After listening to all of the testimony, the DOE Psychiatrist was given an opportunity to question the Individual and provide a further opinion regarding the Individual. The DOE Psychiatrist stated that his prognosis of the Individual was now not as favorable as in his Report, in light of the alcohol-related incidents indicating that the Individual did not in fact have 18 months of non-problematic alcohol consumption. Tr. at 139. Nevertheless, given that he was now seeing a counselor, and the DOE Psychiatrist's belief that the Individual had "a very good structure in his life," the DOE Psychiatrist concluded that "I'm still in a pretty positive place with him." Tr. at 139-40. He further testified that he now believes that the Individual has shown adequate

evidence of rehabilitation and reformation from his alcohol problem. In reaching this conclusion, the DOE Psychiatrist stated that while the Individual is not specifically being treated by the Psychologist for alcohol issues, he feels that if the Individual were having any such problems he would discuss them with the Psychologist. Tr. at 141.

Approximately one month after the hearing was held, the LSO received a report from the Individual that he had been arrested for DUI. I reopened the record to allow DOE Counsel to submit evidence of this report into the record. In response, the Individual submitted a statement asserting that his attorney has informed him that since it was his first arrest for DUI he would receive a "With Held Judgment" and would receive a 90-day suspended license and one year of unsupervised probation. He also reported that he has now joined an Christian based AA group and has started attending meetings as of the last week in June 2009. Ind. Ex. J.

After reviewing all of the evidence, I cannot find that the Individual has resolved the concerns arising from the DOE Psychiatrist's diagnosis of Alcohol Abuse. The Individual's arrest for DUI one month after the hearing clearly suggests some type of ongoing alcohol-related disorder. The DOE Psychiatrist and the Psychologist could not have, of course, considered this information before making their assessment of the Individual. I commend the Individual for his efforts in attending AA and making a renewed effort to be abstinent from alcohol. Nevertheless, it is much too early to conclude that his current efforts have resolved the concerns raised by the diagnosis of Alcohol Abuse.

2. ADHD

The DOE Psychiatrist testified as to how he arrived at his diagnosis of ADHD. During the examination, he asked the Individual a series of questions of general knowledge in order to assist him at making a diagnosis of Attention Deficit Disorder (ADD). Tr. at 33. The Individual showed indications of suffering from ADD in his inability to list the five biggest cities in America even after being given a hint. Tr. at 34. He was also unable to recall who was the governor of the state he lived in, although he did recall the name when given a hint. Tr. at 34. The Individual also had some difficulty with the "serial sevens" and "serial threes" test. These tests ask an individual to start at 100 and then give a series of numbers by subtracting 7 or 3 from the prior number. Tr. at 36-37. The Individual's specific errors in these tests were suggestive of ADD. Tr. at 36-37. The Individual, after being asked about if he had difficulty with his memory, informed the DOE Psychiatrist, "I know. I've had ADD all of my life." Tr. at 34.

The DOE Psychiatrist established a final diagnosis of ADHD by virtue of the fact that the Individual's ADD was present with the Individual's history of impulsive acts and his assessment that the Individual was a "thrill seeker." Tr. at 35. This history suggested that the Individual may have demonstrated hyperactivity. Tr. at 35-36. Additionally, the Individual's MMPI results suggested that the Individual "likes excitement." Tr. at 122.

The Individual's ADD, the DOE Psychiatrist noted, could cause difficulty for a person such as the Individual because of the possibility of impulsive acts, such as spending too much money or getting into inappropriate relationships. Tr. at 38. Additionally, such people might have difficulty with rules because they may act impulsively, rather than considering rules. Tr. at 38. There is also the possible problem of a clearance holder forgetting things or saying things without thinking. Tr. at 38-39. While the Individual had a spotless record earlier in life when he held a

clearance in the military, the DOE Psychiatrist opined that the highly structured environment of the military, not found in civilian life, would help a person with ADD, such as the Individual, to perform better. Tr. at 40.

The DOE Psychiatrist recommended that the Individual receive “coaching” for his “ADD.” Tr. at 40. Such an “ADD Coach” teaches ADD sufferers to learn to “stop and think” and to prioritize jobs. Tr. at 41. The ADD coach would also teach basic coping skills. Tr. at 41.

The Individual disputes the diagnosis of ADHD. The Psychologist informed the Individual that he could not diagnose ADHD on the basis of one session, especially since he was not a certified ADHD Counselor. Nevertheless, his initial opinion was that the Individual did not seem to have ADHD. Tr. at 110. The Individual testified that he explored a more detailed diagnostic evaluation for ADHD but could not afford the expense. Tr. at 110-11. The Individual admits telling the DOE Psychiatrist that he had ADD but did not tell him that he had ADHD, which the Individual understands is a condition that affects the ability of a person to complete tasks or finish assignments. Tr. at 119. The Individual believes that he faithfully completes tasks and assignments. Tr. at 42, 119-20.

After listening to all of the testimony, the DOE Psychiatrist again testified. He believes that given the Individual’s ongoing relationship with the Psychologist, any concerns as to the Individual’s ADHD are resolved. Tr. at 141; *see also* Tr. at 143 (statement from DOE Counsel). In support of his opinion, the DOE Psychiatrist cited the fact that the Psychologist is aware of the Individual’s ADHD. Tr. at 141. Further, the DOE Psychiatrist believes that the Individual would consult with the Psychologist if he were having problems related to the ADHD. Tr. at 141.

After considering all of the evidence in the record, I cannot find a security concern arising from the Individual’s diagnosis of ADHD. There has been no expert testimony establishing that any of the conduct referenced in the Notification Letter is a product of the Individual’s ADHD. At best, the DOE Psychiatrist testified that it was only *possible* that the Individual’s marijuana use was an impulsive act resulting from the Individual’s ADHD. Tr. at 42. The DOE Psychiatrist did testify that a person with ADHD may impulsively overspend or have inappropriate relationships or inadvertently disclose information. However, in the Individual’s case, there is no evidence that the Individual has a history of inappropriate relationships or inadvertently disclosed information despite presumably having ADHD his entire adult life. His work performance has been commended by his supervisor. With regard to the Individual’s indebtedness, there is no evidence that it was directly caused by his ADHD. Further, the Individual’s recent successful efforts in reducing his indebtedness over the past year and a half argues against an ADHD cause for his financial indebtedness. Lastly, even if there is a concern relating to the diagnosis of ADHD, the DOE Psychiatrist believes that the Individual’s current therapeutic relationship with the Psychologist is sufficient to allay any concern. In the present case, I find that the security concerns raised by the diagnosis of ADHD have been resolved.

In sum, I find that the Criterion H concerns related to the Individual’s diagnosis of ADHD have been resolved. However, I also find that the Criterion H concerns related to the Individual’s Alcohol Abuse have not been resolved.

C. Criterion K

The Criterion K concern centers on the Individual's admitted use of marijuana in 2005. Illegal drug use may cause an individual to act in a manner that is inconsistent with the best interests of national security while under the influence of such substances. *See* Adjudicative Guidelines at Guideline H. Also, illegal drug use indicates a willingness to ignore the law, which could be reflected in the clearance holder's attitude toward security requirements. *See, e.g., Personnel Security Hearing*, Case No. TSO-0527 (February 28, 2008).

At the hearing, the Individual explained the circumstances that led to his marijuana use:

I had been in the military, it seemed like, all my life, and I got out. And I never tried it, so I'm like -- and I had been drinking a little bit, so I'm like, "Well, I'll try it." I had never tried it before, so I tried it. I mean, there's nothing I can say to -- I just wanted to see what it was like.

Tr. at 117-18. He testified that he used marijuana approximately three times over the course of a month in 2005. Tr. at 118. Since that month in 2005, he has not used marijuana and intends never to use marijuana even if it is offered to him while he is under the influence of alcohol. Tr. at 118, 132. The Individual has also submitted copies of his pre-employment and pre-assignment urine drug test results taken on August 2007 and July 2008, respectively. Both are negative for marijuana metabolites. Ind. Ex. H; Ind. Ex. I.

The DOE Psychiatrist testified that it was possible that the Individual's marijuana use was an impulsive act resulting from the Individual's ADHD, but that many people try marijuana without suffering from ADHD. Tr. at 42.

DOE Counsel explained the DOE concern as to the Individual's use of marijuana as:

On the marijuana issue, I don't -- I think that, for the most part, the issues are resolved. The concern there isn't so much the use of the marijuana, but the reasons why; and that is, you know, he did it just because. And he admits that it was stupid, but it goes to the impulsivity and the not thinking out the consequences of one's actions, that there's still a concern there with respect to his judgment and reliability because of that impulsiveness. So I think there are still some concerns. . . .

Tr. at 143.

As indicated by the DOE Counsel's statement at the hearing, there is no remaining Criterion K-type concern raised by the Individual's isolated use of marijuana. To the extent there is a Criterion L-type concern about the Individual's judgment, trustworthiness and reliability caused *solely* by his diagnosis of ADHD, those concerns have been resolved as discussed in the Criterion L section above.

V. CONCLUSION

As explained above, I find that the security concerns under Criterion K have been resolved. However, the security concerns under Criteria H and L have not been resolved. Given these findings, I cannot conclude that granting the Individual 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). Consequently, the Individual should not be granted access authorization. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: July 27, 2009