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August 21, 2009

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 29, 2009

Case Number: TSO-0742

This decision concerns the eligibility of XXXXXXXXXXXX ("the Individual") for a DOE access authorization.<sup>1</sup> This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's request for an access authorization should be granted. For the reasons detailed below, it is my decision that the Individual's suspended access authorization should not be granted at this time.

**I. BACKGROUND**

This administrative review proceeding began with the issuance of a notification letter by a Department of Energy (DOE) local security office (LSO), informing the Individual that information in the possession of the DOE created a substantial doubt pertaining to her eligibility for an access authorization.<sup>2</sup> See Notification Letter, March 19, 2009.

The Notification Letter cites the Individual's alcohol use as a security concern under 10 C.F.R. § 710.8(j) (Criterion J). Criterion J relates to conduct indicating that the Individual has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). According to the Notification Letter, a DOE consultant-psychiatrist ("the DOE Psychiatrist") evaluated the Individual in November 2008 and determined both that the Individual's alcohol consumption "constitute[ed] a pattern of using alcohol habitually to excess" and the Individual met the criteria for alcohol abuse. DOE Ex. 7 at 11, 13. The DOE Psychiatrist further concluded that the Individual did not demonstrate adequate evidence of rehabilitation or reformation. *Id.* at 14. Specifically, the DOE Psychiatrist noted that the Individual continued to drink and had not sought any treatment for her alcohol abuse. *Id.* at 13.

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<sup>1</sup> Decisions issued by the Office of Hearings and Appeals (OHA) 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>.

<sup>2</sup> Access authorization, also known as a 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.

The DOE Psychiatrist recommended that in order to demonstrate adequate evidence of rehabilitation or reformation from her alcohol abuse diagnosis, the Individual should seek out a treatment program such as Alcoholics Anonymous (AA) or individual substance abuse counseling, as well as maintain abstinence from alcohol consumption, for a period of at least one year. *Id.*

In addition to the Criterion J concern, the Notification Letter also cited a security concern under Criterion K. Notification Letter, March 19, 2009. Specifically, the Notification Letter noted the Individual's past marijuana use, from 1974 to 2006. *Id.* The Notification Letter also referred to the DOE Psychiatrist's determination that the Individual met the criterion for Cannabis Abuse in the past and, although the Individual demonstrated sufficient evidence of rehabilitation from her past Cannabis Abuse, "her past history of abusing more than one substance without adequate evidence of rehabilitation or reformation would place [the Individual] at risk of substituting another substance in place of alcohol during the course of her alcohol abuse treatment." *Id.*; *see also* DOE Ex. 7 at 14.

Upon receipt of the Notification Letter, the Individual requested a hearing in this matter. *See* Individual's Letter, April 10, 2009. At the hearing, the Individual presented her own testimony, as well as the testimony of her husband, her manager, her co-worker, and her therapist. The DOE counsel presented the testimony of one witness, the DOE Psychiatrist.<sup>3</sup>

## II. HEARING TESTIMONY

### A. The Individual

The Individual stated that she consumed her last alcoholic drink in March 2009, about three months prior to the hearing, when she drank about "a pint" of alcohol in mixed drinks. Hearing Transcript ("Tr.") at 83-84. She met with the DOE psychiatrist in November 2008. Tr. at 84. The Individual stated that she did not stop drinking immediately after the evaluation because she "didn't believe [she] had a problem" until she received the DOE psychiatrist's report in March 2009. *Id.* The Individual added that she also stopped drinking in March 2009 because her son was visiting with his children and she did not want to drink around her grandchildren. Tr. at 86.

The Individual has had an extended period of sobriety in the past. Tr. at 93-95. In 1986, she was arrested for Driving Under the Influence (DUI). Tr. at 93. During court-mandated counseling following that arrest, the Individual learned that her children had been abused by her ex-husband (their stepfather) on occasions when she had too much to drink and passed out. Tr. at 94. She stated, "[learning] that kept me sober all those years that I was raising my kids until they got grown and out on their own." *Id.* The Individual began drinking alcohol again in 1998. She stated, "the kids were grown, they were out of the house, I started dating and going out to dinner and dancing, and I'd have, you know, a couple of drinks out on my date. That's how it started." Tr. at 95.

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<sup>3</sup> The DOE Counsel submitted exhibits into the record, numbered DOE Exs. 1 - 10. The Individual did not submit any exhibits.

According to the Individual, she now understands that she has an alcohol problem “because of what [she is] learning about [her] use of alcohol, [and] how it affects [her].” Tr. at 103. Prior to discontinuing her alcohol use in March 2009, the Individual consumed “maybe a pint [of alcohol a day], maybe a little more than that during the weekend.” Tr. at 109. She added, “I’d have to say it was too much.” Tr. at 110. The Individual has attended an AA meeting and found it helpful. Tr. at 101. In addition, she has identified a person she intends to ask to be her AA sponsor. Tr. at 102. The Individual added that she did not seek out substance abuse counseling sooner because she “didn’t recognize the need.” Tr. at 111.

The Individual has noticed positive changes in her life since she stopped drinking alcohol, including weight loss and better overall health. Tr. at 126. Her relationships within her family have improved. Tr. at 127. Her husband and children are very supportive of her efforts at maintaining her abstinence from alcohol. *Id.* The Individual noted that her primary motivation for discontinuing her alcohol use is her desire to spend more time with her children and grandchildren. *Id.* She currently does not have any desire to consume alcohol and she does not intend to drink alcohol again in the future. Tr. at 111-13. She added that she does not believe she is capable of drinking alcohol in moderation without her use eventually escalating. Tr. at 113. The Individual feels she has a strong support system to support her. In addition to her husband and children, she includes her church friends, her AA group, and her therapist, as strong sources of support. Tr. at 114. The Individual believes continuing attending AA and working with an AA sponsor will help her remain abstinent from alcohol. Tr. at 115. She also intends to continue meeting with her therapist “until it’s determined [that] it’s no longer needed.” Tr. at 116. The Individual concluded, “all I can do is keep working at [being abstinent], continue with the steps I’ve started taking.” Tr. at 114.

As to the concern relating to her past marijuana use, the Individual stated that she used marijuana “often” between 1974 and 2006. Tr. at 88. However, she last used marijuana in December 2006, and she has not used any illegal drug since then. *Id.* She stopped using marijuana in 2006 because she was in the process of looking for a job and knew that, for the positions she was seeking, she would be subject to random drug testing and continuing to use marijuana “just wasn’t worth it.” Tr. at 89. The Individual stated that she believes marijuana should be legal and alcohol should be illegal. Tr. at 90. However, she understands that illegal drug use is of concern to the DOE because such use is against the law and could also impair the user’s judgment. Tr. at 88. The Individual does not intend to use marijuana in the future. Tr. at 92.

## **B. The Individual’s Husband**

The Individual and her husband have been married for approximately seven years. Tr. at 49. The Individual’s husband has been a recovering alcoholic for 14 years. Tr. at 38. He stated that he could see that the Individual was drinking too much and he told her so. *Id.* He was concerned about the effect alcohol had on the Individual’s health. Tr. at 36. He stated that he has seen the Individual intoxicated in the past. Tr. at 49. However, the last time the Individual drank alcohol was in March 2009, prior to her son and grandchildren visiting. Tr. at 35. The Individual’s husband stated that the Individual now acknowledges that she has an alcohol problem and has “taken little steps” to address it. Tr. at 40. She has begun attending AA and has found a therapist with whom she feels comfortable. *Id.* He added, “the biggest step is she’s not drinking,

bottom line.” *Id.* The Individual’s husband further stated that they have no alcohol in their home.

The Individual’s husband has noticed positive changes in the Individual since she stopped drinking. Tr. at 41. She has lost weight and seems happier and healthier. *Id.*; Tr. at 52. In addition, he does not believe the Individual craves alcohol. Tr. at 42. He added that they were recently at a large family gathering where alcohol was served and the Individual did not find it difficult to refrain from consuming alcohol. Tr. at 42-43. The Individual’s husband stated that they do not generally interact with people who consume alcohol. Tr. at 50. He stated that he and the Individual spend most of their free time together either on the computer, visiting with her grandchildren, watching movies or sports, cooking, or otherwise spending time at home. Tr. at 50.

Finally, the Individual’s husband is aware that the Individual used marijuana in the past. Tr. at 39. He stated that the last time she used marijuana was approximately November 2006. *Id.* She stopped smoking marijuana because it conflicted with her career goals and “[smoking marijuana] just didn’t seem worth it anymore.” *Id.* There is no marijuana or any drug paraphernalia in their home. *Id.*

### **C. The Individual’s Manager**

The Individual’s manager has known the Individual since May 2008, when she was assigned to his department. Tr. at 54. He sees the Individual daily at work; they do not socialize together other than attending work dinners or parties. Tr. at 57, 58. The Individual has never exhibited signs at work of having consumed too much alcohol the prior evening. Tr. at 59. The Individual’s manager has never had reason to believe that excessive use of alcohol negatively impacted the Individual’s work performance. Tr. at 60. To his knowledge, the Individual has been subject to at least two drug screenings, one of which was random, and tested negative for illegal drugs. Tr. at 60, 66. The Individual’s manager has never had reason to suspect the Individual uses illegal drugs. Tr. at 65.

The Individual’s manager stated that the Individual has always been focused. Tr. at 63. However, he believes that “her disposition seems to be more upbeat now than maybe a while back.” Tr. at 65. He is aware that she has been attending counseling and stopped drinking alcohol, but he does not “recall the specifics” of what led her to do so. Tr. at 67. Finally, the Individual’s manager described the Individual as a “conscientious person” who tries to get along with people and “to make a difference in our workplace.” Tr. at 66-67. He added, “I see her as being an asset [to our company].” Tr. at 67.

### **D. The Individual’s Co-Worker**

The Individual’s co-worker stated that the Individual used to be in his supervisory chain, “two levels down.” Tr. at 71-72. They used to interact several times per week, but now do not see each other often. Tr. at 74. They do not socialize together. Tr. at 72. He is unaware of whether the Individual consumes alcohol. Tr. at 76. He stated that the Individual never had any work performance problems, adding, “she’s quite a good worker.” Tr. at 75.

### **E. The Individual's Therapist**

As of the date of the hearing, the therapist had met with the Individual four times, with the first session taking place about one month prior to the hearing. Tr. at 10, 23. During the initial evaluation, the therapist and the Individual discussed the Individual's history of substance abuse. Tr. at 13. The therapist stated, "[the Individual] seemed to be pretty upfront and honest with me, and so I didn't have any reason to wonder if she wasn't [being] forthcoming." *Id.* The Individual told the therapist that she last consumed alcohol in March 2009 and that she does not use illegal drugs. Tr. at 14, 16. The therapist believes the Individual recognizes that she cannot drink alcohol in moderation and they discussed the need for total abstinence from alcohol. Tr. at 14. Following the initial evaluation, the therapist diagnosed the Individual with alcohol abuse, with a "depressive" component. Tr. at 22.

The therapist did not observe any denial on the part of the Individual. Tr. at 23. She stated that the Individual "was probably more cognizant of what she had been through [than in the past] and was willing to follow [the therapist's recommendations]." Tr. at 23. The therapist has recommended that the Individual attend AA meetings or another recovery group's meetings. Tr. at 24. In addition, "[the Individual is] supposed to acquire a sponsor, she's supposed to attend at least one to two meetings a week, and to follow up with [the therapist]." Tr. at 25. The therapist did not find the Individual to be "resistant whatsoever [about attending AA meetings] or angry or judgmental or, you know, feeling victimized, not at all." Tr. at 26. In addition, the Individual's spouse is very supportive of her efforts to address her alcohol problem. *Id.*

As to the Individual's prognosis for remaining abstinent from alcohol, the therapist noted that "abstinence is a day at a time" and depends primarily on a person's willingness to follow through with the recovery program. Tr. at 29-30. She added, "I found [the Individual to be] genuine, forthcoming, and attentive and listening and asking questions, and she appeared very serious ... and genuine, and I think she's a good candidate for recovery – continued recovery, absolutely." Tr. at 30-31.

### **F. The DOE Psychiatrist**

After being present throughout the hearing and considering all of the hearing testimony, the DOE psychiatrist did not change the diagnosis he presented in his November 2008 report. He stated that during the evaluation, the Individual was "very polite and cooperative." Tr. at 140. However, at the hearing, she appeared to have a better understanding of her alcohol problem. Tr. at 141.

As to the Individual's alcohol abuse diagnosis, at the time of the Individual's November 2008 evaluation, the Psychiatrist believed the Individual's risk of relapse was high. Tr. at 135, 142. He noted, however, several positive factors brought forth through the hearing testimony, including the fact that the Individual followed his recommendations, sought counseling, began attending AA meetings, stopped drinking, and looked healthier overall. Tr. at 135-36. On the other hand, he also cited some potentially negative factors such as the fact that the Individual

continued to drink “pretty heavily” following the November 2008 evaluation, despite having received “some pretty clear signals” that her excessive drinking was of concern to her employer and could have a negative impact on her health. Tr. at 136. In addition, the DOE Psychiatrist perceived some “ambivalence” on the part of the Individual “as to whether she really has a problem or whether she’s just doing it to get DOE off her back or to ... make her husband happy.” Tr. at 137.

Despite the negative factors, the DOE Psychiatrist changed his opinion regarding the Individual’s risk of relapse. Tr. at 135, 142. He stated, “I would say [the Individual’s current risk of relapse] is medium. It was high when I saw her, because she was still drinking and didn’t even think she needed to stop, and medium today partly because she’s still so early in the treatment.” Tr. at 142. He added, “she took a little nudging, more than I would have hoped, to get into treatment and to pick up the ball on her own to stop drinking ... but she’s moved from a high risk to a medium risk, and the main thing I would be lacking now [to] move that down to low would be to see if she can actually do it, to see if she can maintain sobriety for a year.” *Id.* He concluded, “she’s made a good start, but I think after only a month in treatment and only three months from the last time she [was intoxicated], I don’t think there is yet adequate evidence of rehabilitation or reformation.” Tr. at 139.

Regarding the Individual’s past marijuana (cannabis) abuse, the Psychiatrist stated that she had had a problem with it in the past, but as of the November 2008 evaluation, “given her two year history of abstinence from cannabis, which [he] had no reason to doubt, [he] concluded there was enough evidence of rehabilitation or reformation from her cannabis abuse problem.” Tr. at 131-32. In that regard, he stated that his statement in his report regarding the potential risk that the Individual would substitute one substance for another during her treatment for alcohol abuse may have been unclear. He intended the statement simply as a note for her treatment provider to “keep in mind.” Tr. at 133. The Psychiatrist believed that “with respect to [the Individual’s] marijuana abuse, the likelihood of relapse is low.” Tr. at 134-35.

### III. STANDARD OF REVIEW

The regulations governing the Individual’s eligibility for an access authorization are set forth are 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” An individual is eligible for access authorization if such 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). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* See generally *Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

Under Part 710, the 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). Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern is raised, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the Hearing Officer considers various factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). The 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). In order to reach a favorable decision, the Hearing Officer must find 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.” 10 C.F.R. § 710.27(a).

#### IV. ANALYSIS

##### A. Criterion J – Alcohol Use

The derogatory information in this case centers on the Individual’s past alcohol use, as well as the DOE Psychiatrist’s diagnosis that the Individual met the criteria for alcohol abuse. It is well-established that a diagnosis of an alcohol disorder raises security concerns because “excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” 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) (the Adjudicative Guidelines), Guideline G, ¶ 21. *See also Personnel Security Hearing*, Case No. TSO-0678 (2008). Given the facts in this case, particularly the DOE Psychiatrist’s diagnosis, the LSO had sufficient grounds to invoke Criterion J. The remaining issue is whether the Individual has presented sufficient evidence to adequately mitigate the security concern.

The Individual acknowledged at the hearing that she had an alcohol problem and stated that she was working to address it. She testified that she has been abstinent from alcohol for approximately three months as of the date of the hearing. I believe that the Individual testified candidly regarding her abstinence date and her future intentions to remain abstinent from alcohol. I am convinced the Individual has taken the initial steps necessary to address her alcohol problem. She stopped drinking alcohol in March 2009 and, after reading the Psychiatrist’s recommendations in his report, sought out counseling. She has also attended an AA meeting, and intends to continue participating in AA and acquire a sponsor. According to the Individual, her life has changed for the better since she stopped drinking alcohol and she is committed to maintaining her abstinence. Additionally, the Psychiatrist was optimistic about the steps the Individual has taken to address her alcohol problem. The Individual’s witnesses, particularly her husband, corroborated her testimony regarding her abstinence date of March 2009 and testified that the Individual is committed to remaining abstinent from alcohol. The Individual’s therapist found her to be open and committed to the treatment program. Based on the testimony at the hearing and my own impressions of the Individual, I find that she has been abstinent from alcohol since March 2009, a period of three months as of the hearing. In addition, I believe the Individual has greater insight into her alcohol problem, and is showing progress in addressing it.

I am unable to find, however, that the Individual has brought forward sufficient evidence to mitigate the Criterion J concern. My conclusion is based on the Individual's significant alcohol use over several years, the Psychiatrist's diagnosis of alcohol abuse, and the Individual's short period of abstinence from alcohol and even shorter period of involvement in the AA program and counseling. That short period is significant in light of the fact that the Individual had an extended period of abstinence in the past, yet eventually resumed drinking alcohol. The Psychiatrist testified that the Individual's current risk of relapse, although lower than during the November 2008 evaluation, was still elevated at a "medium" level. In my view, that risk remains unacceptably high. It is clear that, although the Individual has taken positive steps toward treating her alcohol problem, she still has a long way to go in her recovery. Based on this information, I cannot find that the demonstrated period of abstinence and treatment is sufficient to mitigate the security concerns in this case. In that regard, I agree with the Psychiatrist's testimony that this period of abstinence and treatment is not yet sufficient to show adequate rehabilitation or reformation. Consequently, as the foregoing indicates, the security concern set forth in the Notification Letter under Criterion J regarding the Individual's alcohol use has not been mitigated.

#### **B. Criterion K – Marijuana Use**

It is beyond dispute that use of illegal drugs raises security concerns under Criterion K. *See* Adjudicative Guidelines, Guideline H, ¶ 24 ("Use of an illegal drug ... can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations."); *see also Personnel Security Hearing, Case No. VSO-0113*, 25 DOE ¶ 85,512 (1995) ("The drug user puts his own judgment above the requirements of the laws, by picking and choosing which laws he will obey or not obey. It is further the concern of the DOE that the drug abuser might pick and choose which DOE security regulations he will obey or not obey with respect to protection of classified information."). In light of the Individual's past marijuana use and the DOE Psychiatrist's apparent concern that the Individual might substitute the substance for alcohol during the course of her alcohol abuse treatment, the LSO was justified in invoking Criterion K. The remaining question is whether there is sufficient information in the record to fully resolve the security concern.

The Adjudicative Guidelines set forth various factors which may serve to mitigate security concerns raised by the use of illegal drugs. Among those possible mitigating factors is that "the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." Adjudicative Guidelines, Guideline H, ¶ 26. In this case, the Individual testified that she has not used marijuana for well over two years, since approximately December 2006. That testimony was corroborated by her husband, with whom she shares a home and spends most of her time outside of work, who stated that she last used marijuana in November 2006. In addition, the Individual's manager has seen her daily for over one year and testified that he has never observed signs that the Individual uses illegal drugs. He further testified that he had knowledge that the Individual has tested negative for illegal drugs on two drug screens, one of which was random. Finally, the DOE Psychiatrist concluded that, although the Individual met the criteria for cannabis abuse in 2006, she demonstrated adequate evidence of rehabilitation

from that diagnosis. Although there was a slight discrepancy between the testimony of the Individual and her husband as to whether her last use took place in November or December 2006, based on the evidence, I am convinced that the Individual has not used marijuana since late 2006, at least two years and seven months prior to the hearing. In light of these factors, I find sufficient evidence in the record to mitigate the Criterion K concern cited in the Notification Letter.

## V. CONCLUSION

Upon consideration of the record in this case, I find that there was evidence that raised doubts regarding the Individual's eligibility for a security clearance under Criteria J and K. I also find that the Individual has presented sufficient information to resolve the Criterion K concern. However, the Criterion J concern remains unresolved. Therefore, I cannot conclude that granting the Individual an 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). Accordingly, I find that the Individual's request for an access authorization should not be granted at this time.

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

Diane DeMoura  
Hearing Officer  
Office of Hearings and Appeals

Date: August 21, 2009