

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

October 16, 2009

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: May 14, 2009

Case Number: TSO-0754

This Decision concerns the eligibility of XXXXXXXXXXXX (the individual) to obtain an access authorization (also called a security clearance) under the provisions of 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ In this decision, I will consider whether, on the basis of the testimony and other evidence in the record or this proceeding, the individual should be granted an access authorization. For the reasons discussed below, I have determined that the individual should not be granted an access authorization.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

In the course of processing the individual's request for access authorization, the local DOE security office (LSO) obtained information that raised a number of concerns about her eligibility. The concerns relate to the individual's history of alcohol abuse, the inadequate treatment of that condition, and her lack of insight into the condition. After conducting a Personnel Security Interview (PSI) with the individual, the LSO determined that she had not resolved its concerns, and referred her to a DOE-sponsored psychiatrist (DOE psychiatrist) for evaluation of its concerns. The DOE psychiatrist evaluated the individual in October 2008, and issued a report in which he expressed his opinion that the individual suffered from alcohol abuse and depression.

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).

The administrative review proceeding began with the issuance of a Notification Letter to the individual. See 10 C.F.R. § 710.21. That letter informed the individual that information in the DOE's possession created a substantial doubt concerning her eligibility for access authorization. Specifically, the LSO characterized this information as indicating that the individual suffered from alcohol abuse, a mental condition that may cause a defect in judgment or reliability. Ex. 2 (citing 10 C.F.R. § 710.8 (h), and (j)).²

The Notification Letter informed the individual that she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding her eligibility for access authorization. The individual requested a hearing, and the LSO forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of the Office of Hearings and Appeals appointed me as the Hearing Officer in this matter on May 15, 2009.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, four supervisors and co-workers, and the DOE psychologist. The transcript of the hearing will be hereinafter cited as "Tr." The LSO submitted seven exhibits into the record prior to the hearing, and the individual submitted 13 exhibits.

II. Regulatory Standard

A hearing under Part 710 is held "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization," i.e., "to have the substantial doubt regarding eligibility for access authorization resolved. 10 C.F.R. § 710.21(b)(3), (6). It is my role as the Hearing Officer to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to the individual's access authorization eligibility in favor of national security. *Id.*

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. 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).³ After due deliberation, I have determined that the

² Criterion H relates to information that a person has "[a]n illness or mental conditional of a nature which, in the opinion of a . . . licensed clinical psychologist, causes or may cause a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h) (Criterion H). Criterion J relates to information that a person has "been, 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) (Criterion J).

³ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, including knowledgeable participation, the frequency and recency of the conduct, the individual's age and maturity at the time of the conduct, the voluntariness of the individual's 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.

individual's access authorization should not be granted. The specific findings that I make in support of this decision are discussed below.

III. The Notification Letter and the Security Concerns

In the Notification Letter, the LSO sets forth its concerns regarding the individual's eligibility for access authorization and the facts that support each of those concerns. The LSO cites the following derogatory information as a basis for its security concerns under Criterion H. During a November 28, 2007, personnel security interview, the individual admitted that she had called the local "Suicide Hotline" on one occasion because she had consumed alcohol to excess and was feeling depressed. The LSO also relies on the DOE psychologist's opinion that the individual suffers from "inadequately treated depression and alcohol abuse." *See* Ex. 7 (Evaluation Report). As derogatory information underlying its concerns Criterion J, the LSO cites the same facts that formed the basis for its Criterion H concerns. In addition, it states that the individual admitted at the personnel security interview that she had attended Alcohol Anonymous meetings from February to May 2006, while continuing to consume alcohol, and that she was last intoxicated on her birthday, roughly three weeks before that interview.

I find that the information set forth above constitutes derogatory information that raises legitimate questions regarding an individual's eligibility for access authorization under Criteria H and J. A mental condition such as alcohol abuse can impair a person's judgment, reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Adjudicative Guidelines) at Guideline I; *Personnel Security Hearing*, Case No. TSO-0357, 29 DOE ¶ 82,975 (October 26, 2006).⁴ In addition, 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* Adjudicative Guidelines at Guideline G; *Personnel Security Hearing*, Case No. TSO-0442, 29 DOE ¶ 83,057 (July 25, 2007).

IV. Findings of Fact

The individual received counseling for depression for a short period in the late 1980s or early 1990s. Ex. 6 (Transcript of November 28, 2007, PSI) at 5. In 1993, a friend told her she was taking Prozac, an anti-depressant prescription medication, to help her lose weight, and she decided to do the same. Transcript of Hearing (Tr.) at 35. In an attempt to obtain Prozac for herself, the individual told her doctor that she was "feeling down," though that was not the truth, and he prescribed Effexor, a newer anti-depressant, rather than Prozac. *Id.* at 35, 40. From 1993 until she stopped taking Effexor in 2007, the individual suffered numerous side effects of the drug, including insomnia, night sweats, suicidal ideations, and irritable bowel syndrome. Ex. 6 at 7. During that same period, the individual also consumed alcohol excessively: she estimated that she would drink five to six glasses of wine at a sitting. *Id.* at 14. She believes her

⁴ Decisions issued by the Office of Hearings and Appeals 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>.

heavy drinking is attributable to yet another side effect of the Effexor: a compulsion to drink alcohol. Tr. at 36.

One evening in February 2007, the individual phoned the local suicide hotline, feeling a need to talk to someone. *Id.* at 34. She had been under a great deal of work-related stress, she was newly married, her husband was out of town, and she had, in her opinion, “had too much to drink.” Ex. 6 at 3-4. She had no suicidal ideations at the time, but she had had them in the past. Tr. at 46. Following up on that call for help, her physician referred her to a psychologist for counseling, and she attended Alcoholics Anonymous (AA) meetings from February through May 2007. Ex. 6 at 13. Then, in April 2007, her insurance company stopped covering the cost of her Effexor and she could not afford to pay for it herself. Tr. at 36. Having run out of her medication, she stopped taking it “cold turkey,” rather than gradually reducing her dosage, as is recommended. Ex. 6 at 8. Her doctor attempted to ease her withdrawal symptoms by prescribing less expensive anti-depressants including, ironically, Prozac, to little avail. *Id.*; Tr. at 36. After she successfully weaned herself from Effexor, she felt much better; all of her side effects, including excessive drinking, disappeared. Ex. 6 at 8. Because she attributed her excessive drinking to a side effect of Effexor and not to any personal health matter, she discontinued counseling with the psychologist and attendance at AA meetings. Tr. at 35; Ex. 6 at 13 (“If you’re not an alcoholic, you’re not supposed to be” at AA meetings.)

During her PSI in November 2007, the individual stated that she was currently consuming two to four glasses of wine in the evening, five or six days per week. *Id.* at 12. The DOE psychologist then evaluated the individual regarding her history of alcohol use and depression. In his evaluation report, the DOE psychologist concluded that the individual “presents with a condition of inadequately treated depression and substance abuse, a lack of self-responsibility relative to these conditions, and the likelihood that she will show continued poor judgment and lack of responsibility in the future.” Ex. 7 (October 2, 2008, Psychological Evaluation Report) at 5. In his report, the DOE psychologist observed that the individual firmly maintains that the Effexor is entirely responsible for her excessive drinking and that “now that she has discontinued use of the medicine, her current drinking activity is not indicative of any problems.” *Id.* at 4. While the DOE psychologist recognized that her excessive drinking may have been a maladaptive response to the side effects of Effexor, he found no indication that her alcohol problem was resolved when she stopped taking the medication. *Id.* at 5. The individual’s insistence on blaming Effexor for her excessive drinking caused him to question her ability to “be self-responsible should problems of depression and/or substance abuse arise.” *Id.*

V. Hearing Officer Evaluation of the Evidence

A. Diagnosis of Alcohol Abuse

At the hearing, the DOE psychologist defended his diagnosis of alcohol abuse. He stated that he relied on the Diagnostic and Statistical Manual of the American Psychiatric Association, Fourth Edition, Text Revised, for his diagnoses of alcohol abuse and depression, though he acknowledged that a less conservative diagnostician might have found the individual suffers from alcohol dependence rather than abuse. Tr. at 77. He stated that the results of the psychological tests the individual took at his request showed no clinical indications of substance abuse, but they did indicate that she was attempting to portray herself in the best light, a common

phenomenon when the testing is performed for employment or qualification purposes. His opinion was that the individual either truly believed that she had no alcohol-related problems or was denying or minimizing them to herself and others. *Id.* at 58, 61. He addressed a report submitted into the record by a psychologist on behalf of the individual, concurring with that psychologist's opinion that, on the basis of testing and the individual's self-report, she does not suffer from alcohol abuse. His diagnosis is different, he maintains, because he had the benefit of access to medical records and other historical information that the other psychologist did not. *Id.* at 58-60. The individual's history included a long period of excessive drinking (a self-report of consuming one to two bottles of wine in a sitting), blackouts, and increased tolerance. *Id.* at 53, 84.

The DOE psychologist also addressed the individual's belief that her excessive drinking was attributable to taking Effexor. Side effects from the medication are rare, but possible, and include alcohol abuse. *Id.* at 68-69. He would not express an opinion whether Effexor literally induced the individual to drink excessively, but he believed that she had self-treated other side effects of the medication, such as agitation and insomnia, with alcohol, for many years. *Id.* at 71. While he acknowledged that it might be reasonable for her to attribute her heavy alcohol use to Effexor, he noted that only some people will self-treat such side effects with alcohol, and some of those will notice they are not handling the alcohol with good judgment and seek other solutions. *Id.* at 56, 71. Regardless of the cause of excessive alcohol use, once it begins, it takes on "a life of its own." *Id.* at 74. Even though she has stopped taking Effexor, the DOE psychologist stated that the individual remains profoundly vulnerable to relapse. *Id.* at 70-71. Her vulnerability is enhanced by the significant level of alcohol abuse she suffered, including blackouts and increased tolerance. *Id.* at 74. Because of this level of abuse, the DOE psychologist believed that the alcohol abuse was not "completely contingent on the use of Effexor," and consequently had concerns that "will well outlive the stop date of the Effexor." *Id.*⁵ Based on the expert testimony presented in this proceeding, I find that the individual suffers from alcohol abuse, an illness or mental condition that raises significant security concerns under both Criterion H and Criterion J.

B. Rehabilitation or Reformation from Alcohol Abuse

An individual who is diagnosed with alcohol abuse may mitigate the security concerns raised by the condition through a demonstration of rehabilitation or reformation. Rehabilitation from alcohol abuse includes participation in a counseling or treatment program and a modification or elimination of alcohol consumption. Reformation from alcohol abuse includes acknowledgment of alcohol issues and the establishment of a pattern of responsible alcohol use. *See* Adjudicative Guidelines at Guideline G, ¶ 23(b), (c), (d). Mitigation may also be shown by demonstrating that "so much time has passed, or the behavior was so infrequent, or it happened under such unusual

⁵ The record was not well developed regarding the individual's depression, as the focus of the LSO's concern was on her alcohol abuse. Moreover, at the hearing, the DOE psychologist testified that he lacked sufficient information from the individual to determine whether she had been depressed in the past or is vulnerable to depression in the future. *Id.* at 81-82. I find that the evidence in the record regarding the individual's depression does not constitute derogatory information under Criterion H, and that the individual's alcohol abuse alone falls within the parameters of that criterion.

circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." *Id.* at ¶ 23(a).

After considering the testimony he heard during the hearing, the DOE psychologist expressed his reservations concerning the individual's future use of alcohol. As of the hearing, the individual was still drinking, though the DOE psychologist stated that he was not confident of her self-reported level of drinking. *Id.* at 86. He expressed concern that she was drinking at all, in light of his diagnosis of alcohol abuse. *Id.* at 89. Of greater concern to the DOE psychologist than her present alcohol consumption is her "approach to the problem" of alcohol abuse. *Id.* at 87. By attributing her alcohol abuse over a 13-year period to a side effect of a medication she has now discontinued, she is not, in the psychologist's opinion, exercising good judgment or taking any responsibility for the problem. *Id.* at 56. This reasoning permits her to believe that there is nothing she needs to address about this problem; she feels invulnerable to relapse because she no longer takes Effexor. *Id.* at 54, 78. The DOE psychologist's opinion is that the individual's approach to her alcohol abuse demonstrates that she is in denial that she has such a problem and lacks insight into this illness. *Id.* at 75. *See also* Ex. M (June 23, 2009, Evaluation Report of Individual's Psychologist) at 5 ("It is likely that [the individual] lacks insight into both herself and others."). Because she has engaged in excessive alcohol consumption in the past to address other problems, the DOE psychologist testified that alcohol abuse is her repertoire of remedies, and she may resort to it when facing future challenges. *Id.* at 77. She is vulnerable to a relapse, and does not recognize that vulnerability. *Id.* at 80. In light of her history of serious alcohol abuse, including blackouts and increased tolerance, the DOE psychologist expressed his opinion that the evidence of two years of responsible drinking was not sufficient to resolve his concerns regarding potential relapse. *Id.* at 79.

Balancing the evidence presented regarding the individual's involvement with alcohol, I find negative elements in the facts before me that outweigh the positive ones. The individual contends that her alcohol abuse is in the past, and witnesses testified that she is an excellent worker, has never appeared to be intoxicated at work, and has consumed alcohol moderately, if at all, at recent social occasions. Tr. at 6, 10, 13, 14, 19, 20, 24, 26. She also contends that alcohol abuse is not likely to recur because she no longer uses Effexor, which she maintains was the cause of her excessive drinking. For the same reason, she stopped attending counseling and AA meetings after three months. While it is positive that the individual drinks responsibly, and in fact has not been intoxicated since November 2007, I am not convinced that she has the tools to successfully fend off a future relapse, should challenges arise. Of primary concern to me is the individual's frame of mind regarding future alcohol consumption. Because she attributes her excessive alcohol consumption to the Effexor she no longer takes, it appears that she is confident that it cannot strike her again in the future.

I share the DOE psychologist's concern that she might well seek relief from future stresses through alcohol abuse. Even though the record indicates that her history of excessive drinking coincided with her use of Effexor, it is risky to conclude that the medication is solely responsible for that behavior. Counseling and treatment would provide insight and awareness about alcohol abuse, and would, at the very least, teach the individual how to recognize warning signs that her behavior toward alcohol may be changing for the worse. By choosing not to participate in any form of treatment or counseling, the individual may be less likely on her own to avoid the pitfalls that alcohol has placed before her in the past. In the end, the risk that she will resume drinking to

intoxication is simply too great to entrust her with access authorization. *See Personnel Security Hearing*, Case No. TSO-0286, 29 DOE ¶ 82,945 (July 24, 2006) (no mitigation where absence of treatment in conjunction with failure to acknowledge alcohol problem).

For all the reasons set forth above, I find that the individual has not demonstrated adequate evidence of rehabilitation or reformation from her alcohol abuse. Nor do I find that the behavior is unlikely to recur. Consequently, I must conclude that the individual has not mitigated the security concerns associated with her alcohol abuse under Criteria H and J.

VI. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. § 710.8(h) and (j) in determining that it could not grant the individual's access authorization without resolving concerns raised by derogatory information it received regarding the individual. For the reasons I have described above, I find that the individual has not sufficiently mitigated the security concerns raised in this case. I therefore 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 have determined that the individual's access authorization should not be granted. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: October 16, 2009