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November 6, 2009

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 19, 2009

Case Number: TSO-0769

This Decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General 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 of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the DOE should not restore the individual's access authorization at this time.

I. Background

The individual has worked for a DOE contractor since 1984, and held a DOE access authorization beginning in 1985. In October 2007, the Local Security Office (LSO) initiated a routine reinvestigation of the individual. Exhibit 7. During the reinvestigation, the individual revealed that he had participated in an Intensive Outpatient Program for Alcohol Dependency (IOP), a program of three, three-hour sessions per week, lasting for six weeks in July and August of 2007. Exhibit 5. The LSO conducted a Personnel Security Interview (PSI) of the individual on February 10, 2009, Exhibit 9, after which it referred the individual for an evaluation by a DOE consultant-psychologist (DOE psychologist). Exhibit 4. The DOE psychologist examined the individual on March 12, 2009, and issued a psychological assessment on March 19, 2009. Exhibit 6. The LSO ultimately determined that the derogatory information concerning the individual created a substantial doubt about his eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to him. Accordingly, the LSO proceeded to obtain authority to initiate an administrative review proceeding.

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 possession of the DOE created a substantial doubt concerning his eligibility for access authorization.

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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

Specifically, the DOE characterized this information as indicating that the individual (1) has an illness or mental condition of a nature which, in the opinion of a licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability; and (2) has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. Exhibit 1 (citing 10 C.F.R. § 710.8(h), (j)).

The Notification Letter informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his 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 OHA appointed me as the Hearing Officer in this matter on June 23, 2009.

At the August 17, 2009, hearing in this matter, I took testimony from the individual, his wife, the individual's manager, former manager, and two co-workers, and the DOE psychologist. On September 16, 2009, I took testimony by telephone from two additional witnesses who were unavailable to appear at the August 17 hearing, the individual's personal physician and the coordinator of the Employee Assistance Program (EAP) at the individual's place of work. The DOE Counsel submitted ten exhibits prior to the hearing; the individual presented four exhibits prior to the hearing and three additional exhibits after the hearing.

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 the 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 a person's access authorization eligibility in favor of the 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).² After due deliberation, I have determined that the individual's access authorization should not be restored. The specific findings that I make in support of this decision are discussed below.

² Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

III. The Notification Letter and the Security Concerns at Issue

As the basis for security concerns under Criteria H and J, the Notification Letter cites the opinion of the DOE psychologist diagnosing the individual as Alcohol Dependent, in Sustained Partial Remission, under the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, 4th edition, Text Revised (DSM-IV-TR). Exhibit 1; *see also* Exhibit 6 (psychological assessment). The Notification Letter further states that (1) the individual consumed alcohol four times after he completed the IOP in 2007 and was told that he should never consume alcohol again; (2) he acknowledged that in approximately 2004 he developed a physical addiction to alcohol, but nonetheless continues to consume alcohol on occasion; (3) his physician informed him in May 2007 the he had elevated liver enzymes due to his use of alcohol and recommended an alcohol treatment program; (4) he admitted that his wife expressed concerns regarding his alcohol use and that it caused marital problems; (5) he admitted that he has driven while intoxicated approximately 23 times in his life; and (6) he admitted that he first became concerned about his use of alcohol in approximately 2000, but continued to consume eight to ten beers on a daily basis until 2007. Exhibit 1.

In his request for a hearing in this matter, the individual stated that (1) he was not qualified to determine if he had a physical addiction to alcohol; (2) his physician informed him that his liver enzymes were “slightly” elevated; (3) his marital problems were not exclusively focused on alcohol use; and (4) he had not admitted to driving while intoxicated 23 times. Exhibit 2.

Even accepting as true the individual’s assertions in his hearing request, the above information clearly constitutes derogatory information that raises legitimate questions regarding the individual’s eligibility for access authorization. The excessive consumption of alcohol is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, and can raise questions about a person’s reliability and trustworthiness. *See* Adjudicative Guidelines at ¶ 21.

IV. Hearing Testimony

A. The Individual

The individual testified that he understood why his use of alcohol is of concern to the DOE, and did not think that he disagreed with anything in the report of the DOE psychologist. Hearing Transcript [hereinafter Tr.] at 123-124. He confirmed in his testimony that he had relapsed four times since completing the IOP in August of 2007, *id.* at 139, most recently in February of 2009, when he consumed “five or six” beers while watching a basketball game. *Id.* at 130-31.³ The individual also admitted reporting a total of 23 times, over the course of his life, that he drove while intoxicated. *Id.* at 122.

³ The record indicates that the individual’s February 2009 relapse occurred after the February 10, 2009, PSI. Exhibit 9 at 65 (individual states in PSI that he last consumed alcohol in July 2008, though he “may have had a sip” around Thanksgiving 2008).

He testified that he began attending Alcoholic Anonymous (AA) meetings in March 2009, and “bounced around for a couple of months, until like June, I think, before I found a time and a place that -- where I could feel comfortable, . . .” *Id.* at 30. He stated that he attends AA meetings once a week. *Id.* at 133. At the hearing, the DOE Counsel asked the individual how many of the twelve steps of AA he has completed:

A. Yeah, I've completed about four, I think.

Q. Which ones?

A. I can't remember them all. I should have memorized them by now, but somewhere I have a notebook, probably at home.

Q. Okay.

A. And I've actually completed some out of order, like admitting to your family and friends that you have a problem, going over the list of things that -- making a list of things that -- where you've wronged people because of it. I've done some of those.

Id. at 138. At the time of the August 17, 2009, hearing, he did not yet have an AA sponsor. *Id.* at 134. “It should be on my to-do list. In fact, it's on the back of this sheet of paper on my to-do list.” *Id.* When the hearing was reconvened by telephone over four weeks later, he still did not have a sponsor. “I just haven't done it. I mean, that's the one area that I'm reticent about. . . . I will take care of that.” *Id.* at 197-98.

The individual stated that he has telephone numbers of other AA members that he can call, but that he has not called any of them. *Id.* at 135. “[T]he truth is I cannot name one person there that I would want to have a relationship with.” *Id.* However, the individual testified that he would call if he felt he needed to, *id.* at 147, and he does see his participation in AA as increasing his chances of success. *Id.* at 145. “You get to tell your story truthfully. Sometimes you hear things that are valuable to you, every now and then, I mean, you're not going to get a nugget per minute for the whole hour, but you might get one. If you get one, then that was worth it.” *Id.* at 135. He sees his wife and children as his support group, and added that because he had “told all my friends, they'll never let me drink again.” *Id.* at 135-36.

The individual testified that he does not intend to drink alcohol in the future, *id.* at 144, and considers his own risk of future relapse to be only “[o]ne or two percent. It would be very low.” *Id.* at 144. He acknowledges that he told his IOP counselor in July 2007 and an Office of Personnel Management investigator in December 2007 that he did not intend to drink again, and yet he did. *Id.* at 140-41. According to the individual, this time will be different. “I hate the word epiphany, but it fits. Somehow you get it, and I never got it before. . . . I can't describe it to you, but there is a difference in how one feels.” *Id.* at 141-42. The individual stated that he has two grown children, one of whom “is due to be married next year. They might have children. I'd like to be around. The only way I'm going to be around for these life-changing events is to stop, and I mean stop, because I don't want to miss these.” *Id.* at 143. Though there is alcohol in his house, *id.* at 130, the individual states that he does not see his wife drink at home, *id.* at 131, and contends that he no longer gets the urge to drink. “I don't get it. I swear to God, I do not get it.” *Id.* at 143.

B. The Individual's Wife

The individual's wife testified that she has been married to the individual for 26 years, and has known him for 31 years. *Id.* at 88. She stated she did not suspect he had a problem with alcohol until he told her, "[p]robably" in 2007, *id.* at 89, 90. She testified that she never saw him intoxicated, and did not realize the extent of his prior alcohol consumption. *Id.* at 91. "[T]his blind sided me. I really had no concept of the degree. So I was very angry for a long time." *Id.* at 103. She explained that she was angry both because of the extent of his drinking and the fact that she did not know about it, and that she is still angry. *Id.* at 104.

She testified that she has not seen the individual consume alcohol since he entered the IOP in July 2007, though she knows he has relapsed since then. *Id.* at 94. She confirmed that, since being told of her husband's alcohol problem, the two have lived "kind of separately" within their house. *Id.* at 92. She testified that they spend about thirty minutes a day together during the week, but do not have supper together most nights, and do not sleep in the same bedroom. *Id.* at 111.

She stated that, as far as she knows, that individual attends AA once per week. *Id.* at 102. She does not know if he has a sponsor. *Id.*

Q. When he comes home [from AA meetings], do you ask him what transpired at the meeting?

A. No.

Q. Do you care what transpired at the meeting?

A. No.

....

Q. Have you ever been to any -- I think they are called Al-Anon meetings or meetings for family members?

A. No.

Q. Are you interested in going to those?

A. No.

Id. at 95. She explained that "the organized religious basis of [Al-Anon] bothers me. . . . [I]f my attending Al-Anon would help him, I would do it. . . . But right now he's succeeding." *Id.* at 100, 101.

She testified that she "support[s] him 100 percent in his efforts," *id.* at 99, and considers herself part of the individual's support group, but "[n]ot in conjunction with AA I'm there if he needs to talk to me about it." *Id.* at 102, 103. When I asked the individual's wife what she thought would happen if the individual returned to drinking, she responded that she was "not sure how I'd react. I know I would do everything in my power to stop it. If that meant that I had to go every week with him to the AA meetings, I would." *Id.* at 116.

C. The Individual's Manager, Former Manager, and Co-Workers

The first of the individual's co-workers to testify has known the individual since 1987. *Id.* at 45. Prior to being divorced in 1997, he and his wife and the individual and his wife would visit each other's houses, but since then his contact with the individual outside of work has been "more telephone conversations." *Id.* at 46. He testified that he sees the individual occasionally at weddings and graduations, and the last time he saw the individual drink alcohol was three years ago. *Id.* at 53-55. When asked whether he ever thought the individual had a problem with alcohol, the co-worker stated that the individual told him "in the last year or so that he had those issues." *Id.* at 48. According to the coworker, the individual also confided in him once that he "fell off the wagon," *Id.* at 50. He stated that he had no doubt in his mind that the individual is trustworthy. *Id.* at 45.

The second co-worker to testify met the individual in 1985, and testified that he knows the individual outside of work "to a limited degree. I mean, we've played golf together, we've gone to an occasional social function together, but mostly it's been work." *Id.* at 56. The co-worker was not aware of why the individual's clearance had been suspended, and did not know about the individual's alcohol problem or his treatment. *Id.* at 60. He stated that he had seen the individual drink in the past, but not to excess, and that it had been "some number of" years since he last saw the individual drink. *Id.* at 60-62. He testified that he considered the individual someone that he could trust on classified projects, *id.* at 57, and that he is "a really good asset to our company." *Id.* at 63.

The individual's manager since October 2008 testified that he has seen no issues regarding the individual that would give him any concern, and that his work performance has been satisfactory. *Id.* at 65. He stated that he did not know the individual prior to becoming his manager, and has not socialized with him outside of work. *Id.* at 66. The manager knows that the individual received treatment for an alcohol problem, *id.* at 68, but testified that he was not aware that the individual had ever relapsed, had never seen him drink, and has not talked with him regarding the last time he drank. *Id.* at 69.

The individual's former manager testified that he has known and had close contact at work with the individual for "the last five-and-a-half or so years, because his office is just literally two doors down from mine." *Id.* at 72-73. He stated that he has not socialized with the individual outside of work. *Id.* at 74. "I haven't gone to parties at your house, you haven't been to mine, or any of that kind of stuff, but it's just been mostly at work and then around town a little bit here and there." *Id.* He testified that he had played golf with the individual once in 2006 and again in 2007, *id.* at 77, and that he had played softball with the individual in the past, *id.* at 74, but not "in the last five or six years." *Id.* at 82-83. He stated that he knew that the individual had treatment related to an alcohol use, but he cannot recall ever seeing the individual drink, *id.* at 78, and has never discussed the individual's alcohol use with him. *Id.* at 79. According to the former manager, the individual "did a good job on the things that we gave him to do. . . . I think he's a good guy, I haven't seen anything that would cause me to say that he's not trustworthy or not worthy of the trust of classified material" *Id.* at 81.

D. The DOE Psychologist

The DOE psychologist interviewed the individual for about an hour-and-a-half on March 12, 2009, prior to which he reviewed the individual's personnel security file. *Id.* at 13. He stated that the individual had been previously diagnosed as alcohol dependent when he was in the IOP in 2007. *Id.* at 17. He explained his use of the "Sustained Partial Remission" specifier for the current diagnosis of Alcohol Dependence, as set forth in the DSM-IV-TR. Because he considered the individual's diagnosis at the time of the evaluation to be in remission for the more than 12 months since he completed the IOP in 2007, the remission qualified as "sustained," as opposed to "early." However, the individual's remission was "partial" rather than "full remission because he had four relapses," once each in February 2008, July 2008, November 2008, and February 2009. *Id.* at 18.

Asked what, in his opinion, would "show adequate reformation or rehabilitation," the psychologist responded that the individual would need to "totally abstain from alcohol for a year, and that's what I had posed at the time." *Id.* at 24. The psychologist noted that, at the time of the evaluation, the individual found the "strong religious structure" of AA to be "offensive and said that he did not and would not participate in that." *Id.* at 22.

The psychologist stated that a person can become "reliably abstinent" in less than one year. *Id.* at 25. However, prior to the individual's hearing testimony, aware that the individual is now attending AA meetings and seeing his employer's EAP coordinator once a month, *id.* at 22, 23, the psychologist stated that he would still "like to see a longer period of time." *Id.* at 37. However, he testified that he would "probably be comfortable" finding adequate evidence of rehabilitation after ten months of abstinence, "given who he is as a man and then given what he's done." *Id.* at 38.

Regarding the individual's risk of relapse going forward, the psychologist opined that "you would expect that over the next ten years there is about a five percent chance that he would relapse." *Id.* at 32. When I asked him whether his assessment of the risk would change between the time of the August 2009 hearing and February 2010, when the individual would achieve twelve months of abstinence, the psychologist responded that the "level of confidence that I would have in the statement of [five percent risk] . . . would change." *Id.* at 37-38.

After hearing the individual's and others' testimony, the DOE psychologist stated that there were two things "that I think struck me. One was the kind of narrowness of his support, or thinness of it; and while he clearly can make use of AA, he does not respect the people that he's met so far sufficiently to, I think, have them be a personal resource." *Id.* at 148. In the opinion of the psychologist, the individual is "essentially doing it by himself. He's got his wife, . . . that if he gets into trouble, [she] will be there, but prior to that when he may need [her], it's like [she does not] want to get involved too much." *Id.*

On the other hand, the psychologist identified the first co-worker who testified as someone who the individual may be able to talk to, and that the co-worker "could be a real resource." *Id.* at 149. He also recognized in the individual an "emotional kind of understanding something at a much deeper level," and that this "upped my confidence about you. I would have felt even better had you had a

sponsor by now and been involved in a one-to-one therapy -- in other words, a meaningful therapeutic event in your life that frequently met, I would have felt even better about that.” *Id.*

The psychologist then reiterated his statement that he would be “comfortable . . . mov[ing] to a ten-month total from the time of his last drink . . . [in] February of 2009.” *Id.* at 150. He also stated again that his opinion of the risk of relapse was five percent over the next ten years. *Id.* at 152. He added that “at the end of ten years, he may have about a 50 percent chance, essentially, of having relapsed, because . . . by the time you look at it and you add it all up, . . . that's what it would come out to be.” *Id.* at 153.

Finally, I asked the DOE psychologist whether there was a value in requiring twelve months of sobriety in that “you cover the whole cycle of events that happens in one's life in 12 months.” *Id.* at 155. The psychologist responded in the affirmative.

Different times of a year present different stresses, different memories, different -- anniversaries of different drinking episodes for alcoholics.

There is generally a wisdom to kind of going through all the seasons and all the different times. Twelve months is generally the time, too, that AA people think of as appropriate for the 12 steps, not that you do one a month, but it generally is thought to take you about a year to do that.

People who rush through, our research shows, are . . . much more likely to relapse, much less likely to stay off the wagon.

Id. at 154-55.

E. The EAP Coordinator

The coordinator of the Employee Assistance Program at the individual's workplace, who is a licensed clinical psychologist, first met the individual on April 29, 2009. *Id.* at 184-85. In his hearing testimony, he described the “standard” recovery agreement that the individual entered into, which “includes 12 unannounced drug and alcohol tests where the employee is called and they have to report to our lab in medical within two hours of the call.” *Id.* at 186. In addition, “a standard part of the agreement is he comes and meets with me monthly, so kind of just basically a status check and see how you're doing.” *Id.* at 187. The program also “require[s] any of a number of either professional and/or support group experiences for the employee based on their circumstances, . . .” *Id.*

The EAP coordinator stated that he has read the report of the DOE psychologist, and does not “disagree with anything,” including the diagnosis and “the recommendations for treatment and recovery and so forth that were outlined.” *Id.* at 185.⁴ As for the individual's prognosis, the EAP

⁴ Because the EAP coordinator was unavailable to testify at the August 17, 2009, hearing, and therefore testified at a later date, the EAP coordinator and the DOE psychologist were not able to hear nor comment on each other's testimony.

coordinator rated it as “very good.” *Id.* at 192. He noted that he was at “a little bit of a disadvantage because usually when I get to the point of . . . this type of hearing and testimony, I’ve already seen the person for a full year or longer. So I haven’t known [the individual] that long. It’s only been about four or five months.” *Id.* Nonetheless, he stated that he had “been very happy with how he’s done. I think he’s taken to his sobriety very seriously and committed to his recovery program. And so I would -- I would say that my prognosis for the long-term recovery for him would be very good.” *Id.*

The EAP coordinator stated that he thought that the individual’s “marriage relationship would be his primary source of support.” *Id.* at 192. He also cited the individual’s friends and AA as sources of support. *Id.* at 191-92. Asked how the individual’s previous relapses after his 2007 IOP factor into his prognosis, the EAP coordinator stated that he did not think the individual previously had “support in place,” and that he “does well when he has the appropriate ongoing support that he needs, and so that would factor in, certainly. So I could really easily envision him, you know, signing up for a second year of our program, for example, would be a good point there.” *Id.* at 193-94. Upon learning that the individual did not yet have an AA sponsor, the EAP counselor stated that it should be taken into account that the individual was not a good “fit” for AA initially, but that “since all we have is AA, then, yeah, I think that he needs to get a sponsor, definitely.” *Id.* at 198.

The EAP coordinator quantified the individual’s risk of relapse “as low. I think the more time we have, the lower the -- the potential for relapse risk becomes.” *Id.* at 207. He added that “if we’re sitting here in six months and we’re at a year or near a year or year and 12 months period, and he’s still doing exactly the same things and -- and not going back to drinking, then the risk for relapse is lower at that point.” *Id.* at 208. I then posed to the EAP coordinator the same question I asked the DOE psychologist as to whether there is some significance to requiring a year of sobriety based on the cycle of events that takes place over the course of a year. The EAP coordinator responded that “it makes perfect sense. I mean, I don’t think there’s -- you know, I’m not sure there’s any real research evidence to support that as a -- sort of a correlation . . . but it makes sense clinically. Okay? Definitely, I’m going to agree with you there.” *Id.* at 208-09.

F. The Individual’s Personal Physician

The individual’s physician testified that he has known the individual for about three years. *Id.* at 168. According to the physician, “in approximately May of 2007, when I saw him, it was clear that he had problems with alcoholic hepatitis and cirrhosis, and I advised him then to discontinue drinking.” *Id.* at 170. The physician saw the individual again in May 2009, after the individual “had been absent from my care for approximately a year-and-a-half or two years, . . . and he had gone off the proverbial wagon, gone back to drinking, . . .” *Id.* at 169-70. He testified that, since then, he has met with the individual “approximately once every one to two months,” *id.* at 171, monitoring the individual’s recovery “[f]rom a medical standpoint, . . . periodically having him give urine specimens for alcohol. He’s coming in on a regular periodic basis for examination. His laboratory tests are monitored on a periodic basis, as well.” *Id.* at 170-71.

The physician testified that he has not read the report of the DOE psychologist, but stated that he would agree with the diagnosis of alcohol dependence. *Id.* at 169. Asked for his prognosis as to whether the individual will drink again, the physician described the individual as “more motivated

than he has been in the past times. . . . I can't predict what he is going to do. But I can certainly say that he has been very motivated and very straightforward in the last four months in terms of attempting to better his health care.” *Id.* at 174. According to the physician, the individual “has been more consistent, more persistent, more responsible now than he was two years ago, when we first approached this.” *Id.* at 177.

[The individual] has made a major commitment to himself. I think that the risk is relatively small in terms of his likelihood of relapse, that to quantify any more than that, I can't, but I certainly have seen a major motivational change in this gentleman over the -- excuse me -- over the several years that we've been dealing with these issues.

Id. at 182. The physician stated that he believed that the individual currently has sufficient support in place, *id.* at 175, though he also stated that, in addition to AA, “I would probably like to see him have a counselor that he sees on a regular basis, [that] he can call and talk to.” *Id.* at 178.

V. Hearing Officer Evaluation of Evidence

Applying the Part 710 regulations to the present case, I must make a forward-looking, “predictive assessment” as to the risk to our common defense, security, and national interest, were the DOE to restore the individual’s access authorization. *E.g., Personnel Security Hearing, Case No. TSO-0746 (2009).*⁵ Among the factors that the regulations require me to consider, one particularly relevant to the present case is “the likelihood of continuation or recurrence,” 10 C.F.R. § 710.7(c), that is, the likelihood that the individual will use alcohol to excess in the future.

Indeed, given that the individual has been diagnosed as alcohol dependent, any future use of alcohol would be cause for concern, and the experts in this case universally recommended complete abstinence. *See Tr.* at 40 (testimony of DOE psychologist that individual’s previous relapses were “small, and yet they were . . . episodes of drinking. And once you open the door, it's often hard to shut that door for alcohol.”). Thus, to find resolved the concerns under both Criteria H and J, both of which are rooted in the individual’s past use of alcohol, I would need to be convinced that the risk that the individual will use alcohol in the future is sufficiently low. For the following reasons, I am not so convinced.

First, the assessments provided by the experts in this case did not leave me with a clear sense of the individual’s risk of relapse. On one hand, the EAP coordinator found the risk to be “low,” and individual’s personal physician described it as “relatively small,” without elaborating as to what the degree of risk was relative. On the other hand, the DOE psychologist, while characterizing the risk of relapse as five percent over the next ten years, testified that this equates to about a 50 percent chance of having relapsed by the end of ten years. Considering the expert testimony as a whole, I am left without a clear picture of the “likelihood of recurrence” in this case.

⁵ 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>.

Second, I shared the sense of the DOE psychologist as to the “narrowness” and “thinness” of the individual’s support, particularly after hearing the testimony of the individual’s wife. It is clear from her testimony that she is still dealing with her own anger and, while expressing a genuine willingness to provide support to her husband as needed, is not currently playing an active supporting role in his recovery. In addition, despite the undeniable progress that the individual has made, there is also some reason to question his complete commitment to what is needed for his continued success. I was particularly concerned that the individual, after testifying that getting an AA sponsor was on his “to-do list,” *id.* at 134, had not yet done so over four weeks later, identifying it “as the one area that I’m reticent about.” *Id.* at 197.

The individual has periodically had his blood and urine checked for alcohol, most recently on September 24, 2009, and none of those tests have been positive. Exhibit E; Exhibit G. However, the fact remains that the individual, as of his most recent test, had been abstinent from alcohol use for less than eight months. I also note that the individual’s most recent relapse occurred shortly *after* his February 10, 2009 PSI, *see supra* note 3, demonstrating that not long ago he was unable or unwilling to refrain from behavior that he knew was of great concern to the DOE.

I did find persuasive the testimony of the DOE psychologist that one could become “reliably abstinent” in less than twelve months, *id.* at 25, though both he and the EAP coordinator agreed that there are valid reasons for wanting to see twelve months of abstinence as a general matter. Tr. at 144-45, 208-09. However, for the reasons explained above, I still have doubts as to the likelihood of relapse in this case, at this relatively early point in time. As such, given the clear concern that would arise from any such relapse, I must err on the side of national security and find that the individual has not sufficiently mitigated the concerns before me under either Criterion H or J.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises security concerns under Criteria H and J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth evidence to mitigate sufficiently the security concerns advanced by the LSO. I therefore cannot find that restoring the individual’s access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual’s access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: November 6, 2009