

* 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 23, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 24, 2009

Case Number: TSO-0776

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the Individual") to possess an access authorization. This decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual should be granted an access authorization.¹ For the reasons detailed below, it is my decision that the Individual should not be granted an 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 is an employee of a contractor at a DOE facility. On May 2006, the Individual's employer requested that the Individual be given an access authorization. DOE Exhibit (Ex.) 3 at 2. Several months later, in October 2006, the Individual reported that he had been arrested for Driving Under the Influence of Alcohol (DUI).

During the Local Security Office's (LSO) investigation of the Individual to determine his fitness for an access authorization, it discovered potentially derogatory information concerning the Individual's consumption of alcohol. As a result, the LSO conducted two Personnel Security Interviews with the Individual in June 2008 (2008 PSI) and January 2009 (2009 PSI). Additionally, the LSO referred the Individual to a DOE-Contractor Psychologist (DOE Psychologist) for an evaluation.

The DOE Psychologist subsequently submitted an evaluative report on the Individual in March 2009. Ex 8. In his Report, the DOE Psychologist opined that the Individual suffered from an "Alcohol-Related Disorder, not otherwise specified" and that the Individual was a habitual user of alcohol to excess. Ex. 8 at 8. He also opined that the Individual suffered from an illness which could cause a significant defect in judgment and reliability. In addition, the Individual was found not to have demonstrated adequate evidence of rehabilitation or reformation from his disorder. Ex. 8 at 9.

Because the derogatory information had not been resolved, the LSO issued a Notification Letter in May 2009 to the Individual outlining the derogatory information which created a substantial doubt as to the Individual's eligibility for an access authorization pursuant to Criteria H and J of 10 C.F.R. Part 710.³ Ex 1 (Notification Letter Statement of Charges). The Notification Letter cited the DOE Psychologist Report as derogatory information as well as a number of statements made by the Individual in his two PSIs regarding his alcohol usage. These statements concerned: the number of times the Individual had been intoxicated; the role alcohol may have played in the failure of his marriage; incidents where he reported to past jobs intoxicated and suffering from a hangover; and his failure to heed advice from his personal physician to reduce his alcohol usage.⁴ Ex. 1. The Notification Letter also cited his October 2006 arrest for DUI as derogatory information.

At the Individual's request, I convened a hearing in this matter. At the hearing, DOE presented one witness, the DOE Psychologist. The Individual offered his own testimony, as well as that of a long-time friend (Friend), a former supervisor (Supervisor 1), a former co-worker (Co-Worker 1), his current therapist (Therapist) and his current supervisor (Supervisor 2). The DOE

³ 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). Criterion J refers to information that suggests that an individual has "[b]een, 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).

⁴ The Individual challenged several of these facts as alleged by the LSO in the Notification Letter. Tr. 122-28. I will not address them directly because in none of the instances pointed out by the Individual do I find the difference to be significant for the purposes of this decision.

submitted 14 exhibits (Exs. 1-14) for the record. The Individual submitted three exhibits (Ind. Exs. A-C).

III. FACTUAL FINDINGS

The Individual was employed by his current employer, a DOE contractor, in March 2006. Ex. 11 at 14-15. In May 2006, the Individual's employer requested that the Individual be given an access authorization. Ex. 3 at 2. Several months later, in October 2006, the Individual reported that he had been arrested for Driving Under the Influence of Alcohol (DUI).

As part of its investigation as to the Individual's suitability for a security clearance the LSO conducted the 2008 PSI with the Individual. In the 2008 PSI, the Individual reported his then-current alcohol consumption pattern of consuming "three or four" drinks of alcohol a couple of times a week. Ex. 13 at 26. He went on to state "I drink more than the average person." Ex. 13 at 27, 98. Later in the interview, the Individual described his frequency of alcohol consumption as "three or four times a week." Ex 13 at 98. He also admitted that a personal physician had recommended that he consume less alcohol but that he did not follow that recommendation. Ex. 13 at 98-99. The Individual admitted that his ex-wife had expressed concerns over his alcohol consumption and that alcohol may have been a factor in the breakup of his marriage. Ex 13 at 95-96. When asked how many times he had driven in an intoxicated state since 1971, the Individual answered "I would guess 1,000 times." Ex. 13 at 99-100.

The LSO subsequently conducted the 2009 PSI with the Individual. Ex. 12. During this PSI, the Individual provided answers concerning his alcohol consumption similar to the responses noted above. Ex. 12 at 55-56, 64, 67 (Individual's belief that, while not an alcoholic, he has an alcohol problem); Ex. 12 at 54 (physician's advice to reduce alcohol consumption); Ex. 12 at 67-68 (marriage would have had a better chance to survive if both parties had reduced alcohol consumption); Ex. 12 at 47-48 (then-current consumption of alcohol two to six beers two or three times a week). However, the Individual stated during this PSI that his previous estimate of having driven while intoxicated 1,000 times was erroneous and had been made in frustration after being interrogated in the 2008 PSI over three hours. Ex. 12 at 62. He stated that he had been driven intoxicated "hundreds of times" over a 20 or 30 year period. Ex. 12 at 63.

After examining the Individual during two days in March 2009, the DOE Psychologist sent the LSO his Report regarding the Individual. In the Report, the DOE Psychologist diagnosed the Individual as suffering from an "Alcohol-Related Disorder, Not Otherwise Specified."⁵ He went on to state that, for the purposes of the Department of Energy, this diagnosis is operationally defined as "using alcohol habitually to excess." Ex. 8 at 8. He also stated that he believed that the Individual suffered from an illness or mental condition that could cause a significant defect in judgment and reliability. Ex. 8 at 9. In order for the Individual to demonstrate that he was rehabilitated or reformed from his alcohol problem, the DOE Psychologist asserted that the Individual must participate in support sessions twice a week, seek the opinion of a professional alcohol counselor, follow through with all treatment recommendations and abstain from alcohol consumption for a period of one year. If the Individual declined to participate in professional treatment, the Individual must demonstrate abstinence from alcohol for a period of two years which must include frequent and random testing. Ex. 8 at 9.

⁵ This diagnosis was made using the diagnostic criteria listed in the Diagnostic and Statistical Manual 4th Edition . Ex. 8 at 8.

V. ANALYSIS

The Criteria H and J concerns both arise from the Individual's alcohol misuse. The Individual, in mitigation of these concerns, has presented evidence at the hearing that his overall excellence in performing all of his work responsibilities, his demonstrated judgment and responsibility, and his history of no alcohol-impaired behavior at his current position, establishes that he would not be at risk of committing a security breach. Additionally, he presented evidence that he is now seeking treatment for his alcohol problem. After considering all of the evidence presented in this matter, I find that the Individual has not resolved the security concerns presented by his alcohol problem.

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. TSO-0733 (July 13, 2009) (Criterion J case involving alcohol misuse). Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. "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 G. Further, certain emotional, mental, and personality conditions can impair judgment, reliability and trustworthiness. Adjudicative Guidelines at Guideline I. Given the Individual's own admissions concerning his alcohol misuse and the diagnosis by the DOE Psychologist of Alcohol Related Disorder, I find the LSO had ample grounds to invoke Criteria H and J.

At the hearing, the Individual's Friend, Co-Worker 1, Supervisor 1 and Supervisor 2 all testified that the Individual had either stopped consuming alcohol or they had never seen the Individual consume alcohol. Tr. at 14 (Friend had not seen Individual consume alcohol in past year); Tr. at 31, 48-49, 102 (Supervisor 1, Co-Worker 1, and Supervisor 2 had not observed the Individual consume alcohol). Each of these witnesses had been informed by the Individual of his arrest for DUI and his current attendance at Alcoholics Anonymous (AA). Tr. at 18, 29, 47, 99. Co-worker 1, Supervisor 1 and Supervisor 2 all testified as to the excellence of the Individual's workplace performance and to the fact they had never seen the Individual suffering from a "hangover" or being late or intoxicated at work. Tr. at 29-30, 32-33 (Supervisor 1); Tr. at 55 (Co-Worker 1); Tr. at 93-95 (Supervisor 2). Both of the Supervisors believed that the Individual was honest and trustworthy. Tr. at 34, 103.

The Individual testified that he has an "issue" regarding his alcohol usage and that he "drink[s] more than the average guy." Tr. at 105. However, his drinking had not caused him any "severe problems" until his arrest. Tr. at 105. In May 2009, when he received a copy of the Notification Letter and a letter informing him of the appointment of a Hearing Officer in his case, the Individual became somewhat angry and later consumed eight or nine beers. Tr. at 113.⁶ During this time, the Individual contacted his personal physician. His physician recommended that the

⁶ Although the Individual testified this event occurred in May 2009, the letter referred to in his testimony was dated in June 2009.

Individual undergo treatment with a psychiatrist and attend AA. Tr. at 113. The Individual began to try to find an AA group in May 2009. Tr. at 114. In early July 2009, he found an AA group with which he feels comfortable. Tr. at 115-16. The Individual believes that he has benefited from his attendance at AA. He last consumed alcohol in August 2009. Tr. at 114. His intent is not to consume alcohol ever again. Tr. at 106.

With regard to his participation at AA, he has recently found an AA sponsor (Sponsor).⁷ Tr. at 116-17 (obtained a sponsor five or six weeks prior to the hearing date). At the time he obtained a sponsor, the Individual was still consuming a few beers every seven or eight days. Tr. at 117. His sponsor persuaded him to make an increased effort at abstinence. Tr. at 117. He now also talks to another AA member he refers to as his "pseudo sponsor." Tr. at 117-18. They both have increased his awareness that he has an alcohol problem even if he is "not the guy who is in the hotel room with the hooker and the 24-pack and whatever else" and have persuaded him "there is some benefit to not drinking." Tr. at 118. When asked how long he intends to go to AA meetings the Individual answered "I don't know if I need the daily meeting or not, you know. I'm still at the point where I enjoy this and there is benefits and I'm going to keep going." Tr. at 118-19.

The Individual is also receiving counseling from his Therapist. Tr. at 119-20. While he finds it difficult to measure the benefit he receives from counseling, he described the benefit as follows: "I get some support from him, and I -- you know, I think he reinforces that, you know, I'm not one of these people who is extremely troubled by alcohol abuse or dependency, he doesn't see it as that, but, you know, it's nice to go in and talk to people about stuff, and we've talked about things other than alcohol as well." Tr. at 120.

Since he has stopped consuming alcohol the Individual feels more at peace. Tr. at 120. If he does not get his clearance and loses his job as a result, he feels better prepared and that he will have support to get him through that traumatic event. Tr. at 120. While the Individual's family supports his recovery efforts, they also believe it is a "little odd." Tr. at 120. In this regard, the Individual candidly admitted:

[R]ecoverly is kind of a difficult word even for me to grasp at the moment. You know, recovery from what? You know, I mean, I used to drink more than the average guy and it has caused me a few problems in my life. I still am at the point where I compare that a little bit against the guys who were taking the hooker and the 24-pack of beer into the motel room.

Tr. at 121-22.

The Individual also introduced three pieces of documentary evidence. The first is a copy of liver enzyme test results indicating that he has not consumed enough alcohol to produce physical harm. Tr. at 129; Ind. Ex. A. The second is an attendance log documenting attendance at 25 AA meetings from July 2009 through August 2009. Tr. at 130; Ind. Ex. B. The Individual also submitted a testimonial letter from a co-worker (Co-Worker 2) who has known him since 2001. Tr. at 130; Ind. Ex. C. In the letter, Co-Worker 2 states that the Individual had excellent work

⁷ The Individual declined to have his Sponsor testify since he has only been the Individual's AA sponsor for several weeks. Tr. at 117.

performance and rarely missed work due to illness. Ind. Ex. C. Further, Co-Worker 2 stated that after the Individual's arrest, he has observed that the Individual did not consume alcohol while on probation from the DUI arrest. After the probation period, Co-Worker 2 has observed the Individual consume only one beer at one or two social events. Ind. Ex. C.

The Individual also testified to an answer he gave in the 2008 PSI that he had driven under the influence of alcohol "one thousand" times. Ex. 13 at 99-100; Tr. at 106-07. He testified that he gave the answer "one thousand" because he experienced stress at the interview and had been subject to questions for "hours and hours." Tr. at 106-07. The Individual however did not deny driving while intoxicated. He estimates that he drove impaired approximately a "couple of hundred" times. Tr. at 107-08.

The Individual's Therapist, a licensed therapist and substance abuse counselor, testified that he has seen the DOE's Psychologist's Report and believed the DOE Psychologist had done a thorough assessment. Tr. at 68-69. The Therapist did not have any disagreement with the conclusions and recommendations contained in the Report. Tr. at 69.

He has seen the Individual for four office visits and currently has an appointment to see the Individual after the hearing. Tr. at 70. At their last appointment before the hearing, in August 2009, the Individual reported that he had not consumed alcohol since their last appointment two weeks prior. Tr. at 72-73. In evaluating the Individual he did not believe that the Individual met the requirements to be diagnosed as alcohol dependent. Tr. at 75. However, the Individual's use of alcohol has created problems for the Individual. When the Individual first saw him in July 2009, the Therapist believed that the Individual was in a "precontemplative or contemplative kind of stage about his use as to whether or not it [alcohol use] was a problem or not." Tr. at 75. The majority of their four sessions have centered on the Individual's consideration as to whether the Individual has a problem with alcohol. The fact that the Individual is now attending AA meetings indicates that the Individual has moved to a stage from contemplation to action. Tr. at 75-76. The Therapist believes that some treatment would be beneficial to the Individual. He seeks to provide motivation for the Individual to make a decision concerning his alcohol problem. Tr. at 76-77. The Individual has informed him that he intends to continue attending AA. The Therapist believes that the Individual has learned in AA that one does not have to be a heavy drinker to have a problem with alcohol. Tr. at 78.

The Therapist believes that the Individual is now coming to accept that he has an alcohol problem and that the Individual is now looking at options regarding his alcohol problem. Given the Individual's current use of alcohol as of the date of the hearing, the Therapist could not confirm a diagnosis of Substance Abuse Disorder, but believes that the Individual has consumed alcohol to excess. Tr. at 79-80. He believes that the Individual would benefit from individual therapy plus continued AA meeting attendance. Tr. at 80. The Therapist believes that the Individual currently has a support group, the Sponsor, pseudo sponsor and his friends, that will assist him in his recovery. Tr. at 84. When asked about the DOE Psychologist's treatment recommendations for the Individual, he stated that they were reasonable. Tr. at 85.

The DOE Psychologist testified as to his examination of the Individual and the psychological screening tests that he administered to the Individual. Tr. at 145-50. The Minnesota Multiphasic Personality Inventory, Version 2 (MMPI-2) indicated an elevation on a scale that would be consistent with "a pattern of historical overuse of alcohol." Tr. at 146. However, no psychiatric

disorder was indicated by the Individual's MMPI-2 results. Tr. at 147. The Psychological Assessment Inventory (PAI) indicated that the Individual completed the test in a manner similar to other people who were reluctant to acknowledge their shortcomings. The Individual acknowledged problems with alcohol in the PAI. Tr. at 147. Both tests suggest a concern about past excessive alcohol use but do not delineate between recent or past problems. Tr. at 147.

Because the Individual's personnel security file contained information that suggested that the Individual suffered from alcoholism, the DOE Psychologist administered additional tests. One of the additional test administered to the Individual was the Michigan Alcohol Screening Test (MAST). The Individual's score on the MAST was a "six" which indicated the lowest score indicating a problem with alcohol consumption. Tr. at 148-49. Additionally, the DOE Psychologist administered the Substance Abuse Subtle Screening Inventory, Third Edition (SASSI) to the Individual. Tr. at 149. The SASSI results indicated a "high" probability that the Individual suffered from a substance dependence disorder in the past. Tr. at 149. Within the last 12 months prior to the taking of the test, the results indicated an "unlikelihood" that the Individual was suffering from a substance abuse disorder. Tr. at 149. This result would not indicate however, that the Individual does not suffer from an alcohol use disorder. The DOE Psychologist noted that the SASSI also indicated that the Individual was in the highest 15 percent of defensiveness among SASSI respondents. This fact may indicate underreporting of events in his SASSI responses. Tr. at 149. Significantly, in his SASSI responses the Individual admitted to consuming up to 16 ounces of alcohol per week. Tr. at 149. The DOE Psychologist also administered the Alcohol Use Inventory to the Individual. While the test did not indicate a current alcohol use or dependency disorder, the Individual admitted on the test that he has overused alcohol in the past. Tr. at 149-50.

In making his diagnosis, the DOE Psychologist cited a number of events in the Individual's life. Specifically, these events were: the Individual's past use of alcohol in situations where it was physically hazardous; the damage to the Individual's marriage from his alcohol consumption; and the Individual consumption of up to 16 ounces of alcohol per week. Tr. at 150-51. Because none of these events occurred in the past 12 months, the DOE Psychologist could not make a current diagnosis of Alcohol Abuse but instead diagnosed the Individual as suffering from an Alcohol-Related Disorder. Tr. at 151. In supporting this diagnosis, he testified that, according to an article in the New England Medical Journal, use of alcohol above 14 ounces per week should be considered as "unhealthy use." Tr. at 151. Further, a number of the psychological tests indicated that the Individual may be underreporting his use of alcohol and that the Individual has a clear history of alcohol abuse. Tr. at 151.

In summing up his opinion, the DOE Psychologist testified:

So although he's functioning at a high level in most aspects of his life, he continues to have alcohol use in excess of what would be desirable, given his history of over a hundred episodes of driving under the influence, including one for which he was arrested.

Additionally, today, [the Individual] reported that he drank alcohol in a manner greater than he would like to have used, which is symptomatic of alcohol abuse. People who don't have trouble with alcohol don't use more alcohol than they

intend to use. That's the hallmark of the abuse of alcohol, and that took place in May of this year.

He continue[d] to use alcohol in spite of the fact that there is a clear vocational consequence of continued use.

For those reasons, I used the diagnosis alcohol-related disorder, not otherwise specified; although recent information would raise the question of whether he has an alcohol abuse disorder that's in early partial remission. Because he has less than one month of complete abstinence, he would meet the criterion for early partial remission.

Tr. at 151-52.

As for the Individual's current efforts at rehabilitation, the DOE Psychologist testified:

I believe that [the Individual] is making an honest, good-faith effort to abstain from alcohol, as well as to rehabilitate his personal life from the behavioral associations with excessive alcohol use, but it has not persisted long enough to be confident that such abstinence will persist for the indefinite future. His risk of relapse is much higher than the public at large and will continue to improve over a minimum of one year.

Tr. at 152. However, if the Individual is successful in his abstinence and continues his treatment for one year, he would be able to find that the Individual was in sustained remission for his alcohol disorder and rehabilitated from his alcohol disorder. Tr. at 155-56.

After reviewing all of the evidence presented, I cannot conclude that the Individual has resolved all of the security concerns arising from his alcohol misuse.

The Individual has put on evidence supporting his claim that he has been an excellent worker and that his co-workers and supervisors had a high level of trust in his judgment and responsibility. Further, alcohol use has not impaired his performance in his present employment position. However, the Individual's history in this regard is not sufficient to allay concerns over alcohol misuse. A security breach can occur at one's employment site and off site as well. The fact that an individual can become intoxicated away from work itself creates a security risk in that the individual may not safeguard classified knowledge he or she obtains from his or her employment. The fact that the Individual does not appear to work in an alcohol impaired state does not nullify this risk. Additionally, to the extent that a person has a fundamental level of honesty and trustworthiness, this level may be impaired when a person is in an intoxicated state. Consequently, the Individual's workplace performance excellence, apparent level of good judgment and reliability while on the job, and lack of workplace incidents related to alcohol use, do not, in themselves, resolve the security concerns raised here, especially when the Individual suffers from a diagnosable alcohol misuse disorder.

The Individual's evidence regarding his efforts at treatment also do not resolve these concerns. After reviewing the evidence, I cannot find that the Individual is rehabilitated or reformed from his alcohol misuse disorder. While I concur with the DOE Psychologist's opinion that the

Individual has made a good start in his rehabilitation efforts, the Individual, at this early stage of the process, can not be considered rehabilitated. At the date of the hearing, the Individual has only a month and one-half of abstinence. Further, I believe the Individual, because he is in an early stage of his treatment, has not completely accepted the fact that he has an alcohol problem. This finding is supported by the Individual's Therapist's own testimony when asked if the Individual believes that he has an alcohol problem:

I think it's -- again, I think he's in that ambivalence kind of stage where he's put -- he's got both hands up in the air and he's balancing both sides of this issue and trying to decide where he fits.

Tr. at 87. To date, the Individual has not met any of the DOE Psychologist's recommendations regarding a sufficient level of treatment to demonstrate rehabilitation or reformation. In light of the evidence before me, I must conclude that the Criterion H and J concerns raised by the Individual's history of alcohol misuse and the Individual's diagnosis of Alcohol Related Disorder have not been resolved.

V. CONCLUSION

As explained above, I find that the security concerns under Criteria H and J 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: October 23, 2009