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November 20, 2009

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: June 30, 2009

Case Number: TSO-0779

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the individual) to hold 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's access authorization should be granted. For the reasons discussed below, I have determined that the individual's access authorization should not be granted.

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 reviewing the individual's application for access authorization, the local DOE security office (LSO) received derogatory information concerning the individual's history of alcohol use. The derogatory information, which included arrests for driving while intoxicated, drunk and disorderly conduct, and reporting for duty intoxicated, raised concerns for the LSO about his eligibility for a security clearance. After conducting a Personnel Security Interview (PSI) with the individual, the LSO determined that he had not resolved its concerns, and referred him to a DOE-sponsored psychiatrist (DOE psychiatrist) for an evaluation. The DOE psychiatrist

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).

evaluated the individual in January 2009, and issued a report in which she expressed her opinion that the individual suffered from alcohol dependence.

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 his eligibility for access authorization. Specifically, the LSO characterized this information as indicating that the individual suffered from alcohol dependence, a mental illness or condition that may cause a defect in significant judgment or reliability, and that he engaged in unusual conduct that tends to show that he is not honest, reliable, or trustworthy. DOE Exhibit (Ex.) 1 (citing 10 C.F.R. § 710.8 (h), (j), and (l)).²

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 the Office of Hearings and Appeals appointed me as the Hearing Officer in this matter on July 1, 2009.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, his wife, five supervisors and co-workers, his alcohol dependency counselor, and the DOE psychiatrist. The transcript of the hearing will be hereinafter cited as "Tr." The LSO submitted ten exhibits into the record prior to the hearing, and the individual submitted 14 exhibits prior to the hearing, one exhibit at the hearing and an affidavit 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 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.*

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). Criterion L relates, in relevant part, to information that a person "[e]ngaged in any unusual conduct or is subject to any unusual circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security" 10 C.F.R. § 710.8(l) (Criterion L).

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 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 set forth its concerns regarding the individual's eligibility for access authorization and the facts that support each of those concerns. The LSO cited the following derogatory information as a basis for its security concerns under Criteria H and J. Ex. 1. The Notification Letter stated that the individual had consumed large amounts of alcohol from the 1980s to the present and that he continued to drink alcohol even while participating in alcohol counseling in 2003. In addition, the Letter listed five alcohol-related arrests and one alcohol-related domestic violence incident with which the individual has been charged since 1989, and most recently for being intoxicated when reporting for duty in 2006. The LSO also relied on the DOE psychiatrist's opinion that the individual suffers from alcohol dependence with no evidence of rehabilitation or reformation. *See* Ex. 6 (Evaluation Report). As derogatory information underlying its Criterion L concerns, the LSO restated the alcohol-related arrests and drinking patterns it described as Criteria H and J concerns, and added that the individual's excessive alcohol consumption contributed to his divorce, that he had improperly used a government credit card in 2002, that he had written a series of 36 worthless checks in 1988, and that he had tested positive for marijuana use in 1988.

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 dependence 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 (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 (July 25, 2007).

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.

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>.

I also find that the facts set forth above constitute derogatory information that raises national security concerns under Criterion L. Conduct that involves questionable judgment and unwillingness to comply with rules and regulations—in this case, drinking to intoxication, driving while intoxicated, and being involved in altercations after drinking on several occasions—can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. *See* Guideline E of the Adjudicative Guidelines.⁵

IV. Findings of Fact

The individual began drinking when he was 14 or 15 years old. Tr. at 13. Both the quantity of alcohol and his tolerance to alcohol increased over time, until he reached a point in 2004 to 2006 when he was consuming an average of four to five pints of bourbon a week. Ex. 9 (Transcript of November 6, 2008, Personnel Security Interview) at 110-12. Several nights a week, he would consume a pint of bourbon in the evening after work and either pass out or fall asleep. *Id.* at 114-16; Tr. at 94. His alcohol consumption preceded a number of incidents that involved law enforcement personnel. In 1989, he was charged with assault, battery, and drunk and disorderly conduct after consuming alcohol. Ex. 9 at 160; Tr. at 92-93. In 1992, a similar incident occurred. Ex. 9 at 151-52; Tr. at 94. In August 2002, the individual’s wife obtained a restraining order against him following an incident of domestic violence, which he admitted had been preceded by alcohol consumption. Ex. 9 at 86-87; Tr. at 96. In November of the same year, he was arrested for driving under the influence of alcohol. Tr. at 98. He was not convicted of DUI; he was intoxicated and waiting in his truck, with the engine and heater running, for a taxi to arrive to take him home. Ex. 9 at 148-49; Tr. at 98. He was arrested in 2004 for disorderly conduct after drinking three beers and then getting into a verbal argument with his girlfriend. Ex. 9 at 152-54; Tr. at 100. Finally, while still in the military in 2006, he was charged with Drunk on Duty, when, after drinking bourbon before going to sleep and then drinking more at 3:00 a.m., he reported for work at 5:00 a.m. in an inebriated state.

Two of his arrests required him to attend alcohol counseling programs. As a result of his DUI arrest in 2002, which was reduced to public intoxication, he participated in counseling from November 2002 to February 2003, during which time he remained sober. Tr. at 98-99, 150. He then resumed drinking on the weekends and, as stresses increased, so did his alcohol consumption. Ex. 9 at 103-04. Following his Drunk on Duty charge in 2006, he was again directed to attend a treatment program. He admitted that he did not stay sober during the treatment. Ex. 9 at 174. He attended the program for approximately three months before he retired from the military. *Id.* at 130-32, 175-76. Once he left the military and moved to a new location, he discontinued all treatment. *Id.* at 104, 135. He stopped drinking alcohol on his own, however, on January 1, 2007, and remained abstinent for 13 months. *Id.* at 102-03. During a visit with his father in February 2008, he drank some beer. Perceiving no ill effects from that

⁵ The non-alcohol-related derogatory information that the LSO listed under Criterion L, which involved engaging in improper financial transactions and using marijuana, on their face present legitimate national security concerns. I note, however, that these incidents occurred in 1988 and 2002. Neither the LSO nor the individual addressed any of these incidents in the course of this proceeding. The stated derogatory information relates to events in the past, and there is no evidence in the record that any similar behavior has occurred since then. On the other hand, however, the individual has not mitigated the security concerns that these incidents raise. In any event, as set forth below, the individual’s alcohol-related behavior, which was the focus of this proceeding, raises significant security concerns under Criterion L that have not been mitigated.

consumption, he began drinking alcohol in a “monitored” manner, and did not become intoxicated during this period. *Id.* at 67 (testimony of wife); Ex. 9 at 146-48 (at time of PSI, individual was limiting himself to one six-pack per week). In December 2008, the individual again stopped drinking, and has been abstinent since. Tr. at 79-80 (testimony of wife).

Because the November 2008 PSI did not resolve the LSO’s security concerns, the individual was referred to the DOE psychiatrist for an evaluation, which was conducted in January 2009. In a report of her evaluation issued on January 22, 2009, the DOE psychiatrist diagnosed the individual as suffering from alcohol dependence, without adequate evidence of rehabilitation or reformation, as defined in the Diagnostic and Statistical Manual of the American Psychiatric Association, Fourth Edition, Text Revised (DSM-IV-TR). Ex. 6 at 16-18. The DOE psychiatrist stated in her report that as adequate evidence of rehabilitation, the individual could attend AA meetings at least twice a week for a year with a sponsor, followed by an additional year of complete abstinence from alcohol, or complete 50 hours of alcohol abuse treatment and counseling over six months, followed by an additional year and one-half of complete abstinence from alcohol. In the alternative, the individual could achieve reformation from alcohol abuse, without participating in either of the suggested rehabilitation programs, by abstaining from alcohol for three years. *Id.* at 19. She also wrote that the individual had reported to her that he had stopped drinking alcohol after a family event in mid-December 2008, about one month before her evaluation, and that, while he believed he had had a problem with alcohol in his past, he felt that he no longer did. *Id.* at 14-15.

From December 2008 to May 2009, the individual consumed no alcohol and received no treatment related to his history of alcohol consumption. Tr. at 138. The individual first saw the DOE psychiatrist’s report in May 2009, during the course of this proceeding. *Id.* at 137. Soon thereafter, he entered an intensive outpatient substance abuse program and began attending Alcoholics Anonymous (AA) meetings. *Id.* at 139-141. He now attends AA meetings about twice a month. *Id.* at 141. He stated that he does not enjoy them or find them beneficial, because the participants appear to be dependent on the meetings themselves, whereas he was successfully abstinent without attending AA meetings. He further stated that he does not need to participate in AA because he has no cravings for alcohol, and does not need a sponsor because he is not “on thin ice.” *Id.* at 142. In May 2009, he also requested that he be subjected to random alcohol testing. He was not called for random testing, however, and in July and August had himself tested non-randomly several times; the results of those tests are all negative. *Id.* at 113-24, 149; Exs. A, F, G, N. His most recent random test conducted by his employer was in June 2009, and the results of that test and earlier employer-ordered random tests were all negative. Tr. at 159.

At the hearing, the testimony of the individual’s friends and co-workers, as well as that of his wife, supports his testimony that he has remained abstinent since December 2008. After hearing the testimony of the individual, his wife and his co-workers and friends, two expert witnesses testified: the individual’s counselor and the DOE psychiatrist. The counselor stated that she had been seeing the individual for three months. She had initially diagnosed the individual with alcohol dependence, and continues to believe that is the correct diagnosis of his illness. *Id.* at 169. She testified, however, that his treatment progress has exceeded her expectations, and that

he now has developed the insight that his alcohol use has caused many of the problems he has faced. *Id.* at 165. While her impression of the individual is that he has great willpower by nature, what he was lacking before but now has are the insight and the tools to recover from his dependence. *Id.* at 167. Her opinion is that the individual has achieved rehabilitation or reformation from his alcohol dependence. *Id.* at 166. She justified her position with her view that the individual has been abstinent since January 2007, despite an intervening period where he, like many recovering alcoholics, tested his own limits by drinking. *Id.* at 165-66. She further noted that his experimentation with alcohol in 2008, though ill-advised, was successful in that he managed to keep his consumption in control, and his success demonstrates to her that he had already developed some insight by that point. *Id.* at 174-75. She concluded that the individual's prognosis is good, provided that he continues in an aftercare program, working on coping skills. *Id.* at 167, 171-72.

After hearing all the testimony, and particularly that of the counselor, the DOE psychiatrist agreed with the counselor's assessment that the individual's prognosis had improved. *Id.* at 177. Her opinion of the individual's current status differed in a number of material aspects, however. She believed the individual was lacking insight into his illness when he began using alcohol again in February 2008: he felt that he had power over alcohol, that he could control it, rather than it controlling him. *Id.* at 178-79. In fact, at the time of her January 2009 evaluation of the individual, she determined that, though he was motivated, he was not yet committed to abstinence. *Id.* at 181-82. The individual had been diagnosed as suffering from alcohol dependence rather than from alcohol abuse, and she had found that he fit that diagnosis very strongly, meeting six of the seven criteria stated in the DSM-IV-TR. *Id.* at 182. In light of that diagnosis, she considered the 2008 relapse more significant than the counselor did, and thus dated his current period of abstinence from December 2008 rather than from January 2007. *Id.* at 184. Moreover, though the DOE psychiatrist agreed with the counselor that insight is a critical predictor of recovery, she did not believe that the individual had gained insight into his alcohol dependence until fairly recently. Because she determined that he lacked insight at the time of her evaluation, she calculated that the moment that he realized "now is the time to start [recovering]" was after January 2009 and possibly not until he started counseling in June. *Id.* at 183. In her opinion, remission from alcohol dependence must be pegged to that realization, and by any reckoning, the period of remission was significantly less than a year. *Id.* Because the individual had relapsed after maintaining abstinence for as long as 13 months in the past (from January 2007 to February 2008), she would not feel confident that he would not relapse again until he was abstinent for at least that long a period in the future. *Id.* at 185.

On October 13, 2009, the individual submitted an affidavit into the record that he had continued to maintain his abstinence through October 10, 2009. Affidavit of Individual, executed October 10, 2009. On the basis of that affirmation, I find that he has been abstinent for approximately ten months.

V. Hearing Officer Evaluation of the Evidence

A. Criteria H and J

Two experts in the diagnosis and treatment of substance abuse and dependence agree that the individual suffers from alcohol dependence. At the hearing, the individual acknowledged that

alcohol has had a severe impact on his life, and he is committed to maintaining sobriety in the future. The issue, then, is whether the individual has mitigated the security concerns that the LSO has identified as arising from this mental condition.

An individual who is diagnosed with alcohol dependence may mitigate the security concerns raised by the condition through a demonstration of rehabilitation or reformation. Rehabilitation from alcohol dependence includes satisfactory progress in a counseling or treatment program and elimination of alcohol consumption. Reformation from alcohol dependence includes acknowledgment of alcohol issues and the establishment of a pattern of abstinence. *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 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).

At the hearing, the individual testified about his motivation for addressing his alcohol problem. At earlier stages in his life, drinking alcohol was acceptable to him: heavy drinking is common in the military, and he sought solace from an unhappy marriage. Tr. at 27 (testimony of co-worker), 120 (testimony of individual). Now, however, he has a good marriage and finds support from his wife and, for the first time, from formal counseling. *Id.* at 120, 122. Both experts testified that motivation is not enough to prevent relapse; one needs insight and tools. The counselor’s opinion is that the individual now has both, but conditions her favorable prognosis on the individual’s continuing to participate in counseling. Her conditional prognosis is not sufficient for me to conclude that the individual has mitigated the LSO’s concerns. The DOE psychiatrist’s prognosis is even more tenuous. By either of her measurements of the individual’s current success—his abstinence since December 2008 or his insight into his longtime involvement with alcohol, gained within the first half of 2009—his new pattern of behavior toward alcohol is of relatively short duration. I have additional concerns regarding the individual’s reaction to participation in AA meetings. While I recognize that AA is only one approach to maintaining sobriety, his disdain for the concept and his belief at the time of the hearing that he can accomplish and maintain sobriety on his own, by sheer force of will, leaves me questioning the level of his insight into his illness, despite his apparent commitment to overcoming it.

The DOE regulations governing this proceeding instruct me to resolve any doubt as to the individual’s access authorization eligibility in favor of national security. 10 C.F.R. § 710.7(a). The counselor’s conditional prognosis, together with the DOE psychiatrist’s doubt, and my own, leads me to conclude that the individual has not demonstrated adequate evidence of reformation or rehabilitation from his alcohol dependence. Consequently, I must conclude that the individual has not mitigated the security concerns associated with his alcohol dependence under Criteria H and J.

B. Criterion L: Honesty, Reliability and Trustworthiness

The security concerns that fall within Criterion L and Guideline E are distinct from those discussed above. They relate to behaviors that reflect, in this case, questionable judgment and an inability or unwillingness to comply with rules and regulations. Nevertheless, the derogatory information that forms the bases for the LSO’s concerns under Criterion L arise from the same

set of facts as that underlying the Criteria H and J concerns: five arrests and one domestic violence incident over an extended period of adulthood, all fueled by alcohol. No evidence was presented that the individual's judgment is impaired in any other aspect of his life, including his employment. After considering the full record in this case, it is my opinion that the individual's poor judgment is one product of his alcohol dependence. Thus, if I had determined above that the individual had successfully mitigated the LSO's security concerns arising from his alcohol dependence through rehabilitation or reformation, then I would also find that the poor judgment he employed in the past was also mitigated. In this case, however, the doubt that remains concerning the individual's alcohol dependence, despite his admirable progress toward recovery, also attaches to his judgment and reliability until such time as he may be considered rehabilitated or reformed from his alcohol dependence, or has otherwise mitigated the LSO's concerns under Criteria H and J. Consequently, I cannot conclude that the individual has mitigated the LSO's concerns regarding his poor judgment and reliability.

VI. Conclusion

As explained in this Decision, I find that the LSO properly invoked 10 C.F.R. § 710.8(h), (j), and (l) in suspending the individual's access authorization on the basis of 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: November 20, 2009