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July 19, 2011

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 3, 2011

Case Number: TSO-1013

This Decision concerns the eligibility of XXXXXXXXXXXX (the individual) to hold an access authorization (also called a security clearance) under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ For the reasons set forth below, I conclude that the individual should not be granted a security clearance at this time.²

I. BACKGROUND

The individual works for a Department of Energy (DOE) contractor and is an applicant for a DOE access authorization. In the report of a background investigation, the Office of Personnel Management noted that the individual had a history of anger, unusual behaviors, animal abuse, illegal drug use, court-ordered anger management, and counseling. The Local Security Office (LSO) interviewed the individual on June 9, 2010, regarding these concerns in a Personnel Security Interview (PSI). Because the LSO could not resolve these issues to its satisfaction, it referred the individual to a DOE consultant psychiatrist (the DOE psychiatrist) for evaluation. Based on that evaluation and her review of the individual's personnel security file, the DOE psychiatrist diagnosed the individual as suffering from Bipolar Disorder Type I and Alcohol Abuse. The LSO then determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. The LSO informed the individual of this determination in a Notification Letter

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.

² 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>.

that set forth the DOE's security concerns and the reasons for those concerns. Exhibit 1. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to OHA, and I was appointed the Hearing Officer. The DOE introduced seven exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist at the hearing. The individual introduced three exhibits and presented the testimony of three witnesses in addition to his own testimony.

II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

Since at least 2003, the individual has displayed a significant number of behaviors that raise doubts about his eligibility for a security clearance, all of which he related during his PSI or psychiatric evaluation. In 2003, the individual verbally assaulted youths, which resulted in his being charged with misdemeanor assault and attending court-ordered anger management classes. In 2005 and 2008, after long bouts of sleeplessness, the individual had visual hallucinations. He sought help for suicidal thoughts in November or December 2008, and admitted he intended to kill himself in January 2009 when he drank a fifth of hard liquor in a single sitting. He also related that he was angry, bitter, and resentful person, that he had sought treatment for his moods, and that he had abused his dog. Regarding his alcohol consumption, the individual admitted that he drank alcohol to the point of intoxication roughly twice a week from 2006 to 2009, he drove while intoxicated two to three times a year, had reported to work with a hangover, and occasionally missed work due to his alcohol use. Finally, he admitted that, knowing that he should not drink alcohol while taking certain prescribed medications, he stopped taking his medication on the weekends, when he did the majority of his drinking.

In her report of the October 10, 2010, evaluation she conducted of the individual, the DOE psychiatrist concluded that the individual met the criteria for Bipolar Disorder Type I established in the *Diagnostic and Statistical Manual of the American Psychiatric Association*, Fourth Edition, Text Revision (DSM-IV TR). Exhibit 4 at 25. The DOE psychiatrist also concluded that the individual met the DSM-IV TR criteria for Alcohol Abuse, without adequate evidence of rehabilitation or reformation. *Id.* She further concluded that each of these conditions was an illness or mental condition that causes or may cause a defect in judgment or reliability. *Id.* at 26-27. Moreover, the DOE psychiatrist reported that the individual displayed borderline and antisocial personality traits that, in her opinion, increased the risk of a significant defect in judgment or reliability. *Id.* at 25, 26-27.

The individual's history of unusual behavior and the DOE psychiatrist's diagnosis of the individual raise national security concerns under paragraphs (h) and (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Criterion H concerns arise when the individual has "[a]n illness of mental condition of nature which, in the opinion of a psychiatrist . . . , causes or may cause a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). As support for invoking this criterion, the Notification Letter cites the DOE psychiatrist's diagnosis of Bipolar Disorder and her determination that the individual's illness causes or may cause a significant defect in judgment or reliability, and further cites his two episodes of sleeplessness and hallucinations, his two episodes of suicidal thoughts, his abuse of his dog, and the

2003 misdemeanor assault charge. Under Criterion J, concerns arise when derogatory information indicates that the individual has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist . . . as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j). The Notification Letter cites the DOE psychiatrist’s diagnosis of Alcohol Abuse and the individual’s admissions regarding his alcohol intoxication, its effect on his work, his driving while intoxicated, and his unilateral curtailment of prescribed medications on weekends as derogatory information that supports the invocation of Criterion L.

This derogatory information adequately justifies the DOE’s invocation of Criteria H and J, and raises significant security concerns. Conduct involving psychological conditions that, in the opinion of a duly qualified mental health professional, may impair an individual’s judgment, reliability or trustworthiness can raise questions about an individual’s ability to protect classified information. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 19, 2005) (Adjudicative Guidelines), at Guideline I. A diagnosis of Alcohol Abuse or Alcohol Dependence raises similar concerns. *Id.* at Guideline G.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether granting or restoring the individual’s security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

At the hearing, the individual testified that, as a result of the steps he has taken to address his Bipolar Disorder and unhappy relationships with women, he no longer displays any of the behaviors that raised concerns for the LSO. Although he did not challenge the accuracy of the great majority of the

factual bases for the LSO's concerns,³ he offered explanations for each of those concerns. More important than those explanations, however, was the evidence he produced that he was no longer in a toxic relationship, that his Bipolar Disorder was now well controlled through medication, that he was engaged in a therapeutic effort, and that he was no longer consuming alcohol. Transcript of Hearing (Tr.) at 74. He testified that he had not hurt his dog, which he still owns, for over a year. *Id.* at 76. His last manic episode was in October 2010, during the DOE psychiatrist's evaluation of him, triggered, he believed, by nervousness. *Id.* at 104. His last hallucination was in 2008. *Id.* at 105. He has had no thoughts of suicide since January 2009. *Id.* His anger was under control, as he had been goaded to fight at a recent party, and maintained his calm. *Id.* at 95.

He testified that he had consumed no alcohol since September 2010, three weeks before his DOE psychiatric evaluation, but admitted that he had drunk alcohol once recently, in mid-April 2011. He stated that a chance meeting with a girlfriend of his ex-fiancée brought back memories of a relationship he was not yet over. He went home and drank a six-pack of beer. Because his psychiatrist had warned him not to consume alcohol while taking lithium, he drank copious amounts of water before and after the six-pack, to stave off dehydration, which he believed to be the danger of mixing alcohol with lithium. *Id.* at 88. He testified that he made a conscious choice to be abstinent in June 2010, a conscious choice to drink that night, and a commitment to be abstinent again. *Id.* at 89-90. He did not believe he has an alcohol problem now, and had not discussed his alcohol use with his psychiatrist, counselor, or Co-Dependents Anonymous (CoDA) sponsor, but acknowledged that he had a problem with alcohol in the past. *Id.* at 97-99.

The individual has seen a mental health counselor intermittently since October 2008. Although the individual first sought counseling for marital issues and problems he regarded as relating to co-dependence and emotional distress, the counselor raised the possibility that the individual might be bipolar, which the individual was "not ready to accept." Exhibit A at 1-2. Ultimately, in June 2010, after the breakup of his marriage, two suicide attempts, a new relationship and its subsequent breakup, impulsive alcohol use and other impulsive behavior, the individual came to accept the possibility that he might suffer from Bipolar Disorder. *Id.* at 3. The counselor referred the individual to a psychiatrist, who diagnosed the individual with Bipolar Disorder and began prescribing medication to control the illness, first risperidone alone, adding lithium in October 2010. *Id.* at 4. At the counselor's suggestion, the individual began attending CoDA meetings and obtained a sponsor in that program. *Id.* The counselor reported that the individual has made consistent progress since starting lithium, abstaining from smoking and alcohol, attending CoDA meetings, and eliminating impulsive control issues. *Id.* He agreed with the DOE psychiatrist's diagnosis of Bipolar Disorder and felt that the individual, six months into his course of treatment with lithium at the time of his report, is now functioning within normal limits. He disagreed with the DOE psychiatrist's diagnosis of Alcohol Abuse and identification of borderline and antisocial personality traits, contending that the individual's excessive alcohol use and impulsive behavior are "cluster symptoms" relating to the individual's Bipolar Disorder, particularly because these problems resolved as soon as the Bipolar Disorder was effectively treated. *Id.* at 5.

³ He did assert that the DOE psychiatrist had mischaracterized his level of intoxication in her reporting that he was significantly impaired on those occasions when he drove while intoxicated. See Exhibit 4 at 22. He nevertheless agreed that he believed his blood alcohol content would have been above the legal limit on those occasions. Transcript of Hearing (Tr.) at 84-86.

The individual's treating psychiatrist testified that the individual has made remarkable progress managing his Bipolar Disorder. He responded excellently to lithium, and is atypical in his willingness to comply with treatment. Tr. at 38, 65. He stated that as long as the individual was compliant with his medication regimen, he was at low risk of a relapse of manic or depressive episodes. *Id.* at 54, 66. He further testified that he approves of the individual's participation in CoDA, not as a treatment for Bipolar Disorder, but because it may give him insights into his relationships with others, on which Bipolar Disorder often has adverse effects. *Id.* at 66. While he himself diagnosed the individual with Bipolar Disorder Type I, he, like the counselor, disagreed with the DOE psychiatrist's diagnosis of Alcohol Abuse in this case. He conceded that the individual technically meets the DSM-IV TR criteria for Alcohol Abuse, but expressed the opinion that the individual's abuse is at a level that is too minimal to be treated. *Id.* at 42, 49, 51-52.

The individual's CoDA sponsor also testified at the hearing. CoDA is similar to Alcoholics Anonymous, in that it is a 12-step program in which participants establish an intimacy with a higher power, but different in that the illness addressed is not alcoholism, but rather codependence. *Id.* at 15.⁴ The first step in the program is admitting that we are powerless over others (as opposed to "over alcohol"), and that our lives have become unmanageable. *Id.* at 18. The remaining 11 steps are the same as those followed by Alcoholics Anonymous participants. *Id.* The sponsor speaks with the individual daily and meets with him once a week, and testified that the individual has made outstanding progress. *Id.* at 11-13. He stated that as a sponsor, he helps a sponsee with his codependence issues but refers him to a therapist should issues arise "out of my ballpark," such as other addictions or compulsions, or to a psychiatrist if he observes, for example, depression. *Id.* at 23-24.

After hearing the testimony of all the other witnesses, the DOE psychiatrist testified. She did not concur with the opinions of the individual's counselor and treating psychiatrist that the individual's abuse of alcohol was merely a symptom of his Bipolar Disorder. Instead, she felt that her diagnosis was correct, that the individual suffered from two co-existing conditions. *Id.* at 128. The fact that, at the time of her evaluation, the individual had stopped drinking alcohol but was still having a manic episode was evidence that the two illnesses were not linked. *Id.* at 124. She also expressed concern that the individual had recently consumed a large quantity of alcohol one evening recently, after successfully abstaining for months. Choosing to drink the six-pack, according to the DOE psychiatrist, showed poor judgment with respect to alcohol use, as it demonstrated the individual's vulnerability when he made a self-defeating choice triggered by stress. *Id.* at 125, 127. Drinking alcohol while taking lithium, moreover, reflects hazardous, risky behavior, a criterion of Alcohol Dependence, a disorder more serious than Alcohol Abuse. *Id.* at 135.

The DOE psychiatrist further testified about the effectiveness of the treatment of each of the individual's illnesses. She stated that the individual was receiving no treatment for his Alcohol Abuse because it is not the focus of the treatment he is receiving from his CoDA sponsor, his counselor, or his psychiatrist, nor is it a concern of the individual himself. *Id.* at 128. For that reason, the DOE psychiatrist concluded that there was no evidence of rehabilitation and the

⁴ The sponsor testified that he and the individual have defined codependence as a disease "induced by child abuse that leads to self-defeating relationships with self and others." *Id.* (omitting source cited).

individual's risk of relapse to Alcohol Abuse is moderate. *Id.* at 128, 131. With respect to the individual's Bipolar Disorder, the DOE psychiatrist testified that, although lithium appears to be controlling the illness effectively, the coexistence of substance abuse makes the treatment of Bipolar Disorder more difficult. *Id.* at 125. For example, the individual's recent consumption of six beers, despite his awareness that he should not combine alcohol with lithium, led her to question his future compliance with the medication, despite the positive testimony of his treating psychiatrist. *Id.* at 129. In light of the complexity of the individual's psychiatric issues, the DOE psychiatrist concluded that he has a moderate risk of relapse of Bipolar Disorder in the future. *Id.* at 131.

A. Criterion J: Alcohol Abuse

After considering all the evidence presented in this proceeding, I find that the individual suffers from Alcohol Abuse. When he saw the DOE psychiatrist in October 2010, he had stopped drinking for a significant period, yet the DOE psychiatrist and the individual agree that he was having a manic episode at the time of the evaluation. This demonstrates, to some degree, that the Alcohol Abuse is not linked to the Bipolar Disorder. Further evidence that the illnesses were not linked came out at the hearing, when the individual admitted he had consumed a six-pack of beer one evening within a month of the hearing, at which time his Bipolar Disorder had been under control for several months. These facts convince me that the individual's Alcohol Abuse is a discrete illness and not merely a symptom of his Bipolar Disorder. The evidence is consistent that the individual has received no treatment for his Alcohol Abuse. The individual testified that he does not believe he currently has an alcohol problem. *Id.* at 97-99. CoDA focuses on accepting one's powerlessness over others, not over alcohol. *Id.* at 181. Neither his counselor nor his treating psychiatrist feels his Alcohol Abuse deserves treatment, either because it is merely a symptom of his Bipolar Disorder that resolves as long as the Bipolar is under control, or because it is too insignificant to be treated. Exhibit A; Tr. at 41-42. A recent episode of drinking to excess indicates that there is a significant risk that the individual may abuse alcohol in the future. Because the individual continues to suffer from Alcohol Abuse but has received no treatment for it, I must conclude that the individual has not mitigated the LSO's concerns under Criterion J regarding his alcohol consumption.

B. Criterion H: Bipolar Disorder Type I

All the mental health professionals who either testified at the hearing or treat the individual diagnosed the individual with Bipolar Disorder Type I. The sole issue before me, therefore, is whether the individual has mitigated the concerns raised by such a diagnosis. Although the individual at first resisted the possibility that he suffered from Bipolar Disorder, he accepted that diagnosis in June 2010 and, by October 2010 he and his psychiatrist had discovered a pharmacological regimen that has permitted him to control his illness extremely well. His counselor and his psychiatrist reported that he is exceptionally compliant with his medications, and his psychiatrist testified that the individual's risk of relapse is low, provided he remains compliant. On the other hand, a recent evening of consumption of a six-pack of beer, while taking lithium and while cognizant of his psychiatrist's warning not to drink alcohol while taking lithium, raises a doubt that the individual will be fully compliant with his prescribed medications in the future. As a result, I agree with the DOE psychiatrist's assessment that the individual's risk of relapse is moderate rather than low. After reviewing all the evidence before me, I conclude that the individual has not sufficiently mitigated the LSO's concerns under Criterion H regarding his Bipolar Disorder.

V. CONCLUSION

For the reasons set forth above, I conclude that the individual has not sufficiently resolved the DOE's security concerns under Criteria H and J, and therefore has not demonstrated that granting an access authorization to him would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the individual should not be granted an access authorization at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: July 19, 2011