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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	January 14, 2013)	
)	Case No.: PSH-13-0003
)	

Issued: May 1, 2013

Hearing Officer Decision

William M. Schwartz, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization¹ 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." As discussed below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I have determined that the individual's access authorization should be restored.

I. Background

The individual works for a DOE contractor in a position that requires him to maintain a DOE security clearance. A history of drinking to intoxication, a recent arrest for Driving Under the Influence of Alcohol (DUI), and a diagnosis of Alcohol Dependence raised security concerns in the opinion of the Local Security Office (LSO), and the LSO suspended the individual's security clearance. On December 10, 2012, the LSO sent a letter (Notification Letter) to the individual advising him that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security

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.

regulations at 10 C.F.R. § 710.8, subsections (j) and (l) (hereinafter referred to as Criteria J and L).²

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing, and I was appointed the Hearing Officer in the case. At the hearing that I conducted, the individual presented his own testimony and that of four other witnesses, and the LSO presented the testimony of one witness, a DOE consultant psychiatrist. In addition to the testimonial evidence, the LSO submitted 15 exhibits into the record and the individual tendered 11 exhibits. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

A. Individual’s Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his 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). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

² Criterion J relates to information that a person 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). Criterion L concerns information that a person has “[e]ngaged in any unusual conduct or is subject to any 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. Such conduct or circumstances include, but are not limited to, criminal behavior, ... or a violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.” 10 C.F.R. § 710.8 (l).

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, 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.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites two criteria as the bases for suspending the individual's security clearance, Criteria J and L. With regard to Criterion J, the LSO relies on the opinion of a DOE consultant psychiatrist (DOE psychiatrist) who determined that the individual meets the criteria for Alcohol Dependence, Early Full Remission, set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association*, Fourth Edition Text Revised (DSM-IV-TR).³ In addition, the LSO cites the individual's alcohol-related arrests in 1988, 1993 or 1994, and April 2012; his drinking to frequent intoxication from 1983 to 2001, and his resumption of heavy drinking in September 2011 after being advised in February 2002 to stop consuming alcohol for health reasons.

I find that there is ample information in the Notification Letter to support the LSO's reliance on Criterion J. 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, which in turn can raise questions about a person's reliability and trustworthiness. *See 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.

As for Criterion L, the LSO cites as support the three alcohol-related arrests mentioned above, as well as a 1997 charge for Possession of a Controlled Substance (cocaine). Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness and by its very nature calls into question a person's ability or willingness to comply with

³ In his September 17, 2012, report, the DOE psychiatrist found that the individual had demonstrated adequate evidence of rehabilitation or reformation from his Alcohol Dependence. Exhibit 5 at 7. On October 12, 2012, the LSO questioned that finding in light of the individual's four-month period of sobriety, his ongoing treatment, and the diagnosis of Alcohol Dependence in Early (as opposed to Sustained) Full Remission. The DOE psychiatrist responded on October 22, 2012, stating that despite the individual's aggressive approach to addressing his alcohol problems, he had not yet been abstinent for twelve months, and "cannot be considered to be rehabilitated and reformed at this time." Exhibit 4 at 2. When questioned about this apparent inconsistency at the hearing, the DOE psychiatrist testified that "adequate evidence of rehabilitation or reformation" is not a medical term and not a term he uses in his profession. Provided with no definition of the term, he could only speculate at what information the LSO was seeking, and still finds the term to be ambiguous. His opinion regarding the individual's psychiatric condition, he maintains, was nevertheless unchanged. Tr. at 131-33.

laws, rules and regulations. *See* Adjudicative Guidelines at Guideline J. While I note that three of the arrests are more than 15 years old, the most recent one occurred only last year. Consequently, I find that the LSO properly relied on Criterion L in this case.

IV. Findings of Fact and Analysis

A. Criterion J

From age 21 through the year 2001, the individual consumed alcohol in a stable, though excessive, manner, drinking six or seven bourbons at a time, one to three times per week, and becoming intoxicated every time he drank. Tr. at 90-91; Ex. 13 (Transcript of June 7, 2012, Personnel Security Interview) at 31-36. A routine physical in February 2002 revealed that the individual had elevated liver enzymes, and his doctor suggested that he stop drinking alcohol. Tr. at 93. He successfully abstained for six months by attending Life Ring, an alternative to Alcoholics Anonymous, weekly and seeing a specialist monthly. After his August 2002 relapse, he enrolled in an intensive outpatient recovery program and followed it with an aftercare program. At the same time, he continued his participation in Life Ring, increasing his involvement, to the point that he was running two meetings a week after he achieved 12 months of sobriety, and four meetings after 18 months of sobriety. *Id.* at 94-96.

Two household moves made his participation in Life Ring increasingly difficult, due to the time it took to get to meetings. *Id.* at 97-98. By 2006, he no longer attended Life Ring meetings, and no longer considered himself an alcoholic; he simply no longer drank alcohol. He nevertheless maintained his sobriety until 2011. *Id.* at 99. He had recently bought his first home, and neighbors came visiting and handed him a beer. He held it during their visit and took two or three swallows before pouring out the rest. He had no adverse effects and, believing he could drink again, slowly began drinking more frequently and in larger amounts, up to five or six drinks when he was alone. *Id.* at 102-03, 106. In hindsight, the individual now recognizes that he was feeling depression and stress following his mother's death, and was isolated from other people, including his girlfriend, when he moved into his new home. *Id.* at 101. On April 21, 2012, he had an argument with his girlfriend at her house, drove home, and drank several drinks. Looking for a meal, he drove to a restaurant and, learning that the kitchen had closed, had "a couple of drinks" at the bar. Driving home from the restaurant intoxicated, he got lost, ran off the road, crashed his car, and was taken by ambulance to the local hospital. *Id.* at 107-09.

After the accident, he immediately enrolled in the same intensive outpatient recovery program that he had completed in 2002. He also located and started attending a nearby Life Ring group. *Id.* at 110-11. He removed all alcohol from his house, and has consumed no alcohol since the accident on April 21, 2012. *Id.* at 115-16. Since completing the recovery program, he now attends a weekly aftercare program and weekly Life Ring meetings. *Id.* at 117-18. In addition, he discusses his progress with an on-site Employee Assistance Program (EAP) counselor, through whom he requested and receives random alcohol and drug tests, all of which have been negative. *Id.* at 71, 85, 123. He now recognizes that, even after nine years of sobriety, he was not able to start drinking again, and is committed to remaining abstinent in the future. *Id.* at 118. He

also recognizes his error in accepting a beer to “fit in” with his neighbors; he is comfortable telling others that he cannot drink. *Id.* at 121, 127. Finally, he has learned that his greatest danger is isolation, and his protection against isolation is staying connected with others through Life Ring, and accepting support from his girlfriend and one particular Life Ring member, both of whom testified at the hearing. *Id.* at 119, 122, 125.

The individual’s EAP counselor testified at the hearing, as did his supervisor, his girlfriend, and a fellow member of Life Ring, who serves a role similar to that of an Alcoholics Anonymous sponsor. The EAP counselor stated that the individual sought help from the EAP voluntarily in the fall of 2012. *Id.* at 68. She feels their monthly meetings are sufficient, as she is monitoring his treatment but not providing the treatment herself. *Id.* at 70, 79. In her opinion, the individual is highly motivated to achieve recovery. As an example of his motivation, she pointed out that he had already begun his treatment program and Life Ring participation before he met with her; this demonstrated to her that he understood his Alcohol Dependence and his need for treatment. *Id.* at 72. He also understands that he needs to abstain totally from alcohol in the future, and understands the risk inherent in his having accepted the beer from his neighbor last year. *Id.* at 74, 87. As of the date of the hearing, the individual was nine days short of a full year of sobriety. Nevertheless, the EAP counselor felt that the individual had achieved “full remission,” and that he had a high certainty of maintaining his sobriety provided he continues his participation in Life Ring. *Id.* at 77.

At the hearing, the DOE psychiatrist maintained his opinion that the individual suffers from Alcohol Dependence. He found that the individual accurately reported his involvement with alcohol and did not minimize his use, as many do. *Id.* at 134. He testified that the critical element in recovery, more important than even treatment, is internal motivation. *Id.* at 136. He found substantial evidence of that motivation in the individual, particularly in the fact that the individual took immediate action after the accident to start a recovery program without being directed to do so by either legal or medical authorities. When he had evaluated the individual, he had been sober for roughly five months and had voluntarily entered a recovery program. *Id.* at 137-38. As of the date of the hearing, according to the DOE psychiatrist, the proper diagnosis for the individual was Alcohol Dependence in Full Sustained Remission, despite the fact that he had not yet quite reached twelve full months of sobriety set as guidelines in the DSM-IV-TR. *Id.* at 140. He further stated that the individual did not suffer from a defect in judgment, and never did, even when he was actively drinking. *Id.* at 41. Finally, he testified that the individual’s risk of relapse is very low, due in large part to his continued motivation to address his alcohol issues. *Id.* at 139.

B. Criterion L

The Notification Letter listed three alcohol-related arrests and one arrest for possession of cocaine as evidence of the individual’s criminal behavior. Details about the arrests were not developed at the hearing. There is no mention in the record of any further involvement with cocaine, and the Notification Letter raises no security concerns based on the use of illegal substances.

V. Analysis

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) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. I find that granting the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Criterion J

After considering the entire record in this proceeding, I find that the individual is properly diagnosed as suffering from Alcohol Dependence. The record, in particular, the testimony of both the EAP counselor and the DOE psychiatrist, establishes that the individual's Alcohol Dependence diagnosis is now properly modified to be in sustained full remission, even though his period of sobriety falls just short of the customary year set forth as a guideline in the DSM-IV-TR. The concurrence of the mental health experts on this diagnosis demonstrates to me the confidence they have in the individual's progress through treatment and his motivation to remain sober. I have taken into consideration a number of mitigating factors in his favor, specifically, his acknowledgment of his alcohol problem, his abstinence, his voluntary participation in a treatment program and in Life Ring, and the mental health professionals' favorable prognosis of the individual and their assessments that he is at low or very low risk of relapse. Adjudicative Guidelines at Guideline G, ¶ 23. After considering all the testimony and written evidence in the record, I am convinced that the individual has resolved the LSO's security concerns that arise from his alcohol use.

B. Criterion L

The individual was arrested three times between 1988 and 1997, followed by a 15-year period during which there is no evidence of the individual engaging in criminal activity. The most recent arrest, in April 2012, was the result of a relapse of alcohol dependent behavior after nine years of sobriety. As discussed above, I am convinced by the testimony of the mental health experts who testified at the hearing that the individual's Alcohol Dependence is in sustained full remission and that the risk of his relapsing is very low. Although the most recent criminal behavior, the 2012 DUI arrest, is less than a year old, it happened under such unusual circumstances that it is unlikely to recur and, in the opinion of the DOE psychiatrist, does not cast doubt on the individual's good judgment. Adjudicative Guidelines at Guideline J, ¶ 32(a). Moreover, there is evidence of successful rehabilitation, not only in the form of treatment for the underlying cause of the arrest, but also in his immediate remorse and resolve to prevent future criminal consequences of his involvement with alcohol. *Id.*, ¶ 32(d).

The individual's limited arrest record, with only one arrest since 1997, does not indicate a current pattern of criminal conduct. Given that his arrests occurred only during periods

of heavy alcohol use and in light of my conclusion that the individual is now at very low risk of relapse to such alcohol use, the individual has resolved the Criterion L concerns in this case. *Cf. Personnel Security Hearing, Case No. PSH-12-0143 (2013) (incomplete, inadequate treatment for alcohol abuse does not mitigate Criterion L concerns).*

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria J and L. 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 brought forth sufficient evidence to mitigate the security concerns associated with these criteria. I therefore find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be restored.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: May 1, 2013