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United States Department of Energy
Office of Hearings and Appeals

In the Matter of Personnel Security Hearing)

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Filing Date: February 27, 2013)

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Case No.: PSH-13-0021

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Issued: June 6, 2013

Decision and Order

Robert B. Palmer, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization 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's security clearance should not be restored at this time.²

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor and was granted a security clearance in connection with that employment. In June 2012, the individual was arrested for Driving While Intoxicated (DWI). Because this information raised security concerns, the local security office (LSO) summoned the individual for an interview with a personnel security specialist in September 2012. After this Personnel Security Interview (PSI) failed to resolve these concerns, the LSO referred the individual

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will also be referred to in this Decision as a security clearance.

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>.

to a local psychologist (hereinafter referred to as “the DOE psychologist”) for an agency-sponsored evaluation. The DOE psychologist prepared a written report based on that evaluation, and submitted it to the LSO. After reviewing that report and the rest of the individual’s personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual’s eligibility for access authorization. It informed the individual of this determination in a letter that set forth the DOE’s security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. 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 the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced 10 exhibits into the record of this proceeding and presented the testimony of the DOE psychologist at the hearing. The individual introduced four exhibits and testified on his own behalf.

II. THE NOTIFICATION LETTER AND THE DOE’S SECURITY CONCERNS

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual’s eligibility to hold a clearance. This information pertains to paragraphs (h), (j) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Under criterion (h), information is derogatory if it indicates that an individual has an illness or mental condition which, in the opinion of a psychiatrist causes, or may cause, a significant defect in the individual’s judgment or reliability. 10 C.F.R. § 710.8(h). Criterion (j) defines as derogatory information indicating that the individual “has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or licensed clinical psychologist as alcohol dependant or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j). As support for these criteria, the Letter cites the diagnosis of the DOE psychologist that the individual suffers from alcohol abuse, and that this condition causes, or may cause, a significant defect in his judgment or reliability. As additional support for criterion (j), the Letter refers to the individual’s June 2012 DUI arrest, and citations that he received in 2006 and 2003 for the underage consumption of alcohol.

Criterion (l) refers to information indicating that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of national security. As support for its invocation of this criterion, the Letter cites the arrest and citations referred to in the previous paragraph, the individual’s statement in his 2012 PSI that he has driven while intoxicated on multiple occasions, and statements that he made to a police officer and to an Office of Personnel Management (OPM)

investigator about his alcohol consumption that are inconsistent with other information that he provided during the 2012 PSI.

These circumstances adequately justify the DOE's invocation of criteria (h), (j) and (l), and raise significant security concerns. Mental conditions that involve the excessive consumption of alcohol, such as alcohol abuse, often lead to the exercise of questionable judgment or the failure to control impulses, and can therefore raise questions about an individual's reliability and trustworthiness. Moreover, illegal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations. Finally, conduct involving questionable judgment, lack of candor, or dishonesty can also raise questions about an individual's reliability, trustworthiness and ability to protect classified information. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines G, I, J and E.*

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 or unfavorable, that has a bearing on the question of whether granting or restoring a 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, 24 DOE ¶ 82,752 at 85,511 (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

Although the individual introduced into evidence a “fitness for duty” evaluation by a psychologist in his employer’s Occupational Medicine Division that concluded that he does not suffer from an alcohol use disorder, at the hearing the individual admitted that he is an alcoholic, and he generally did not dispute the DOE psychologist’s diagnosis or the allegations set forth in the Notification Letter.³ Hearing Transcript (Tr.) at 32. Instead, the individual attempted to demonstrate that he no longer abuses alcohol and that he is an honest, reliable and law-abiding person who can be trusted with a DOE security clearance.

He testified that, even after the DWI arrest, he did not believe that he had a drinking problem. Tr. at 22. This belief was based, at least in part, on the “fitness for duty” evaluation, and on the fact that, prior to the DOE psychologist’s evaluation, no one had ever expressed a concern to him about his alcohol consumption. Tr. at 13, 16. However, meeting with the DOE psychologist “opened [the individual’s] eyes to the severity of the situation,” and made him realize that he did, in fact, have a drinking problem. Tr. at 16. He said that he was “devastated” after reading the DOE psychologist’s report. Tr. at 24. He stopped drinking in early November 2012 and starting attending Alcoholics Anonymous (AA) meetings one-to-two times per week in early January 2013. Tr. at 17. His intention is to remain sober for the rest of his life. Tr. at 37.

The individual also testified about his provision of false information to the police officer who arrested him for DWI and to the OPM investigator. He termed his representation to the arresting officer that he had had only one beer, when he had, in fact, consumed five to eight beers prior to his arrest, a “white lie” that he told because he was “scared.” Tr. at 27. He attributed his 2008 misstatement to the OPM investigator that he had not consumed alcohol prior to his 2003 citation for underage consumption of alcohol to youth and to a misunderstanding of the question that was asked by the investigator. Tr. at 28. He admitted that this was a mistake and he observed that he “came clean” about both of these falsehoods during his 2012 PSI. Tr. at 28-29.

After observing the individual’s testimony, the DOE psychologist then testified. He said that the individual’s attitude had changed markedly from the one that he exhibited during his evaluation. During his evaluation, the DOE psychologist explained, the individual blamed others for his predicament, and not his own actions. He also seemed to not be aware of, or willing to acknowledge, the number of people who had been adversely affected by his drinking. Furthermore, he “almost defiantly” insisted that he was going to keep drinking. Tr. at 40-41. However, the DOE psychologist noted that he “didn’t hear any of that today.” Tr. at 38. Instead, the individual exhibited “a very different attitude,” and “has taken some steps” towards abstinence and rehabilitation. Tr. at 41-42. The DOE psychologist described the individual’s progress as “impressive.” Tr. at 42. Nevertheless, the DOE psychologist opined that the individual was still not exhibiting adequate

³ This “fitness for duty” evaluation is Individual’s Exhibit 1. The psychologist who performed this evaluation apparently did not have access to all of the information provided to the DOE psychiatrist, such as the individual’s statements in his PSI that he repeatedly drove while under the influence of alcohol during the years 2007 through 2012.

evidence of rehabilitation or reformation. He explained that mental health professionals who work with alcohol abusers and the alcohol-dependant “like to have one year of abstinence” and treatment before such a positive prognosis would be warranted. Tr. at 44-45. In this case, “given how long alcohol has been a central part of [the individual’s] life,” the DOE psychologist concluded, he would still recommend one year of abstinence and treatment. Tr. at 45.

I agree that the individual has not demonstrated adequate evidence of reformation or rehabilitation. As of the date of the hearing, he had abstained from all alcohol use for approximately six months and had been attending AA for approximately four months. The record in this matter indicates that, prior to this time, he had driven while intoxicated repeatedly, reported to work while still under the influence of alcohol, and continued to drink despite the DWI. DOE Ex. 4 at 5. Given the extent of his alcohol involvement, I agree with the DOE psychologist that a longer period of abstinence and AA attendance is necessary. I therefore conclude that the individual has not adequately addressed the DOE’s security concerns under criteria (h) and (j).

I reach a similar conclusion regarding criterion (l). The individual’s arrest and citations all resulted from his maladaptive pattern of alcohol use. Because I believe that the individual’s chances of relapsing into such an abusive pattern are still unacceptably high at this stage of his recovery, I accordingly conclude that his chances of encountering future alcohol-related legal troubles are also unacceptably high. Regarding his provision of false information to the officer who arrested him for DWI and to the OPM investigator, I disagree with his characterization of the statement that he made to the officer as a “white lie.” While his misrepresentation as to the amount of alcohol that he had consumed might be understandable, the officer was attempting to ascertain whether the individual’s continued operation of a motor vehicle represented a threat to public safety. The individual’s misrepresentation was far from harmless. I also find no mitigation in the fact that, during his 2012 PSI, the individual fully and truthfully answered questions about his alcohol consumption prior to his DWI and his underage drinking citations. Failure to do this would have been a violation of federal law and would itself have raised significant concerns about the individual’s eligibility for a security clearance. I also do not find his age (21) at the time of his misrepresentation to the OPM investigator to be of significant mitigating value. Significant security concerns remain concerning criterion (l).

V. CONCLUSION

For the reasons set forth above, I find that the individual has not adequately addressed the DOE’s concerns under criteria (h), (j) and (l). Consequently, he has failed to demonstrate that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not restore the individual’s security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: June 6, 2013