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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: June 20, 2013)

Case No.: PSH-13-0078

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Issued: October 25, 2013

Decision and Order

Robert B. Palmer, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXX (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 be restored.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 December 2012, the individual was arrested for Domestic Assault. Because this information raised security concerns, the local security office (LSO) summoned the individual for an interview with a personnel security specialist in February 2013. After this Personnel Security Interview (PSI) failed to resolve these concerns, the LSO referred the individual to a local psychologist (hereinafter referred to as “the

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>.

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 she was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning her 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 13 exhibits into the record of this proceeding and presented the testimony of the DOE psychologist at the hearing. The individual presented the testimony of four witnesses, in addition testifying herself.

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

As indicated above, the Notification Letter (the 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) 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.

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 or licensed clinical psychologist 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 Use Disorder Not Otherwise Specified (NOS), his finding that she is a user of alcohol habitually to excess, and his conclusion that these conditions cause, or may cause, a significant defect in the individual’s judgment or reliability. As additional support for criterion (j), the Letter cites statements that the individual made during her 2013 PSI indicating that, just before her December 2012 arrest, she had consumed three 16-ounce beers and two “shots;” that, since 2011, she had consumed four 16-ounce beers and two shots once per week and had become intoxicated eight times; and that, from 1986 to 2005, she drank to intoxication 98 times.

These circumstances adequately justify the DOE’s invocation of criteria (h) and (j), and raise significant security concerns. Mental conditions that involve the excessive consumption of alcohol 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. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines G and I.*

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

At the hearing, the individual did not contest the DOE psychologist’s diagnosis. Instead, she attempted to demonstrate, through her testimony and that of her friend, her coworker, her daughter, and her therapist, that she is no longer a user of alcohol habitually to excess, and no longer suffers from Alcohol Use Disorder NOS. For the reasons set forth below, I agree, and I find that she has provided compelling evidence to convince me that no valid security concerns remain under criteria (h) and (j).

First, I find that the individual has established a pattern of responsible alcohol usage. At the hearing, she testified that in the eight and one-half months since her alcohol-related arrest for domestic abuse in December 2012, she has consumed alcohol on nine occasions. During none of these instances did the individual’s consumption exceed three standard-sized drinks, nor did the individual have more than seven such drinks during any one-week period. Hearing Transcript (Tr.) at 51-54. This level of consumption is consistent with the guidelines set forth in the DOE psychologist’s report. DOE Exhibit (DOE Ex.) 6 at 12.³ The individual said that she was able to

³ The DOE psychologist observed that the safest course of action was for the individual to completely refrain from alcohol use. However, he continued, if she chose to indulge, she should

give an accurate account of her alcohol usage because she tracks it using an application for her cell phone. Tr. at 58. This level of usage was corroborated by testimony from the individual's friend and her daughter. Tr. at 71-72, 110. The record in this matter also indicates that she has not consumed alcohol to the point of intoxication or encountered any alcohol-related legal problems since the December 2012 Domestic Assault arrest. Tr. at 64.⁴

Second, I find that the individual's chances of relapsing into an abusive pattern of drinking are low. The individual is participating in counseling with a therapist who is a certified substance abuse counselor. Tr. at 126. Although the majority of her work with the individual has concerned other issues, she has counseled her about alcohol, and has monitored her usage. Tr. at 137. She intends to continue seeing the individual indefinitely. Tr. at 139. Moreover, I believe that the individual is highly motivated to continue her current pattern of responsible use. This is evidenced by the facts that she began seeing her therapist and began her current pattern of alcohol usage before she saw the DOE psychologist and received his recommendations for counseling and for, at most, moderate alcohol use. She is also acutely aware of the importance of remaining sober for purposes of retaining her security clearance and maintaining her employment. Tr. at 59. I also find it to be a positive factor that the individual ended her relationship with her boyfriend largely because of what she perceived as his abusive level of alcohol consumption. Tr. at 24-25, 31.

Finally, at the hearing, the DOE psychologist testified that the individual was currently exhibiting adequate evidence of reformation and rehabilitation from Alcohol Use Disorder NOS, and that the risk of her relapsing into an excessive pattern of consumption was low. Tr. at 167-168, 170. In his report, the DOE psychologist recommended that, in order to demonstrate adequate evidence of rehabilitation, the individual should abstain from alcohol or practice moderate consumption for at least six months, participate in counseling with a mental health professional, inform this professional and her primary care physician of her alcohol use history, and comply with any guidelines set forth by these medical professionals. DOE Ex. 6 at 12. After hearing all of the testimony, including testimony indicating that each of these requirements had been met, the DOE psychologist concluded that the individual has "made a significant change in her drinking," Tr. at 167, and that her prognosis is now "good." Tr. at 170. I therefore conclude that no significant security concerns remain regarding criteria (h) and (j).

V. CONCLUSION

consume no more than three drinks on any one occasion, and no more than seven standard-sized drinks during any given seven-day period. This standard, which purports to differentiate moderate alcohol usage from unhealthy usage, was taken from a 2005 article published in the *New England Journal of Medicine* entitled "Unhealthy Alcohol Use," by R. Saitz. DOE Ex. 6 at 8, 11-12.

⁴ During this incident, which occurred in the midst of a contentious break-up between the individual and her boyfriend, the individual threw a shot glass, allegedly in the vicinity of the boyfriend. No one was injured.

For the reasons set forth above, I find that the individual has adequately addressed the DOE's security concerns. Consequently, I am convinced that restoring her access authorization would not endanger the common defense and would be clearly consistent with the national interest.

Accordingly, I conclude that the DOE should restore the individual's security clearance. Review of this Decision by an Appeal Panel is available pursuant to 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: October 25, 2013