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

In the Matter of Personnel Security)	
Filing Date: November 28, 2011)	
)	Case No. PSH-11-0024
)	
_____)	

Issued: March 22, 2012

Decision and Order

Kimberly Jenkins-Chapman, Hearing Officer:

This Decision concerns the eligibility of xxxxxxxxxxxxxxxx hereinafter referred to as “the individual”) to hold an access authorization 1/ 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, I have determined that the individual’s access authorization should be granted.

I. Background

The individual is an applicant for a DOE security clearance. In March 2011, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address his alcohol use. In addition to the PSI, the LSO requested the individual’s medical records and recommended a psychiatric evaluation of the individual by a DOE consultant psychiatrist (DOE psychiatrist). The DOE psychiatrist examined the individual in August 2011 and memorialized his findings in a report (Psychiatric Report). According to the DOE psychiatrist, the

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).

individual has been a user of alcohol habitually to excess without adequate evidence of rehabilitation or reformation.

In October 2011, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding her eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, notably subsection (j) (hereinafter referred to as Criterion J). 2/

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the DOE Counsel called one witness, the DOE psychiatrist. The individual presented the testimony of two witnesses - his wife and a family friend. He also testified on his own behalf. The LSO and the individual submitted a number of written exhibits prior to the hearing.

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 denial"); *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 granting 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.

B. Basis for the Hearing Officer's Decision

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).

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 in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As stated above, the LSO cites one criterion as the basis for denying the individual's security clearance: Criterion J. To support Criterion J, the LSO cites the DOE psychiatrist's opinion and the following additional information: (1) in May 2011, the individual became intoxicated daily after consuming one bottle of wine by himself in two and a half hours; (2) the individual's primary care physician advised him to abstain from alcohol because he believed alcohol negatively affects his anxiety problems; (3) the individual's physician recommended that he enter Alcoholics Anonymous (AA), but despite this recommendation, the individual has not attended AA; and (4) the individual admitted that he has used alcohol primarily to "self-medicate" his excessive anxiety and to relieve stress. *See* DOE Exh 1.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under 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* Guideline G of the *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*).

IV. Findings of Fact

By his own account, the individual began drinking alcohol at the age of 17. *See* DOE Exhs. 3 and 6. When he was in college, he began drinking socially "off and on" and drank to excess approximately two times a month. *Id.* This pattern of drinking to excess continued for a number of years. *Id.* In 2010, the individual drank one bottle of wine about twice a week, becoming intoxicated. *Id.* The individual acknowledges that he drank more in early 2011, drinking one bottle of wine a day, because of the anxiety associated with the fear of losing his job and not being able to support his family. *Id.* In May 2011, the individual's primary care doctor prescribed him an anxiety medication as well as a medication for his alcohol use. *Id.* The individual's primary care doctor also told him to quit drinking. *Id.* According to the individual, he last drank alcohol on May 15, 2011. The individual asserts that he has continued on his anxiety medication under medical advice and no longer "self-medicates" with alcohol. *Id.*

V. Analysis

I have thoroughly considered the record in 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 be granted. I find that granting the individual's 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. The Individual's Habitual Use of Alcohol - Criterion J

1. Lay Testimony

At the hearing, the individual acknowledged that he has had an alcohol issue in the past. Transcript of Hearing (Tr.) at 13. He described his drinking habits as drinking a bottle of wine nearly every day for about five months until he quit drinking on May 15, 2011. *Id.* at 16 and 17. Prior to this period, the individual testified that he was more of a "social drinker." *Id.* He further acknowledged that he "self-medicated" with alcohol to deal with his anxiety stemming from the loss of a previous job and the loss of his house. *Id.* at 13 and 16. According to the individual, he met with his primary care physician on May 15, 2011. His doctor prescribed him anxiety medication and advised him to quit drinking because the alcohol would counteract the medication. *Id.* at 20. The individual testified that since he met with his physician, he has taken the anxiety medication as prescribed and has had no temptation or urge to drink. *Id.* at 21. He asserted that the anxiety medication has been a "life saver" and has worked very well for him, adding that since taking the medication he has no "ups and downs" and feels better about himself. *Id.* Although the individual acknowledged that he still has stressors in his life, he testified that he has the ability to deal with stressful situations without panicking. *Id.* at 28. He added that he has not had a panic attack since starting his anxiety medication. Finally, the individual testified that he does not plan to drink in the future. He considers his wife and family to be his support system. *Id.* at 32.

During the hearing, the individual also offered the testimony of a family friend and his wife. The individual's friend, who attends the same church as the individual and is a medical doctor, testified that she was not aware the individual had a problem with alcohol. *Id.* at 40. She stated that she last saw the individual consume a glass of wine with dinner was over six months ago. *Id.* at 42. The individual's friend further testified that the individual confided in her that he had a problem with anxiety and wanted to quit drinking. *Id.* at 44. He further told the friend that after taking anxiety medication, he lost his desire to drink. *Id.* at 46. The friend testified that when she visited the individual's home a few months ago for Thanksgiving dinner, the individual declined a glass of

^{3/} Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his 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 continuation or recurrence, and other relevant and material factors.

wine. *Id.* at 47. The individual's wife, who has been married to the individual for six years, testified that she last saw the individual drink in May 2011. *Id.* at 56. She stated that her husband does not have the urge to drink now and that they have no alcohol in their house. *Id.* at 58. She testified that the individual has not struggled with alcohol since he began taking anxiety medication. She further testified that the individual's anxiety level has been significantly reduced and that he is more engaged with his family. *Id.* at 62. Finally, the wife testified that her husband is very reliable. *Id.* at 67.

2. Expert Testimony

After listening to the testimony of all of the witnesses in this case, the DOE psychiatrist testified that the testimony confirmed his own observations of the individual. *Id.* at 70. He reiterated that he did not believe the individual suffered from Alcohol Abuse or Dependence, but rather has been a user of alcohol habitually to excess. *Id.* However, after hearing the testimony of the individual regarding the nature of his anxiety, the DOE psychiatrist stated that the individual's diagnosis probably would rise to Generalized Anxiety. *Id.* at 71. He opined that the "driving force" of the individual's need to drink was chronic anxiety and once the individual began taking medication to treat his anxiety, the urge to drink subsided. *Id.* The DOE psychiatrist testified that it is not uncommon for individuals who suffer from anxiety to self-medicate with alcohol. *Id.* In his report, he indicated that the individual had not yet established adequate evidence of rehabilitation or reformation in that he had only established three months of absolute sobriety at the time of evaluation and would need an additional six months of sobriety. *Id.* at 72. However, after hearing the testimony of all the witnesses, the DOE psychiatrist opined that, based on the individual's compliance with his anxiety medication as well as his sobriety, he has demonstrated adequate evidence of reformation. *Id.* at 73. He further opined that the individual does not require the typical alcohol treatment or AA monitoring because the individual does not possess a primary alcoholic diagnosis, but drank in response to situational anxiety. *Id.* at 74. The DOE psychiatrist testified that the risk of relapse is low as long as the individual continues to take his medication. He testified that the probability of drinking again is very low. The DOE psychiatrist noted that the individual's current anxiety medication has low side effects and is not habit forming, sedating or cognitive impairing. *Id.* at 78.

3. Hearing Officer's Evaluation of the Evidence

In the administrative process, Hearing Officers accord deference to the expert opinions of psychiatrists, psychologists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing*, Case No. TSO-0728 (2009). ^{4/} Regarding rehabilitation, I gave considerable weight to the opinion of the DOE psychiatrist, who opined that the individual has demonstrated adequate evidence of reformation and does not require the typical treatment and AA monitoring associated with an alcohol diagnosis. During the hearing, the individual testified that since taking his anxiety medication, he has not had the urge to drink and that

^{4/} Decisions issued by 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>.

he has been sober for about nine months. He submitted a letter from his primary care physician confirming that he is compliant in taking his anxiety medication, that his anxiety symptoms are well-controlled and that he has remained sober for the last nine months. Ind. Exh. A. The DOE psychiatrist was convinced that the driving force of the individual's need to drink was his chronic anxiety, and that because the individual has addressed his anxiety and has been sober for nine months, he has demonstrated adequate evidence of reformation from his habitual use of alcohol to excess. Based on the foregoing, I find that the individual has demonstrated adequate evidence of reformation at this time. For this reason, I find that she has mitigated the security concerns under Criterion J.

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 Criterion J. 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 find that the individual has brought forth convincing evidence to mitigate the security concerns associated with Criterion J. I therefore 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 find that the individual's access authorization should be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: March 22, 2012