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

In the Matter of Personnel Security)	
Filing Date: February 28, 2012)	
)	Case No. PSH-12-0015
)	
_____)	

Issued: June 28, 2012

Decision and Order

Kimberly Jenkins-Chapman, Hearing Officer:

This Decision concerns the eligibility of xxxxxxxxxxxx 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 not be granted.

I. Background

The individual is an applicant for a DOE security clearance. In July 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 October 2011 and memorialized his findings in a report (Psychiatric Report). According to the DOE psychiatrist, the individual suffers from Alcohol Dependence.

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).

The DOE psychiatrist further concluded that the individual's Alcohol Dependence is a mental illness that causes or may cause a significant defect in his judgment and reliability.

In February 2012, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding his 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 two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, notably subsections (h) and (j) (hereinafter referred to as Criteria H and J respectively). 1/

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 who were friends of the individual. He also testified on his own behalf. The DOE 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

2/ Criterion H relates to information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). 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).

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

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 two criteria as bases for denying the individual's security clearance: Criteria H and J. To support Criterion H, the LSO relies on the opinion of the DOE psychiatrist that the individual suffers from Alcohol Dependence.

As for Criterion J, the LSO cites the DOE psychiatrist's opinion and the following additional information: (1) a September 2010 arrest for Public Intoxication and Disorderly Conduct and a June 2006 arrest for Public Intoxication; (2) the individual's admission during a July 2011 PSI that he drinks to intoxication once per month and intends to continue drinking alcohol; (3) the individual's admission that from 2001 to the present, he has experienced five or six blackouts per year due to his alcohol consumption, with his most recent blackout occurring during his September 2010 Public Intoxication arrest; (4) the individual's admission that his tolerance for alcohol has increased over the years to the point that it takes 12-14 beers plus whiskey cocktails in order for him to become intoxicated and (6) the individual's admission that when he does not consume alcohol he experiences withdrawal symptoms. *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 both Criteria H and J. First, a mental condition such as Alcohol Dependence can impair a person's judgment, reliability and trustworthiness. *See* Guideline I 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*). Second, the excessive consumption of alcohol itself 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 id.* at Guideline G.

IV. Findings of Fact

By his own account, the individual has been drinking alcohol since the age of 17. DOE Exh. 6. During his senior year in high school, he drank to excess about twice a month at parties on

weekends. *Id.* In college, the individual's pattern of drinking alcohol increased slightly and he would become intoxicated approximately three times a month at parties. *Id.* He also experienced blackouts about every two months while in college. *Id.* After college, the individual became intoxicated twice a month and developed a tolerance to alcohol, at one time needing as much as 12-14 beers plus whiskey cocktails to become intoxicated. *Id.* During his October 2011 psychiatric evaluation, the individual acknowledged that he has become alcohol dependent. *Id.* His last blackout occurred in September 2010 at the time of his second arrest for Public Intoxication. *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). 1/ After due deliberation, I have determined that the individual's access authorization should not be granted. I cannot 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 Diagnosis of Alcohol Dependence

The DOE psychiatrist explained in detail in the Psychiatric Report and at the hearing how the individual met the diagnostic criteria set forth in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, Text Revision (DSM-IV-TR) for Alcohol Dependence. DOE Exh. 6, Transcript of Hearing (Tr.) at 63-65.

B. Evidence of Rehabilitation and Reformation from Alcohol Dependence

During the hearing, the individual acknowledged that he had a problem with alcohol, a conclusion he reached after his psychiatric evaluation with the DOE psychiatrist. Tr. at 34. He explained that, in the past, he did not feel the "need" to drink, but when he did consume alcohol, he consumed it in excess. *Id.* The individual testified that he last consumed alcohol in October 2011, but had begun limiting his alcohol intake about a year ago, consuming only two or three beers during the course of a weekend. *Id.* He further explained that he primarily drank for social reasons and stated that his drinking has never created family problems for him. *Id.* at 37. However, the individual acknowledged his two alcohol-related arrests, the first occurring in 2006

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.

while he was in college and the second occurring in September 2010 after drinking with a roommate. *Id.* at 38-40. He testified that these two arrests were lapses in judgment. *Id.* According to the individual, he decided to abstain from alcohol after receiving the DOE psychiatrist's report, which opened his eyes to his alcohol problem. *Id.* at 42. He testified that since abstaining from alcohol, in October 2011 ^{1/}, he has been healthier and more productive. *Id.* The individual further testified that he is not currently participating in an alcohol program such as Alcoholics Anonymous (AA). *Id.* He attended AA briefly in 2010, but testified that he did not feel comfortable in the environment. *Id.* The individual testified that he does not feel the need for an alcohol program, stating that he has done well at abstaining from alcohol on his own. He added that he does not frequent bars anymore and stated that the transition to abstinence has not been difficult for him. *Id.* at 53. The individual testified that he has a support system, including family and a close group of friends, who he can call upon if in need. *Id.* at 55. Finally, the individual testified that he is not interested in drinking socially.

The DOE psychiatrist listened to all the testimony at the hearing before testifying himself. He noted that the individual has been abstinent for a six-month period, which he considered to be a good start towards reformation. *Id.* at 69. However, he testified that until the individual achieves 12 months of sobriety, the risk of relapse is high. *Id.* He concluded that the individual has not yet achieved adequate evidence of reformation. *Id.*

C. 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).* ^{1/} The DOE psychiatrist convinced me that the individual has made a good start towards rehabilitation, but needs at least one year of abstinence to be considered adequately reformed. Although the individual has stated that he has changed his drinking habits and has altered his social life, it is clear that the individual is only in the early stages of recovery. Moreover, the individual has not yet demonstrated established a pattern of abstinence. *See Adjudicative Guidelines* at Guideline G ¶ 23(b). Based on the foregoing, I find that the individual has not yet demonstrated adequate evidence of reformation at this time. For this reason, I find that he has not mitigated the security concerns under Criteria H and J.

D. Conclusion

^{4/} During the hearing, the individual offered testimony by two witnesses who were friends who have known the individual for a number of years. Both of his friends testified that the last time they witnessed the individual consume alcohol was in October 2011.

^{5/} 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>.

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 H and 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 not brought forth convincing evidence to mitigate the security concerns associated with Criteria H and J. I therefore cannot 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 not 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: June 28, 2012