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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: April 17, 2012)	
)	Case No. PSH-12-0038
)	
_____)	

Issued: August 9, 2012

Hearing Officer Decision

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 be restored.

I. Background

The individual is employed at a DOE facility where his work requires him to have an access authorization. In December 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 February 2012 and memorialized his findings in a report (Psychiatric Report). According to the DOE psychiatrist, the individual suffers from Alcohol

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).

Dependence. 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). ^{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 four witnesses - a clinical psychotherapist, his Employee Assistance Program (EAP) counselor, his Alcohol Anonymous (AA) sponsor and a friend. 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 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. §

^{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).

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 suspending 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) in July 2011, a licensed psychologist diagnosed the individual with Alcohol Dependence and referred him to the EAP program for treatment of alcohol withdrawal; (2) the individual's admission during a July 2011 PSI that he went to EAP after consuming over nine 750 ML bottles of vodka over five days of binge drinking; (3) the individual's admission that in 2010 following a physical, his primary care doctor told him to he had elevated triglycerides and advised that he should drink no more than two drinks a day; (4) the individual's admission that in 2010 he continued to binge drink most weekends and in 2011 he continued to binge drink every weekend; (5) the individual's admission that in 2009 he called in sick three to four times a month due to alcohol consumption; and (6) the individual's admission that in June 1981 he was admitted to an alcohol treatment facility for alcohol addiction and started drinking three to four months after his treatment. *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 13, and by the age of 16 he suspected that he had a drinking problem. DOE Exh. 4. In 1981, the individual's parents took him for inpatient substance abuse treatment where he was diagnosed as suffering from alcohol and marijuana addiction. *Id.* At that time, the individual described himself as a daily drinker who consumed about a six-pack of beer per day. *Id.* After completing the alcohol treatment program, the individual continued in AA until about 1982. *Id.* However, he acknowledged that he had frequent relapses into drinking, although he was drinking less than before. *Id.* According to the individual, he stopped drinking in 2000 at his wife's insistence, but resumed drinking in 2002 after a marital separation. *Id.* At this time, the individual's drinking "increased dramatically." *Id.* He typically drank at home alone, becoming intoxicated two or three times a week after drinking a six-pack of beer plus about three shots of liquor. *Id.*

Over the past five years, the individual began experiencing alcohol-related medical problems, including hypertension, elevated serum triglyceride levels, and elevated liver enzyme levels. *Id.* During the last couple of years, he frequently called in sick on Mondays following a weekend of excessive drinking. *Id.* The individual purchased a Breathalyzer and would not go into work on Monday morning if he still registered alcohol from his heavy drinking the night before. *Id.* In April 2011, the individual's physician was concerned about his enlarged, fatty liver and elevated liver enzymes, but he continued to under-report his drinking. *Id.* By June 2011, he began experiencing alcohol withdrawal symptoms after long weekends of intoxication. *Id.* On July 12, 2011, after drinking about nine 750 ML bottles of vodka during a five-day binge, the individual called his ex-wife and asked her to take him to the EAP for treatment. According to the individual, he last drank alcohol on July 12, 2011. *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 restored. I find that restoring 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

^{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.

The individual does not dispute the DOE psychiatrist's diagnosis of Alcohol Dependence. Therefore, the focus of the analysis will be on whether the individual has demonstrated adequate evidence of rehabilitation or reformation from Alcohol Dependence.

B. Evidence of Rehabilitation or Reformation from Alcohol Dependence

During the hearing, the individual explained that his drinking increased after his divorce. Transcript of Hearing (Tr.) at 44. He testified that he last drank alcohol on July 12, 2011 just before seeking help from the EAP. *Id.* at 40. According to the individual, he felt "relieved" after taking the "leap" to get assistance with his alcohol problem. *Id.* at 43. The individual stated that he has successfully completed an Intensive Outpatient Treatment program and currently attends AA once or twice a week. *Id.* at 52. He also testified that he spends five hours a week in an after care program. The individual testified that his alcohol treatment has enlightened him about alcohol triggers. *Id.* at 63. He believes that he does not currently have any alcohol triggers, noting that he is not in a relationship at this time and that his kids are doing well. *Id.* at 64. Finally, the individual testified that his health has changed since abstaining from alcohol. He has lost ten pounds and his cholesterol is now good and in the normal range. *Id.* at 76 and 77. The individual added that he takes 40 milligrams of Prozac to stabilize his mood. *Id.* at 75. According to the individual, he has no desire to drink in the future.

The clinical psychotherapist testified that the individual was referred to his IOP on July 20, 2011. *Id.* at 87. He described the IOP as a comprehensive psychotherapy 36 week program consisting of nine hours of face to face group and individual alcohol and substance abuse treatment sessions, three hours per evening and three evening per week. *Id.* The clinical psychotherapist testified that the individual successfully completed the intensive phase of the program on February 23, 2012 and approached the program motivated to stay sober. *Id.* at 88 and 91. He opined that the individual's current motivation to stay sober is key to his future success, and noted that if the individual experiences significant triggers, his aftercare treatment should provide support for him. *Id.* The clinical psychotherapist also opined that the individual has demonstrated adequate evidence of rehabilitation. *Id.* at 93. The individual's EAP counselor testified that her role involved monitoring the individual's treatment. *Id.* at 82. She noted that the individual has done an excellent job in treatment. *Id.* at 83. According to the EAP counselor, if the individual continues with AA and aftercare treatment and continues to work with his AA sponsor, he has a good chance of remaining in recovery. *Id.* at 84.

The individual's AA sponsor met the individual in the Spring of 2011 and has sponsored him for ten months. *Id.* at 12 and 13. He testified that the individual actively participates in AA meetings and is currently on Step three of the Twelve Steps of AA. *Id.* Finally, the individual's friend who socializes with the individual every month, testified that he has not seen the individual drink since July 2011. *Id.* at 26. He further testified that the individual appears happy and is now enjoying his life. *Id.* at 22.

The DOE psychiatrist listened to all the testimony at the hearing before testifying himself. He testified that since evaluating the individual, the individual has demonstrated an understanding of

his disease and has had more time to prove himself. *Id.* at 104. The DOE psychiatrist noted that the individual survived break-ups in relationships since his evaluation without relapsing. *Id.* He further noted that the testimony of the clinical psychotherapist, the EAP counselor and the AA sponsor were credible and impressive in vouching for the individual's recovery success. *Id.* at 101. The DOE psychiatrist testified that, in his Psychiatric Report, he recommended that the individual should achieve one year of abstinence to be considered rehabilitated. However, after listening to the testimony during the hearing, he believes that based on the individual's alcohol treatment and eleven months of abstinence, he has achieved adequate evidence of rehabilitation. *Id.* at 98. The DOE psychiatrist testified that the individual's diagnosis would now be Alcohol Dependence, Sustained Remission rather than Early Remission. *Id.* at 106.

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). ^{4/} In this case, the DOE psychiatrist convinced me that the individual has demonstrated a considerable understanding of his alcohol problem and has achieved adequate evidence of rehabilitation. The individual credibly testified that he no longer has a desire to consume alcohol, that his health has improved and that he is committed to participating in AA and Aftercare. Moreover, the individual successfully completed a 36-week IOP and has established a pattern of abstinence. *See Adjudicative Guidelines* at Guideline G ¶ 23(b). Based on the foregoing, I find that the individual has demonstrated adequate evidence of rehabilitation at this time. For this reason, I find that he has mitigated the security concerns under Criteria H and J.

D. 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 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 brought forth convincing evidence to mitigate the security concerns associated with Criteria H and J. I therefore find that restoring 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 restored. The parties may

seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

^{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>.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: August 9, 2012