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

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	April 18, 2012)	
)	Case No.: PSH-12-0039
)	

Issued : August 24, 2012

Hearing Officer Decision

Ann S. Augustyn, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as ‘the individual’) to hold an access authorization¹ 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 and the Adjudicative Guidelines, I have determined that the DOE should not grant the individual an access authorization at this time.

I. Background

The individual is an applicant for a DOE security clearance. During the background investigation conducted by the Office of Personnel Management (OPM), information surfaced about the individual’s alcohol consumption. As a result, the Local DOE Security Office (LSO) invited the individual to a personnel security interview (PSI) to discuss the nature and extent of his alcohol use. When the LSO could not resolve the derogatory information at issue, it referred the individual to a DOE psychiatrist for a forensic psychiatric examination. The DOE psychiatrist examined the individual in December 2011, and memorialized his findings in a report (Psychiatric Report). In the Psychiatric Report, the DOE psychiatrist opined that 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). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

Dependence, in partial remission, without adequate evidence of rehabilitation or reformation. The DOE psychiatrist also determined that the Alcohol Dependence constituted a mental illness or condition, which causes, or may cause, a significant defect in the individual's judgment and reliability. *Id.*

In March 2012, the LSO sent a letter (Notification Letter) to the individual advising him that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. 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, subsections (h) and (j) (hereinafter referred to as Criterion H and Criterion J).²

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing, and I was appointed the Hearing Officer in the case. At the hearing that I conducted, seven witnesses testified. The LSO called one witness and the individual presented his own testimony and that of five witnesses. In addition to the testimonial evidence, the LSO submitted six exhibits into the record; the individual tendered 18 exhibits, a few with multiple attachments. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.

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 denials"); *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

² Criterion H concerns information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or a 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).

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

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 eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites two criteria as the bases for suspending the individual's security clearance, Criteria H and J. The LSO cites the same information to support its invocation of both criteria in this case: (1) an opinion in December 2011 by a DOE psychiatrist that the individual meets the criteria set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, 4th edition, Text Revised (DSM-IV-TR) for Alcohol Dependence, in partial remission; (2) a 2001 charge for public intoxication; and (3) admissions by the individual that he drinks to escape job-related stress; that his wife asked him four to five years ago to stop drinking alcohol; that his drinking to intoxication has negatively impacted his family time because he cannot function; that he is concerned about his ability to respond to an emergency because he uses alcohol to excess; that since 2009 he has been consuming three beers each weekday night, and six beers on Friday and Saturday nights; and that he drinks to intoxication three days during the week and on Fridays and Saturdays.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's mental health under Criterion H, and his alcohol use under Criterion J. Certain emotional, mental, and personality conditions can impair judgment, reliability, or 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). In addition, 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* Adjudicative Guideline G.

IV. Findings of Fact

The individual began drinking heavily in 2007. Tr. at 13-14. At the time, he was consuming approximately 12 beers each day. *Id.* at 14. In 2009, the individual's physician suggested that the individual reduce his alcohol consumption. Ex. 6 at 28. Sometime thereafter, the individual decreased his consumption to six to ten beers during the

weekdays, drinking more on the weekends. Tr. at 100. In July 2011, a DOE contractor hired the individual. The individual's employer required the individual to take a physical, which included blood tests. *Id.* at 15. Results from the blood tests revealed that the individual had elevated liver enzymes, an abnormality possibly attributable to his heavy alcohol consumption. *Id.* at 102. The individual's employer referred him to his personal physician to follow up on the abnormal liver enzyme tests. *Id.* at 15. The individual's physician advised the individual to stop drinking alcohol. *Id.* at 16. The individual did not heed his physician's advice, instead he reduced his alcohol consumption to six beers every other day. *Id.*

The individual stopped consuming alcohol on March 28 or 29, 2012. Tr. at 20; Ex. B. He entered an intensive outpatient program on May 3, 2012, for chemical dependency treatment, and completed that program on June 28, 2012. Ex. M.

V. Analysis

I have thoroughly considered the record of 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) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual should not be granted an access authorization. I cannot find that granting the individual's DOE 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.

1. The Diagnosis of Alcohol Dependence

The individual stipulated at the hearing that the DOE psychiatrist correctly diagnosed him as suffering from Alcohol Dependence. The focus of the hearing and this Decision therefore centers on whether the individual has demonstrated adequate evidence of rehabilitation or reformation from his Alcohol Dependence.

2. Mitigating Evidence Proffered

a. Testimonial Evidence

The individual testified that he has maintained abstinence since March 29, 2012, has completed an intensive outpatient chemical dependency treatment program, has been faithfully attending Alcoholics Anonymous (AA) meetings, has secured an AA sponsor, has attended two Aftercare meetings, and has a network of support in his wife, sponsor, fellow AA members and fellow recovery program members. Tr. at 92, 106, 112, 155-156, 161, 167-168. He testified that he now understands the stressors that contributed to his need to use alcohol as a "social lubricant to build [his] confidence." *Id.* at 108. He identified his triggers at the hearing as unrelenting standards, social isolation, and self-sacrifice, explaining in detail how each of those triggers manifested themselves in his life. *Id.* at 107. He also testified credibly that he has learned coping mechanisms that allow him to alleviate stress in his life. *Id.* at 149. For example, he now thinks of stress as a river and

allows it to pass through him instead of fighting against it. *Id.* Finally, he explained how his sobriety has improved his family relationships and his relationships at work. *Id.* at 149-150.

The individual's AA sponsor testified that he has sponsored the individual for a period of only a few weeks. *Id.* at 135, 140. The sponsor requires that the individual call him every day, read pages from the AA "Big Book," do written assignments, go to AA meetings, work the AA steps, and meet with him face-to-face at least one time each week. *Id.* at 128-130. The sponsor recognized that the individual is only in the beginning stages of recovery but he believes that the individual is sincere in his efforts to maintain sobriety. *Id.* at 135, 142. Finally, the sponsor testified that he will support the individual as long as the individual is willing to do what the sponsor asks of him. *Id.* at 141.

The individual's wife explained at the hearing that she has been involved in her husband's recovery program, attending five sessions of couples therapy with him, and a "Family Fundamentals" weekend. She testified that he believes that her husband recognizes that he has a problem with alcohol and knows his triggers. *Id.* at 34, 37. According to the wife, her husband is much more social since he stopped drinking and enjoys new hobbies and doing activities with his step-daughter and her. *Id.* at 25.

b. Documentary Evidence Submitted

To support his successful completion of his intensive outpatient chemical dependency program, the individual submitted Exhibit M. He also submitted biweekly progress notes from the treatment facility to show his progress in the program (Exhibits K, O, P, Q), and the negative results from five alcohol screens tests administered during his treatment program (Exhibit L). He further documented his attendance at AA through Exhibits H and R, and his attendance at two Aftercare meetings through Exhibit N. Finally, he provided many positive character statements from family members, co-workers and others. Exhibits C, D, E, F, G, I, and J.

c. The DOE Psychiatrist's Assessment

In his Psychiatric Report, the DOE psychiatrist opined that to demonstrate adequate evidence of rehabilitation, the individual needs to (1) attend a structured inpatient or outpatient treatment program, (2) have documented participation in 12-step recovery meetings, (3) have familiarity with a recovery model, and (4) have at least one year of complete sobriety. The DOE psychiatrist was present during the entire hearing and testified last. Overall, the DOE psychiatrist was impressed with the progress that the individual has made in a brief period. *Tr.* at 177-179. However, the DOE psychiatrist testified that it is too early to determine whether the individual will remain successful in achieving sobriety. *Id.* He pointed out that the individual had previously attempted to stop drinking and was not successful. He was also concerned that the individual's father, a recovering alcoholic himself, continues to drink, and that the individual's mother will continue to be a source of stress for the individual. *Id.* at 178. He concluded by stating that alcoholism is a cunning and baffling illness that can re-present very quickly and without warning. For this reason, the DOE psychiatrist remained firm in his assessment

that the individual needs one year of abstinence (until March 29, 2013) before he can be considered adequately rehabilitated.

d. Hearing Officer Evaluation

After considering all the relevant evidence, favorable and unfavorable, it is my common-sense judgment that the individual is not rehabilitated or reformed from his Alcohol Dependence. I make this determination even though I was very impressed by the individual's testimony. It is my assessment, after observing the individual's demeanor at the hearing, that the individual is enthusiastically embracing his new-found sobriety, is dedicated to his treatment program, and now understands the negative physical, psychological and emotional impact that alcohol had on his life. Only time will tell, however, whether the individual's enthusiasm will wane, or whether he will succumb to some stressor which might cause him to seek comfort in alcohol.

In making this determination, I accorded weight to the expert opinion of the DOE psychiatrist who opined that the individual needs one year of sobriety before he would consider him reformed or rehabilitated. It is quite telling that the individual's own treatment program concluded that the individual's prognosis is good if he attends 90 meetings in 90 days, followed by four to five meetings weekly for the first year; gets a same sex sponsor; attends weekly Aftercare meetings for one year; and calls the treatment center staff for the first year after discharge, and then monthly for the following six months. The treatment center, like the DOE psychiatrist, sets the one year marker as a qualifier to the individual's receiving a good prognosis. In the end, it is simply too early in the individual's recovery to find that he is adequately rehabilitated or reformed from his Alcohol Dependence. Based on the foregoing, I find that the individual has not mitigated the security concerns at issue in this proceeding.

C. 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 have found that the individual has not brought forth sufficient evidence to mitigate the security concerns associated with either criterion. I therefore cannot find that granting the individual an access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual should not be granted an access authorization. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: August 24, 2012