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

In the Matter of: Personnel Security Hearing)	
)	
Filing Date: July 19, 2012)	
)	Case No.: PSH-12-0092
)	
_____)	

Issued: November 13, 2012

Hearing Officer Decision

Steven L. Fine, Hearing Officer:

This Decision concerns the eligibility of XXXXXX (hereinafter referred to as “the Individual”) to hold a security clearance 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 conclude that the Individual’s security clearance should not be granted.

I. BACKGROUND

The administrative review proceeding began with the issuance of a Notification Letter to the Individual. *See* 10 C.F.R. § 710.21. The letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. Specifically, the Local Security Office (LSO) stated that the Individual had been diagnosed by a psychologist with Alcohol Dependence, and that the Individual had engaged in a pattern of criminal behavior which brought into question his honesty, reliability, and trustworthiness.¹

¹ *See* 10 C.F.R. § 710.8(h), (j), and (l) (Criterion H, J, and L, respectively). The Notification Letter also cited Section 1072 of the National Defense Authorization Act for Fiscal Year 2008, otherwise known as the BondAmendment, noting that the Individual has been convicted of a felony for which he was subsequently incarcerated for a period greater than one year.

The Notification Letter informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for a security clearance. The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on July 19, 2012.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his supervisor, a manager, his coworker/girlfriend, and a DOE consultant psychologist (the DOE Psychologist). See Transcript of Hearing, Case No. PSH-12-0092 (hereinafter cited as "Tr."). The LSO submitted 10 exhibits, marked as Exhibits 1 through 10, while the Individual submitted no exhibits.

II. FINDINGS OF FACT

The Individual has a significant history of criminal conduct. On October 1, 1988, he was arrested for driving under the influence of alcohol (DUI). On November 6, 1989, a warrant was issued for his arrest because he failed to appear in court for the October 1, 1988, DUI charge. On August 18, 1990, he was again arrested for DUI, as well as No Proof of Insurance, No Registration, Speeding, and Engaging Aid and Abetting. On July 16, 1992, he was arrested and charged with Lewd Acts with a Child Under 14 by Force. The victim of this crime was the Individual's own daughter. He was eventually convicted for this offense and was incarcerated for three years. On August 27, 2000, he was cited for Speeding and No Proof of Vehicle Insurance. On February 27, 2003, he was arrested for Shoplifting.

At the request of the LSO, the DOE Psychologist evaluated the Individual on April 23, 2012. The DOE Psychologist reviewed selected portions of the Individual's personnel security file, and interviewed the Individual. After completing his evaluation of the Individual, the DOE Psychologist issued a report on April 23, 2012, in which he found that the Individual met the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revised (DSM-IV-TR) for "Alcohol Dependence, in early partial remission."² Exhibit 4 at 8. The DOE Psychologist further found the Individual's Alcohol Dependence to be an illness or condition that causes, or may cause, a significant defect in the Individual's judgment and reliability. *Id.* The DOE Psychologist opined that the Individual was neither reformed nor rehabilitated from his Alcohol Dependence, stating in pertinent part:

[The Individual] needs to permanently abstain from drinking. I recommend that evidence of his control over alcohol would be partially found in his becoming completely abstinent for a period of 12 months. I believe that this will be difficult for him to accomplish. However if he can refrain from drinking for 12 consecutive months, then he will likely be able to remain abstinent. I also recommend his active participation in AA for a minimum of 12 months. By active participation, I intend that he should participate in a minimum of four meetings a week, obtain a sponsor and provide evidence of knowing and working the steps.

² A copy of this Report appears in the record as Exhibit 4.

Id. at 8.

III. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). In rendering this opinion, I have considered the following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's 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. *See* 10 C.F.R. § 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

On October 1, 1988, and on August 18, 1990, the Individual was arrested for DUI. Subsequently, the DOE Psychologist diagnosed the Individual with Alcohol Dependence, in early partial remission. This information raises security concerns about the Individual under Criterion J. In addition, the Alcohol Dependence diagnosis raises security concerns under Criterion H, since the Individual's Alcohol Dependence constitutes an illness or condition that causes, or may cause, a significant defect in the Individual's judgment and reliability. Exhibit 4 at 8. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. *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) at ¶ 21. In the present case, an association exists between the Individual's consumption of alcohol and his subsequent failure to exercise good judgment and to control his impulses, as evidenced by operation of a motor vehicle on public roads while in a state of intoxication.

The Individual's five arrests and conviction (and subsequent three-year incarceration) for Lewd Acts with a Child Under 14 by Force have established a significant pattern of criminal conduct, spanning a period of 15 years, which raises security concerns under Criterion L. “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.” Adjudicative Guidelines at ¶ 15. “Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.”

Id. at ¶ 30.

The Individual was convicted of a felony, for which he was incarcerated for three years. A Federal statute, 50 U.S.C. §435c, known as the “Bond Amendment” states: “Absent an express written waiver granted in accordance with paragraph (2), the head of a Federal agency may not grant or renew a security clearance described in paragraph (3) for a covered person who— (A) has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding 1 year, and was incarcerated as a result of that sentence for not less than 1 year.” 50 U.S.C. §435c(c)(1)(a). Paragraph (2) states: “In a meritorious case, an exception to the disqualification in this subsection may be authorized if there are mitigating factors. Any such waiver may be authorized only in accordance with— (A) standards and procedures prescribed by, or under the authority of, an Executive order or other guidance issued by the President; or (B) the adjudicative guidelines required by subsection (d).” 50 U.S.C. §435c(c)(2).

V. ANALYSIS

A. Criteria H and J

The Individual disputes the DOE Psychologist’s conclusion that he suffers from Alcohol Dependence. However, he acknowledges that he needs to stop drinking. Tr. at 15. He further promises: “I can get rid of that habit within -- like I said, the next three months, I will -- I will be -- and that I -- I can give you my word on that, that I will -- after that, no more.” Tr. at 49.

I am convinced that the DOE Psychologist’s conclusion that the Individual is alcohol dependent is appropriate and well supported in the record. The DOE Psychologist’s Report and the record document the Individual’s history of excessive alcohol consumption, two DUI’s, consumption of alcohol after being warned by a physician that alcohol use was damaging his liver, inability to discontinue alcohol use even when he desired to do so, withdrawal symptoms, concerns about his alcohol use expressed by family members, and development of a tolerance to alcohol. Exhibit 4 at 7-8.

The Individual admitted at the hearing that he continues to use alcohol. Tr. at 19. He testified that his “drinking habits have changed dramatically” and that he now drinks in moderation. Tr. at 15-16, 19. Since I was convinced by the DOE Psychologist’s testimony³ that the Individual needs to both abstain from alcohol use for a period of at least a year, actively participate in Alcoholics Anonymous (AA) and engage himself in an AA twelve-step program in order to resolve the doubts raised by his Alcohol Dependence, it is clear that the Individual has not been reformed or rehabilitated from his Alcohol Dependence. Accordingly, I find that the Individual has not sufficiently mitigated the security concerns raised under Criteria H and J.

B. Criterion L

³ At the hearing, the DOE Psychologist observed the testimony of each of the other witnesses before he testified. The DOE Psychologist then testified that the Individual is neither reformed nor rehabilitated from his Alcohol Dependence. Tr. at 46-47.

The Individual has attempted to resolve the security concerns raised by his convictions for Lewd Acts with a Child Under 14 by Force, shoplifting, and failure to appear, by claiming that he did not actually commit these crimes. The Individual claims that he has been unjustly convicted of each of these criminal acts. However, other than his own self-serving testimony, the Individual has submitted no evidence to support his contention that he was wrongly convicted of these criminal acts. He claims that he was intimidated into falsely confessing that he molested his juvenile daughter, but offers no evidence for his claim other than his testimony. Tr. at 28-29. He also denied having failed to appear before a court, but again did not offer any evidence other than his testimony to support his contention. Tr. at 28. He also claims that he was unjustly convicted of shoplifting, although his testimony about this issue lacked credibility. *See* Tr. at 22-24.

While the Individual has not engaged in criminal activity for over nine years, not enough time has passed since his last criminal activity to consider the security concerns raised by his 15 year pattern of criminal activity resolved by the passage of time; this is particularly the case concerning the gravity of the crime he was convicted of committing against his daughter. Nor has the Individual met any of the other mitigation criteria set forth in the Adjudicative Guidelines at ¶ 32. Accordingly, I find that the security concerns raised under Criterion L by the Individual's five arrests remain unresolved.

C. The Bond Amendment

As discussed above, the Individual was convicted of a felony, Lewd Acts with a Child Under 14 by Force, and was incarcerated for approximately three years as a result of this conviction. Accordingly, the Individual is disqualified, under the Bond Amendment from holding a DOE Access Authorization. Since the Individual has not provided evidence of any mitigating factors, other than the passage of time, which I find to be insufficient because of the gravity of the crime for which he was incarcerated and the Individual's demonstrated lack of remorse, I find that an exception to this disqualification under the Bond Amendment is not appropriate.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H, J, L, and the Bond Amendment. I find that unmitigated security concerns remain under each of these criteria. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be granted at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: November 13, 2012