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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: November 15, 2011) Case No.: PSH-11-0018
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Issued: February 8, 2012

Decision and Order

Janet R. H. Fishman, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the Individual) for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} For the reasons set forth below, I conclude that the Individual's access authorization should be restored.

I. Procedural History

The Individual is employed by a Department of Energy (DOE) contractor. Based upon the receipt of derogatory information, the Local Security Office (LSO) called the Individual in for a Personnel Security Interview (PSI). As a result of the PSI, the Individual was referred to a local psychologist (the DOE psychologist) for an evaluation. The DOE psychologist prepared a written report setting forth the results of that evaluation. DOE Ex. 6. After reviewing the DOE psychologist's report, the LSO informed the Individual that derogatory information created a substantial doubt concerning his eligibility for access authorization. Notification Letter dated September 12, 2011; DOE Ex. 1; 10 C.F.R. § 710.8(j).

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will also be referred to in this Decision as a security clearance.

The Notification Letter informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization. The Individual requested a hearing on this matter. The LSO forwarded this request to OHA, and I was appointed the Hearing Officer. The DOE introduced eleven exhibits into the record of this proceeding and presented the testimony of the DOE psychologist. The Individual, through his attorney, submitted seven exhibits and presented the testimony of two witnesses, in addition to testifying himself.

II. Regulatory Standards

Under Part 710, certain types of information raise concerns about whether an individual is eligible for access authorization. In considering whether an individual has resolved a security concern, the Hearing Officer considers various factors, including the nature of the conduct at issue, how frequently it occurred, how recently it occurred, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, both favorable and unfavorable. *Id.* § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that “the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest.” *Id.* § 710.27(a).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” *Id.* § 710.27(d); *see Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995), *aff’d*, OSA, 1995.^{2/} The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

III. Findings of Fact and Analysis

A. Criterion J Concern

Criterion J applies where an individual has been, or is, a user of alcohol habitually to excess or has been diagnosed by a psychologist as alcohol dependent or suffering from alcohol abuse. *Id.* § 710.8(j); *see also* Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005, by The White House (Adjudicative Guidelines) ¶ 22(c) (habitual or binge consumption of alcohol to the point of impaired judgment).

^{2/} Decisions issued by the Office of Hearings and Appeals (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 his August 2011 report, the DOE psychologist diagnosed the Individual with Alcohol-Related Disorder, Not Otherwise Specified, under the requirements of the *Diagnostic and Statistical Manual of the American Psychiatric Association, Fourth Edition (DSM-IV-TR)*. DOE Ex. 6 at 10. The DOE psychologist also opined that the Individual has been a user of alcohol habitually to excess, without adequate evidence of rehabilitation or reformation. The Individual had one alcohol-related incident in his past. In March 2011, he was arrested for Driving Under the Influence (DUI). DOE Exs. 1, 7. In addition, during the PSI, he admitted that between 1998 and March 2011, he consumed a six pack of beer over three hours once per month. DOE Ex. 1; DOE Ex. 6 at 3; DOE Ex. 11 at 36-42. These incidents, along with the DOE psychologist's diagnosis, are sufficient to raise a security concern under Criterion J.

B. Possible Mitigation of Criterion J Concerns

The Adjudicative Guidelines list as a possible condition of mitigation for an alcohol-related diagnosis:

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Adjudicative Guidelines ¶ 23(d).

The Individual testified that his last alcohol consumption was April 15, 2011. Tr. at 73. His significant other confirmed that date. Tr. at 30. He also testified that he does not want to drink again. Tr. at 77, 87. The Individual stated that, after completing alcohol education with his counselor, he concluded that he did drink to excess in the past. Tr. at 77. On the positive side, he never consumed alcohol and drove a car prior to his DUI. Tr. at 83. He testified that the night of his DUI, he was upset about a personal matter. Tr. at 67-68.

The Individual's counselor testified that she first met with the Individual in July 2011. Tr. at 11. They regularly meet every other week, except when she was educating him in alcohol awareness when they met once a week. Tr. at 13. The Individual has done everything that she has asked him to do, even going as far as trying yoga. Tr. at 16. When she first evaluated him, she diagnosed him with depression. Tr. at 19. At the present time, she believes he has an adjustment disorder. *Id.* She opined that his depression over the personal matter led to his consuming alcohol in excess before his DUI. She found the Individual to be sincere. Tr. at 20. He would clarify issues to confirm her understanding. Tr. at 18. Initially, he had trouble concentrating, because he was emotionally overwhelmed. *Id.* The counselor testified that his future prognosis is good. She did not diagnose him with any alcohol-related disorder. Tr. at 24.

The DOE psychologist testified that the Individual's DUI was a result of poor coping skills in having to deal with his personal matter. Tr. at 120. After his counseling and alcohol education, he is more familiar with alcohol dependence and alcohol abuse than he was at the time of his diagnosis. *Id.* The DOE psychologist opined that the Individual and his counselor appear to have a good working relationship and that they have worked hard together. Tr. at 119. The DOE psychologist opined that the Individual showed adequate evidence of reformation and rehabilitation at the hearing. Tr. at 121. He has been abstinent for nine months. *Id.* He is attending counseling, which has improved his coping skills. Tr. at 121-22. Finally, the DOE psychologist was encouraged because the "incident scared the devil out of him." Tr. at 122. The DOE psychologist stated that he "sees a preponderance of positive prognostic factors" in the Individual's case. Tr. at 123.

After considering all of the evidence and testimony in the proceeding, I find that the Individual has mitigated the concerns arising from his alcohol-related disorder diagnosis. The DOE psychologist's testimony that the Individual was reformed and rehabilitated is convincing. I found the Individual to be honest and sincere in his testimony that he does not want to drink alcohol again. I also found his significant other's testimony to be sincere. The Individual's counselor was credible. At the time of the hearing, the Individual had been abstinent for nine months. In his report, the DOE psychologist recommended a six-month period of abstinence with involvement with a mental health professional experienced in alcohol disorders. DOE Ex. 6 at 11. As of the date of the hearing, the Individual has met both criteria outlined by the DOE psychologist. Therefore, there is sufficient evidence to find that the Individual has established reformation and rehabilitation at this time. Accordingly, I find that the Individual has mitigated the alcohol-related security concerns raised under Criterion J.

IV. Conclusion

Upon consideration of the entire record in this case, I find that there was sufficient evidence that raised doubts regarding the Individual's eligibility for a security clearance under Criterion J of the Part 710 regulations. I also find that the Individual has presented sufficient information to resolve those concerns. Therefore, I conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(a). Consequently, it is my decision that the Individual's access authorization should be restored at this time. The parties may seek review of this decision by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Janet R. H. Fishman
Hearing Officer
Office of Hearings and Appeals

Date: February 8, 2012