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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: December 11, 2013) Case No.: PSH-13-0129
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Issued: March 20, 2014

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxxxxxxx (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 fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should be restored.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. In August 2013, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address concerns about his alcohol-related arrests and his alcohol use. In addition to the PSI, the LSO requested the individual’s medical records and recommended a psychological evaluation of the individual by a DOE consultant psychologist (DOE psychologist). The DOE psychologist examined the individual in June 2013 and memorialized her findings in a report (Psychological Report). According to the DOE psychologist, the individual suffers from Alcohol-Related Disorder Not Otherwise Specified (NOS). The DOE psychologist further concluded that the

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.

individual's Alcohol-Related Disorder NOS is a mental illness that causes or may cause a significant defect in his judgment and reliability.

In November 2013, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created 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, 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 Administrative Judge in this case. At the hearing that I convened, the individual presented his own testimony and that of four witnesses. The DOE Counsel called one witness, the DOE psychologist. Both 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 her 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 her 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 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.

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).

B. Basis for Administrative Judge's Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge 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 previously noted, 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 diagnosis of the DOE psychologist that the individual suffers from Alcohol-Related Disorder NOS, and the expert's opinion that Alcohol-Related Disorder NOS is a mental illness that could cause a significant defect in the individual's judgment and reliability. As for Criterion J, the LSO cites the DOE psychologist's opinion, the individual alcohol-related arrests as well as his alcohol use. *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 an Alcohol Use Disorder can impair a person's judgment and 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

The individual has a long history of alcohol consumption and has had two alcohol-related arrests. On May 6, 2001, the individual was arrested and charged with Aggravated Driving While Intoxicated. According to the individual, he and a friend attended a bachelor party where he drank three or four beers in approximately two hours. The individual admitted to consuming four to five beers prior to the arrest and stated that he refused to submit to a Breathalyzer because he was not sure if he would pass it. *See* DOE Exh. 1. On June 8, 2013, the individual was arrested and charged with Aggravated Driving Under the Influence (ADUI). Although he admitted to consuming four beers prior to the arrest and refused to submit to a Breathalyzer test, the individual maintained that it was his son who was driving the vehicle at the time of the incident. *Id.*

During his August 2013 PSI, the individual stated that from 1976 until his arrest for ADUI in June 2013, his alcohol consumption consisted of four to six beers on Friday and Saturday nights and three to four beers on Sundays. The individual also admitted that he considered himself to be an alcoholic. *Id.*

Based on this information, the individual was referred to a DOE psychologist for a psychological evaluation. On September 17, 2013, the DOE psychologist evaluated the individual. In her Report, she concluded that the individual met the Diagnostic Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) criteria for Alcohol-Related Disorder NOS, without adequate evidence of rehabilitation and reformation. The DOE psychologist further concluded that the individual possesses an illness or mental condition, which causes, or may cause, a significant defect in judgment and reliability. DOE Exh. 6.

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 and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. Based on the facts in this record, I find that restoring 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.

A. The Diagnosis of Alcohol-Related Disorder Not Otherwise Specified

The individual does not dispute the DOE psychologist's diagnosis of Alcohol-Related Disorder NOS. Therefore, the focus of the analysis will be on whether the individual has demonstrated adequate evidence of rehabilitation or reformation.

B. Evidence of Rehabilitation and Reformation from Alcohol-Related Disorder NOS

During the hearing, the individual acknowledged his two alcohol-related arrests⁴, as well as the fact that he is an alcoholic. Transcript of Hearing (Tr.) at 56. He also admitted to minimizing his alcohol use during his August 2013 PSI. *Id.* He testified that his alcohol problem stemmed from drinking too much alcohol, primarily beer and wine, over the weekends and believes his drinking

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.

⁴ Prior to the hearing and during the course of the hearing, the individual contended that he was not driving the vehicle at the time of his alcohol-related arrest in June 2013, but rather his son was driving the vehicle. *See* Exhibit A.

increased after the loss of both his mother and brother. *Id.* at 57. The individual testified that it was his June 2013 arrest for DUI that “opened his eyes” and convinced him that it was time to change his behavior with respect to alcohol. *Id.* at 58 and 59. He further testified that after consulting with an Employee Assistance Program doctor, he began attending Alcoholics Anonymous (AA) in July 2013 and currently attends three AA meetings a week. He subsequently completed an Intensive Outpatient Treatment Program (IOP) and is currently in aftercare. The individual admitted that he drank two glasses of wine during his IOP to celebrate his 40th wedding anniversary on July 14, 2013. *Id.* at 60. He states that he has abstained from all alcohol since that date. Although the individual acknowledges that it has been difficult abstaining from alcohol over the holidays, he testified that he is committed to remaining sober and stated that he feels that he really does not need alcohol in his life. *Id.* at 62. He testified that he has the support of his wife, brother-in-law, AA sponsor and his children. *Id.* at 64.

During the hearing, the individual also offered the testimony of his therapist, his AA sponsor, his supervisor and his wife. The individual’s therapist has worked in the field of addiction for 17 years and treated the individual during the course of his IOP. He confirmed that the individual completed a 30-session IOP in January 2014 and is attending aftercare three days a week. *Id.* at 32. He testified that the individual also participates in AA and immediately obtained a sponsor. According to the therapist, as long as the individual continues to work the aftercare program, his prognosis is good and his risk for relapse is low. *Id.* at 36.⁵ The individual’s sponsor testified that he meets with the individual every Saturday and talks with him about three or four times a week. He testified that the individual is currently working on step 8 or 9 of the Twelve Step program of AA. He is happy with the individual’s level of commitment and positive attitude, and believes the individual will be successful.

The DOE psychologist listened to all the testimony at the hearing before testifying herself. She testified that there are a number of factors that weigh in the individual’s favor, including his broad support base consisting of the individual’s work, family, AA sponsor and the support he receives from his aftercare program. *Id.* at 94. She noted that the individual’s aftercare program is very much in the individual’s favor because it is a rehabilitation program that improves his prognosis. The DOE psychologist further noted that the individual’s spiritual foundation also helps the individual’s recovery and is a good fit with the AA Twelve Step program. She also opined that the individual’s openness weighs in his favor. The DOE psychologist testified that the only factor that does not weigh in the individual’s favor is the factor of time. She testified that although there is nothing “magical” about a 12-month period of abstinence, statistically the rates of success of ongoing abstinence increase to about 90 percent when an individual has been abstinent for 12 months. *Id.* at 95. She noted that the individual’s seven months of abstinence at the present time give him a rate of success between 65 and 72 percent. However, that being stated, given all of the individual’s positive factors weighing in his favor, as well as the credible testimony of the individual, the DOE psychologist testified that her prognosis would be more

⁵ The individual’s wife who has been married to the individual for 40 years testified that the individual stopped drinking immediately after the June 2013 DUI. *Id.* at 42. She further stated that it was at this time that the individual finally realized that he had a problem with alcohol. The individual’s supervisor testified that the individual has never been intoxicated at work, is dependable and possesses good judgment and reliability. *Id.* 21 and 22.

favorable for the individual even given that he has only achieved seven months of abstinence. *Id.* at 96. She opined that the individual's prognosis is good, and that he does not currently have an illness or mental condition which causes a significant defect in his judgment or reliability. *Id.* at 97.

C. Administrative Judge's Evaluation of the Evidence

In the administrative process, Administrative Judges accord deference to the expert opinion of psychiatrists, psychologists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing*, Case No. TSO-0728 (2009).⁶ At the outset, I am persuaded by the testimony of the DOE psychologist that the individual achieved adequate evidence of rehabilitation. Moreover, the Adjudicative Guidelines describe factors that could mitigate security concerns involving psychological conditions and alcohol consumption. *See Adjudicative Guideline, Guidelines G and I, ¶ 23 and ¶ 29, respectively.* In this case, the individual has satisfied the following mitigating factors: (1) the individual has acknowledged his alcohol problem, provided evidence of actions taken address his problem and has established a pattern of responsible use; (2) the individual has successfully completed an IOP with required aftercare, has demonstrated a clear and established pattern of abstinence in accordance with his treatment recommendations, i.e., his participation in AA meetings, and has received a favorable prognosis by a duly qualified medical professional; and (3) the DOE psychologist has opined that the individual's condition has a low probability of recurrence. *Id.* For these reasons, I find that the individual has sufficiently mitigated the DOE's security concerns under Criteria H and J.

VI. 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.

Kimberly Jenkins-Chapman
Administrative Judge
Officer of Hearings and Appeals

⁶ 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>.

Date: March 20, 2014