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

In the Matter of: Personnel Security Hearing )  
Filing Date: December 11, 2013 ) Case No. PSH-13-0130  
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Issued: March 19, 2014

## Administrative Judge Decision

Diane DeMoura, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (“the Individual”) to hold a Department of Energy (DOE) access authorization.<sup>1</sup> This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual’s suspended DOE access authorization should be restored. For the reasons detailed below, I find that the DOE should not restore the Individual’s access authorization at this time.

## I. BACKGROUND

The Individual is employed by a DOE contractor and currently holds a suspended DOE access authorization. DOE Exhibit (“Ex.”) 3. In May 2013, the Individual timely reported his arrest for Driving Under the Influence (DUI) and related charges to the Local Security Office (LSO). DOE Ex. 10 (May 20, 2013, Incident Report). This information prompted the LSO to request that the Individual participate in a June 2013 Personnel Security Interview (PSI). DOE Ex. 12. After the PSI, the Local Security Office (LSO) referred the Individual to a DOE consultant-psychologist (“the DOE psychologist”) for an evaluation. The DOE psychologist evaluated the Individual in September 2013, and issued a report. DOE Ex. 7. In October 2013, the LSO informed the Individual that there existed derogatory information that raised security concerns

<sup>1</sup> Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

under 10 C.F.R. §§ 710.8 (h) and (j) (Criteria H and J, respectively).<sup>2</sup> See DOE Ex. 1 (Notification Letter, October 30, 2013). The Notification Letter also informed the Individual that he was entitled to a hearing before an Administrative Judge<sup>3</sup> in order to resolve the security concerns. *Id.*

The Individual requested a hearing on this matter. DOE Ex. 2. The LSO forwarded his request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. At the hearing, the DOE counsel introduced fourteen exhibits into the record (DOE Exs. 1-14) and presented the testimony of one witness, the DOE psychologist. The Individual submitted two exhibits and presented his own testimony, as well as the testimony of six witnesses: his wife, his Alcoholics Anonymous (AA) sponsor; two colleagues from AA; a close friend who is the pastor at a local church and serves as the Individual's spiritual adviser; and the Individual's second-line supervisor. See *Indiv. Exs. A-B*; Transcript of Hearing, Case No. PSH-13-0130 (hereinafter cited as "Tr.").

## II. REGULATORY STANDARD

The regulations governing the Individual's eligibility for access authorization are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The regulations identify certain types of derogatory information that may raise a question concerning an individual's access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Administrative Judge considers relevant factors, including "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 of the individual at the time of the conduct; the voluntariness of 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," and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Administrative Judge also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors and considerations. See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified

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<sup>2</sup> Criterion H concerns information that a person has "an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician 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 conduct indicating that the Individual has "been, 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).

<sup>3</sup> Effective October 1, 2013, the titles of attorneys in the Office of Hearings and Appeals (OHA) changed from Hearing Officer to Administrative Judge. See 78 Fed. Reg. 52389 (August 23, 2013). The title change was undertaken to bring OHA Hearing Officers in line with the title used at other federal agencies for officials performing identical or similar adjudicatory work. See *Personnel Security Hearing*, Case No. PSH-13-0114 at 1 n.1 (2014).

Information (issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House) (Adjudicative Guidelines).

Ultimately, the decision concerning eligibility is “a comprehensive, common-sense judgment made after consideration of all relevant information, favorable and unfavorable . . . .” 10 C.F.R. § 710.7(a). In order to reach a decision favorable to the individual, the Administrative Judge must find that “the grant or restoration of access authorization to the individual will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.27(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* See generally *Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

### III. FINDINGS OF FACT

#### A. The Individual’s Alcohol Consumption

The Individual, currently 53 years of age, began consuming alcohol as a teenager. His alcohol consumption increased at age 18, when he could legally purchase alcohol. DOE Ex. 7 at 4. In 1982, at age 22, the Individual was arrested for DUI, after registering a breath alcohol content (BrAC) of 0.22. *Id.* Several years later, the Individual stopped consuming alcohol, and remained abstinent for approximately the next fifteen years as he participated in a twelve-step program similar to AA.<sup>4</sup> *Id.* The Individual resumed consuming alcohol in moderation, drinking two or three beers on Friday evenings. Between 2009 and 2012, the Individual’s alcohol consumption decreased. *Id.*

In 2012 and early 2013, the Individual experienced a significant increase in stress and upheaval in his family life, as he and his wife became temporary guardians first of one infant grandchild, then another grandchild after the first child was returned to her mother. *Id.*; Tr. at 16, 20-21, 115-17. The Individual found it difficult to raise and become attached to the children, but then have to return them to their parents. Tr. at 115-17. The Individual began using alcohol more frequently as a coping mechanism. DOE Ex. 7 at 7. According to the Individual, he was drinking three-to-four beers daily, and drinking to intoxication weekly. *Id.* at 4.

On an afternoon in May 2013, the Individual consumed beer while out fishing on his boat, after which he drove home. *Id.* at 3. However, prior to arriving home, the Individual lost control of his vehicle during a sudden rainstorm and was involved in a single-car accident. According to the Individual, he did not feel intoxicated prior to beginning his drive, and he estimated at that time that he had consumed four beers during the afternoon. However, the police officers responding to the accident scene administered field sobriety tests, which the Individual failed. A

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<sup>4</sup> The Individual used marijuana and cocaine during his twenties, which caused problems in his life. In 1986, the Individual discontinued his drug use, completed a 28-day residential treatment program to address his substance-abuse problems, and began regularly participating in Narcotics Anonymous (NA) meetings. Following a relapse the following year, the Individual again completed a residential treatment program. DOE Ex. 7 at 4-5. The DOE has previously reviewed the Individual’s history of illegal drug use and determined that it does not present a security concern due to the passage of a significant period of time without evidence of recurrence. See DOE Exs. 3, 6.

subsequent blood test performed within an hour of the Individual's accident indicated that the Individual had a blood alcohol concentration (BAC) of 0.23. *Id.* at 3-4.

## **B. The Subsequent Alcohol-Related Diagnoses**

Following his evaluation of the Individual in September 2013, the DOE psychologist diagnosed him with Alcohol Use Disorder, Severe, according to criteria set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, Fifth Edition (DSM-5). He noted that the disorder is an "illness or condition which causes, or may cause, a significant defect" in the Individual's judgment or reliability. *Id.* at 12. The DOE psychologist based the diagnosis on the fact that, although the Individual's reported period of "problematic" alcohol consumption was "recent and relatively short" (from December 2012 until his DUI arrest in May 2013), the Individual's alcohol consumption during that period evidenced "a problematic pattern of alcohol use leading to clinically significant impairment or distress, as manifested by [seven of the eleven formal diagnostic criteria] occurring in a 12-month period."<sup>5</sup> *Id.* at 10.

The DOE psychologist further considered whether the Individual has been a user of alcohol habitually to excess, or met criteria for alcohol abuse or dependence. Although the DSM-5 no longer characterizes substance-related disorders in an abuse/dependence framework, the DOE psychologist noted that the Individual's pattern of consumption would properly be diagnosed as "Alcohol Abuse" under the previous version of the DSM – the DSM, Fourth Edition, Text Revision, or DSM-IV-TR.<sup>6</sup> In this regard, the DOE psychologist noted that the Individual met all four of the criteria for Alcohol Abuse under the DSM-IV-TR. *Id.*

In his report, although the DOE psychologist noted some positive factors – such as the Individual's three-month period of abstinence as of the evaluation and his frequent and routine attendance at AA meetings – he noted several areas of concern, among them the fact that the Individual's period of problematic drinking culminated in a DUI arrest. *Id.* at 9-11. Therefore, the DOE psychologist concluded that the Individual's recovery efforts were "early, fragile, and less than robust" at the time of his evaluation. *Id.* at 11.

With respect to how the Individual could demonstrate adequate evidence of rehabilitation or reformation from his alcohol-related condition, the DOE psychologist recommended a minimum of twelve months of abstinence from alcohol. *Id.* at 12. In addition, the DOE psychologist

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<sup>5</sup> The DSM-5 sets forth the following eleven criteria characteristic of a substance abuse disorder: (Criterion 1) consuming the substance in larger amounts over a longer period than was originally intended; (Criterion 2) a persistent desire to cut down or regulate the substance use, and multiple efforts to decrease or continue use; (Criterion 3) spending a great deal of time obtaining, using, or recovering from the effects of the substance; (Criterion 4) presence of cravings; (Criterion 5) recurrent substance use resulting in failure to fulfill major obligations at work, school, or home; (Criterion 6) continued substance use despite recurrent interpersonal problems caused or exacerbated by the substance; (Criterion 7) reduced participation in important social, occupational or recreational activities due to substance use; (Criterion 8) recurrent substance use in physically hazardous situations; (Criterion 9) continued substance use despite knowledge of persistent or recurrent physical or physiological problem likely caused or exacerbated by substance; (Criterion 10) evidence of tolerance; (Criterion 11) symptoms of withdrawal. According to the DOE psychologist, the Individual met Criteria (3)-(9). DOE Ex. 7 at 10.

<sup>6</sup> Until recently, the DSM-IV-TR was the most current version of the manual, and is most often cited in our prior decisions.

recommended that the Individual seek “personal counseling” focused on “alcohol issues.” *Id.* His final recommendation was that the Individual participate in the AA program, working with a sponsor, three times per week. *Id.*

#### **IV. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS**

As stated above, the LSO issued a Notification Letter identifying security concerns under Criteria H and J of the Part 710 regulations. DOE Ex. 1. In support of its concerns, the LSO cited the Individual’s history and pattern of alcohol consumption, his May 2013 alcohol-related arrest, and the DOE psychologist’s alcohol-related diagnoses and opinion that the Individual has an illness or condition which causes, or may cause, defects in his judgment or reliability. *Id.* It is well-established that excessive use of alcohol raises security concerns because “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.” Adjudicative Guidelines, Guideline G, ¶ 21. Similarly, certain mental conditions “can impair judgment, reliability, or trustworthiness.” *Id.*, Guideline I, ¶ 27. Therefore, there is no question that the diagnosis of such a condition by a duly qualified mental health professional may raise security concerns.

In this case, given the Individual’s history of excessive consumption of alcohol – particularly the facts underlying his May 2013 arrest – and the DOE psychologist’s diagnoses, I find that the LSO had ample grounds for invoking Criteria H and J.

#### **V. ANALYSIS**

In making a determination regarding the Individual’s eligibility for DOE access authorization, I have thoroughly considered the record in this proceeding, including the hearing testimony and the documentary evidence. For the reasons set forth below, I am unable to conclude that restoring the Individual’s suspended DOE access authorization “will not endanger the common defense and security, and is clearly consistent with national interest.” 10 C.F.R. § 710.7(a).

##### **A. The Individual’s Mitigating Evidence**

The Individual did not dispute any of the facts giving rise to the security concerns in this case. Rather, he attempted to demonstrate that he had mitigated the security concerns related to his excessive consumption of alcohol.

At the hearing, the Individual testified that he was aware even before his May 2013 DUI arrest that his alcohol consumption had become a problem. Tr. at 107. He had already attended a few AA meetings in the days prior to his May 2013 DUI arrest, but found himself unable to quit drinking on his own. *Id.* The Individual stated that he has not consumed alcohol since his arrest. Tr. at 104. He credited his interview with the DOE psychologist in September 2013 with helping him to recognize the extent of his alcohol problem and make his recovery efforts “more robust,” noting that the DOE psychologist’s assessment and recommendations were “instrumental” to the process. Tr. at 101.

The Individual stated that he recognizes that he cannot maintain his recovery on his own. Tr. at 104. To support his efforts, the Individual actively participates in AA. He attends AA meetings at least six times per week, doubling the attendance that the DOE psychologist recommended to him. As of the date of the hearing, the Individual had attended over 200 meetings. Tr. at 127-28; *see also* Indiv. Ex. A. The Individual also fulfills service commitments to the organization and works with newcomers to the meetings. Tr. at 21-22. He testified to the close relationship that he has established with his AA sponsor, with whom he is working the program's twelve steps, as well as with a small group of other AA members who act as a support system for one another. Tr. at 106, 113-14. In addition to his participation in AA, the Individual continues to meet with a counselor who specializes in addiction-related issues every other week. Tr. at 119. According to the Individual, his counselor helps him "keep [his] feet on the ground" with respect to his recovery efforts. Tr. at 120. The Individual believes that he has learned to better manage stress in his life without alcohol, and has identified the "triggers" for his drinking, such as certain music or movies. Tr. at 112-13. The Individual also counted his wife as a key part of his abstinence program. Tr. at 141. She has accompanied the Individual to some of his AA meetings, and has also attended meetings of Al-Anon, a support group for family members of individuals with alcohol problems. Tr. at 16, 22-23.

The Individual's lifestyle has also changed due to his abstinence. The Individual no longer has any alcohol in his home. Tr. at 140. His wife also no longer consumes alcohol in the Individual's presence, and has generally reduced her own alcohol consumption. Tr. at 16, 136. As a result, the Individual reports that he and his wife are getting to know each other "on a whole different basis," since they both drank when they first met. Tr. at 136. In addition, the Individual no longer socializes with the same group of friends with whom he used to drink. Tr. at 24. He stated that he is aware that he cannot avoid alcohol in his life entirely, but he can avoid placing himself in situations similar to those that would have caused him to drink alcohol in the past. Tr. at 123-24. The Individual maintained that his abstinence and recovery are the most important things in his life, including his marriage, because he recognizes that without his recovery, "there is nothing." Tr. at 136-37.

The Individual's testimony regarding his abstinence was corroborated by his wife, his friend, and his AA sponsor. Tr. at 15, 34, 82. The Individual's wife spoke of the Individual's commitment to maintaining his sobriety, as well as the Individual's intention to continue participating in AA. Tr. at 18-19, 25. The Individual's friend testified that the Individual has confided in him regarding his past struggles, and they have talked "in detail" about the Individual's alcohol issues. According to the friend, the Individual "talks as if it is totally in his past," and no longer appears to be struggling with alcohol-related issues. Tr. at 36, 39-40. The Individual's friend asserted that if he believed the Individual resumed drinking, he would confront the Individual and hold him accountable for his actions. Tr. at 39. Similarly, the Individual's AA sponsor and other AA colleagues testified that they are a key component of the Individual's abstinence. They each testified that the Individual is very active in the AA program. Tr. at 55, 72, 82-84. The AA witnesses also confirmed that they all hold one another accountable and support each other's abstinence through routine contact outside of their regular AA meetings. Tr. at 57, 68, 89-90.

## **B. The DOE Psychologist's Testimony**

After listening to the testimony of the other witnesses at the hearing, the DOE psychologist opined that the Individual had made significant progress in addressing his alcohol problem since his September 2013 evaluation, but the DOE psychologist did not change the conclusions or recommendations that he made in his September 2013 report. Tr. at 153. The DOE psychologist noted several positive factors in the Individual's recovery efforts, such as his increased insight and commitment to his recovery, his adherence to the advice of his treating professionals, his improved coping skills, and his "substantial and impressive" involvement in AA. Tr. at 154-55, 159-60. However, the DOE psychologist identified several areas of continuing concern, including the Individual's limited involvement in psychotherapy at the time of the hearing and the presence of a comorbid anxiety condition, for which the Individual took a prescription medication contraindicated for alcohol-related disorders. Tr. at 156, 160. In this regard, the DOE psychologist opined that, with eight months of demonstrated abstinence and treatment – several months short of the twelve months of abstinence that he recommended – the Individual was still too early in his recovery to be considered adequately rehabilitated. Tr. at 155, 161.

## **C. Administrative Judge's Evaluation of Evidence**

Among the factors that may serve to mitigate security concerns raised by an individual's alcohol use are that "so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," that "the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)," and that "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, Guideline G, ¶ 23.

The Individual presented mitigating evidence which demonstrates the steps he has taken since May 2013 to address his problem with alcohol. He has acknowledged his alcohol problem, actively participates in AA meetings, meets with a counselor, and has developed close relationships with his AA sponsor and other AA members. He also has a strong support system outside of AA, and has made certain changes in his lifestyle to bolster his sobriety. However, while the Individual has remained abstinent for a bit over eight months as of the hearing and has expressed his intention to maintain his abstinence in the future, his history of excessive alcohol consumption includes two alcohol-related arrests, as well as a resumption of drinking alcohol after a fifteen-year period of abstinence. While I am impressed by the Individual's commitment to his recovery, as well as his progress thus far, the evidence in the record indicates that certain issues regarding his alcohol problem – namely, those that the DOE psychologist identified during his testimony – remain unresolved. In this regard, I am persuaded by the testimony of the

DOE psychologist that the Individual's period of abstinence to date is not yet sufficient to establish adequate evidence of rehabilitation and reformation. Given these facts, I cannot conclude at this time that the Individual has adequately mitigated the Criteria H and J concerns raised by his past alcohol use.

## **VI. CONCLUSION**

Upon consideration of the entire record in this case, I find that there was evidence that raised doubts regarding the Individual's eligibility for a security clearance under Criteria H and J of the Part 710 regulations. I also find that the Individual has not presented sufficient information to fully resolve those concerns. Therefore, I cannot conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and security is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore the Individual's suspended DOE access authorization at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Diane DeMoura  
Administrative Judge  
Office of Hearings and Appeals

Date: March 19, 2014