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

In the Matter of: Personnel Security Hearing)

Filing Date: April 17, 2014)

Case No.: PSH-14-0041

_____)

Issued: August 26, 2014

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXX X. XXX (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 restored.

I. BACKGROUND

This administrative review proceeding began when a Local Security Office (LSO) issued 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 her eligibility for a security clearance. Specifically, the LSO stated that the Individual had been diagnosed by a psychologist with Alcohol Dependence without Physiological Dependence in Early Partial Remission (under the American Psychiatric Association’s Diagnostic and Statistical Manual – Text Revision (DSM-IV-TR)), and for Alcohol Use Disorder, Moderate (Under DSM-V).

The Notification Letter further informed the Individual that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding her eligibility for a

security clearance. The Individual requested a hearing and the LSO forwarded the Individual's request to the OHA. The Director of OHA appointed me as the Administrative Judge in this matter on June 24, 2014.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, her Alcoholics Anonymous (AA) sponsor, three of her current or former supervisors, and a DOE consultant psychologist (the DOE Psychologist). *See* Transcript of Hearing, Case No. PSH-14-0041 (hereinafter cited as "Tr."). The LSO submitted five exhibits, marked as Exhibits 1 through 5, while the Individual submitted 15 exhibits, which are marked as Exhibits A through O.

II. FINDINGS OF FACT

During a routine reinvestigation of the Individual's background, the Individual reported that she had been receiving treatment from a psychologist (Treating Psychologist) and a psychiatrist (Psychiatrist). In addition, several sources had reported concerns about the Individual's alcohol consumption to the Office of Personnel Management investigator who conducted her background investigation interviews. Exhibit 4 at 1, 4; Exhibit 5 at 40-45.

Because of these unresolved concerns about the Individual's alcohol consumption, the LSO conducted a Personnel Security Interview (PSI) of the Individual on December 18, 2013. Exhibit 5 at 1. During this PSI, the Individual reported that she had seen the Treating Psychologist two to three times a month since 2010. Exhibit 5 at 10-16. The Individual reported that the Treating Psychologist had diagnosed her with Adjustment Disorder. Exhibit 5 at 15. In October 2012, the Individual began seeing the Psychiatrist because she was concerned that she might have Attention Deficit Disorder (ADD). Exhibit 5 at 19. The Individual sees the Psychiatrist every two to three months. Exhibit 5 at 19.

During the PSI, the Individual stated that: "I tend to drink a little bit too much the day before I get my period." Exhibit 5 at 40. The Individual reported that her ex-husband had suggested that she curtail her pre-menstrual alcohol consumption. Exhibit 5 at 45. Her ex-husband also suggested that she should curtail or quit her alcohol consumption on more than one occasion during their marriage. Exhibit 5 at 70-71. She reported that a co-worker had expressed concern that she had alcohol on her breath, however, the Individual claimed that she had just taken "a big swig of mouthwash," before encountering that co-worker. Exhibit 5 at 41-42. She further reported that a co-worker had expressed concern when she had a beer at lunch on a workday. Exhibit 5 at 82-83. A co-worker had also expressed concern about her behavior and speech during a telephone conference. The Individual attributed her behavior and speech during this telephone conference to codeine cough syrup she had taken. Exhibit 5 at 86-87. Her son expressed concern about her alcohol consumption, although he recently agreed that she has "gotten it more under control." Exhibit 5 at 72. The Individual's mother also expressed concern about the Individual's drinking. Exhibit 5 at 75. The Individual admitted that she had abused alcohol during the last year of her marriage, in 2010 and 2011. Exhibit 5 at 76. She reported that she tends to drink wine four nights a week. Exhibit 5 at 78. The Individual stated that "every now and then I'll finish an entire bottle of wine. That's not common though." Exhibit 5 at 56. The Individual stated that she would consume a whole bottle of wine in one evening every

three months or so. Exhibit 5 at 59. The Individual also admitted that she had consumed an entire bottle of wine as recently as the previous weekend. Exhibit 5 at 57. When the Individual was asked about her future intentions regarding the use of alcohol, she responded by stating that she was definitely “cutting back.” Exhibit 5 at 89. She further stated that she was going to use alcohol two or three nights a week instead of four. Exhibit 5 at 90.

At the request of the LSO, the DOE Psychologist evaluated the Individual on January 31, 2014. Exhibit 4 at 1. In addition to conducting a 2.75 hour forensic psychological interview of the Individual, the DOE Psychologist reviewed the Individual’s personnel security file, the medical records provided by the Psychiatrist, a treatment summary provided by the Treating Psychologist, and administered several psychological tests to the Individual.

After completing her evaluation of the Individual, the DOE Psychologist issued a report (the Psychological Report) on February 7, 2014, in which she found that the Individual has a mental condition, Alcohol Dependence, without Physiological Dependence, in Early Partial Remission (under DSM-IV-TR) or Alcohol Use Disorder, Moderate (under the DSM-V) which causes, or may cause, a significant defect in judgment or reliability. Exhibit 4 at 12. The Psychological Report states that the Individual informed the DOE Psychologist that she consumed alcohol to the point of intoxication once or twice a month. Exhibit 4 at 3-4. The Psychological Report noted that the medical records provided by the Psychiatrist indicated that the Psychiatrist diagnosed the Individual with Adjustment Disorder with Mixed Anxiety and Depressed Mood; Alcohol Abuse, and Hypertension. The Psychological Report provides the following quote from the Psychiatrist’s clinical impressions:

The first thing that we address is her drinking. The patient has always danced around this issue with me. It seems like she does drink a lot and a binge pattern ... she may be drinking too much for her to be able to translate her gains in therapy into meaningful actions in her life The next issue we address is trying to manage this with the medication Naltrexone (opioid receptor antagonist primarily used in the management of alcohol dependence). The patient surprisingly is keen to take the medication . . .

Exhibit 4 at 7. The Psychological Report further notes that the treatment summary provided by the Treating Psychologist states that the Individual has “periodically overused substances, namely alcohol ... her past or current use does not meet full criteria for either alcohol abuse or dependence (but) this has been an intermittent topic of discussed in therapy” and noted that the Treating Psychologist opined that ongoing therapy is indicated for both the Individual’s alcohol use and her depression. Exhibit 4 at 8.

The DOE Psychologist opined that in order to be reformed or rehabilitated from her Alcohol Dependence/ Alcohol Use Disorder, the Individual:

[C]ould benefit from a program which specifically addresses alcohol use, particularly given the chronic nature of her problem. This could be adjunctive to her therapy with [the Treating Psychologist and the Psychiatrist], and would consist of participation in a program offered by specialists, either an intensive out-

patient program (IOP which is 9 hours or more per week of services), or out-patient services such as 12-step facilitation therapy . . . Another evidence based treatment, which might be helpful to [the Individual] is evidence-based Motivational Enhancement Therapy, given her history of ambivalence about changing her alcohol consumption. Any of these formal programs should be conducted over a 12-month period (the IOP program would be followed up by less intense out-patient services), and abstinence should be maintained. Her progress should be supported by random alcohol testing. If [the Individual] chooses reformation rather than rehabilitation, abstinence should be required for 24 months, with random alcohol testing on a frequent, unpredictable basis.

Exhibit 4 at 12.

III. STANDARD OF REVIEW

The Administrative Judge'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 and 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

The Individual's ex-husband, son, mother, colleagues, Psychiatrist, and Treating Psychologist have all expressed concerns about her alcohol consumption. The Individual has admitted that her alcohol consumption has been excessive at times and to drinking to intoxication once or twice a month. 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) Guideline G at ¶ 21. On February 7, 2014, the DOE Psychologist diagnosed the Individual with Alcohol Dependence without Physiological Dependence in Early Partial Remission/Alcohol Use Disorder, Moderate. This information raises security concerns about the Individual under Criterion H, since the Individual's Alcohol Dependence without Physiological Dependence in Early Partial Remission/Alcohol Use Disorder, Moderate constitutes an illness or condition that causes, or

may cause, a significant defect in the Individual's judgment and reliability. Exhibit 4 at 12; Adjudicative Guidelines I at ¶ 27 and G at ¶ 21, 22(e).

V. ANALYSIS

I find that the Individual has not adequately mitigated the security concerns raised under Criteria H and J by her Alcohol Dependence without Physiological Dependence in Early Partial Remission/Alcohol Use Disorder, Moderate.

At the hearing, the Individual testified on her own behalf. Tr. at 51-138. The Individual testified that she does not believe that she is an alcoholic, and that she believes that she "can make a decision to drink alcohol or not to drink alcohol." Tr. at 60, 115. She testified that she does not believe that she is Alcohol Dependent. Tr. at 105. She does not believe she has a problem with alcohol. Tr. at 130. She testified that her alcohol consumption has never been "uncontrollable." Tr. at 72. She testified that her "body does not crave alcohol." Tr. at 60, 92, 133. The Individual testified: "I don't believe that it ever truly had ahold of me, other than I had a bad habit of pouring a glass of wine when I got home from work, mindlessly without thinking about it." Tr. at 135. The Individual testified that she taken the Substance Abuse Subtle Screening Inventory (SASSI) and that the SASSI showed that she had a low probability of having a substance dependence disorder. Tr. at 99-100.

The Individual admitted, however, that she has engaged in excessive alcohol use. Tr. at 62, 72, 104. Her last excessive use of alcohol occurred in November 2013. Tr. at 104. She admitted that she had "technically" engaged in binge drinking. Tr. at 73. She admitted that alcohol could have contributed to a security incident which led to her clearance being temporarily suspended for two weeks.¹ Tr. at 89. The Individual admitted that she had asked her Psychiatrist to prescribe her Naltrexone because she wanted to avoid alcohol during an upcoming vacation with her partner's family. Tr. at 96. The Individual testified that she did not use any of the Naltrexone that had been prescribed to her. Tr. at 97. She admitted consuming an entire bottle of wine over the course of a day in the past. Tr. at 74. When the Individual was asked about her Psychiatrist's view of her alcohol consumption, the Individual testified that alcohol "hasn't been a huge topic of our conversation." Tr. at 64.

The Individual testified that she had recently stopped drinking. Tr. at 90-92. She testified that she considered April 20, 2014, to be her sobriety date. Tr. at 114. However, she later testified that she had a glass of wine approximately two weeks prior to the July 24, 2014, hearing. Tr. at 131-132. She testified that she began counseling with the Treating Psychologist in 2010 or 2011. The Individual testified that both she and the Treating Psychologist have been "periodically concerned" about the Individual's alcohol intake. Tr. at 61, 64. The Individual testified that she had recently begun attending AA meetings in March.² Tr. at 93-94. She testified that she is enjoying AA, and intends to continue with it. Tr. at 124, 136. The Individual testified that she

¹ The Psychological Report indicates that this incident occurred in 2010. Exhibit 4 at 4-5.

² This testimony has been corroborated by the hearing testimony of her Sponsor, and by Exhibit G, a five page record documenting her attendance at 95 AA meetings from March 14, 2014, through June 16, 2014. Tr. at 15-16, 20, 27.

began treatment with an alcohol and drug abuse counselor (the Counselor) in April 2014. Tr. at 98. She further testified that she has been participating in an alcohol and abuse rehabilitation program as well. Tr. at 103. She testified that even though she is participating in a recovery program, she does not believe she needs to recover. Tr. at 124. She testified that her future intentions towards alcohol were to drink alcohol occasionally. Tr. at 129.

At the hearing, the DOE Psychologist listened to the testimony of each of the other witnesses before she testified. The DOE Psychologist testified that nothing she had heard at the hearing had changed her mind about the Individual's diagnosis or her treatment recommendations. Tr. at 139, 152. The DOE Psychologist testified that she was concerned that the Individual had not informed her Sponsor or Treating Psychologist of her recent wine consumption. Tr. at 141. The DOE Psychologist noted that although the Individual had "put a lot of good things in place," and was on the right track, her recovery had only started in April, and three months is a very short period of time, especially for someone like the Individual "who is changing a pattern of alcohol use that been a significant pattern." Tr. at 142, 165. The DOE Psychologist reiterated her opinion that the Individual needs to remain sober for at least a year in order to show that she is rehabilitated or reformed. Tr. at 142.

The DOE Psychologist testified that the amount of alcohol that the Individual was consuming in the 2010-2011 time period was evidence that she had developed a tolerance to alcohol. Tr. at 162. The DOE Psychologist testified that the Individual met five of the seven criteria for Alcohol Dependence under the DSM-IV-TR. Tr. at 162-164. (Only three of the seven criteria need be present for the diagnosis to apply. DSM-IV-TR at 197). Specifically, the DOE Psychologist noted that the Individual: (1) reported that she had consumed more alcohol than she intended to, (2) the Psychiatrist's records indicated that the Individual had a history of unsuccessful attempts to reduce her alcohol consumption, (3) that the Individual has spent a great deal of time using alcohol during that period in her life when she was drinking almost every night, (4) that the Individual continued to consume alcohol despite the concerns of her doctor, and (5) that the Individual appeared to have developed a tolerance to alcohol. Tr. at 163-164.

After carefully considering all the evidence, I find that the Individual has not shown that the DOE Psychologist's conclusion that she is Alcohol Dependent or has Alcohol Use Disorder, Moderate is in error, and I find that the DOE Psychologist's opinion to be well supported in the record, and by her convincing testimony at the hearing. Moreover, while the Psychiatrist's and the Treating Psychologist's records indicate that they came to somewhat different diagnostic conclusions than the DOE Psychologist concerning which alcohol-related disorder best describes the Individual's constellation of symptoms, it is significant that they each found the Individual's alcohol consumption to be problematic. The Individual did not offer any expert testimony at the hearing specifically contradicting the DOE Psychologist's findings, or suggesting that she does not need treatment for an alcohol disorder.

It is clear that after only three months of substance abuse treatment, the Individual has not received sufficient treatment, developed sufficient insight into her alcohol disorder, or abstained from using alcohol for a sufficient period of time, to establish reformation or rehabilitation from her Alcohol Dependence/Alcohol Use Disorder. The Individual has offered no expert testimony to the contrary. Nor has the Individual shown that she has met any of the mitigating criteria set

forth in Adjudicative Guideline G at ¶ 23, or Adjudicative Guideline I at ¶ 29. Based upon the foregoing, I find that the Individual has not sufficiently mitigated the security concerns raised by her Alcohol Dependence/Alcohol Use Disorder under Criteria H or J.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H and J. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has not mitigated the Criteria H and J security concerns. Accordingly, the Individual has not demonstrated that restoring her 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 restored 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
Administrative Judge
Office of Hearings and Appeals

Date: August 26, 2014