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

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	July 31, 2014)	
)	Case No.: PSH-14-0074
)	

Issued: November 6, 2014

Administrative Judge Decision

William M. Schwartz, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (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 discussed below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I have determined that the individual’s access authorization should not be restored at this time.

I. Background

The individual works for a DOE contractor in a position that requires that he hold a DOE security clearance. Investigation into the individual’s history of alcohol consumption and alcohol-related arrests raised security concerns in the opinion of the Local Security Office (LSO), and the LSO had the individual evaluated by a DOE consultant psychologist (DOE psychologist). On July 3, 2014, the LSO sent a letter (Notification Letter) to the individual advising him that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification

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.

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 his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing, and I was appointed the Administrative Judge in the case. At the hearing that I conducted, the individual presented his own testimony and that of three other witnesses, and the LSO presented the testimony of one witness, the DOE psychologist who had evaluated the individual. In addition to the testimonial evidence, the LSO submitted 14 numbered exhibits into the record, and the individual submitted five exhibits, which I labeled Exhibits A through E. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

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 denials”); *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 his 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 his 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 evidence 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 concerns information that a person suffers from “[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 the 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 eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As support for its security concerns under Criteria H and J, the LSO relies on the opinion of the DOE psychologist, who determined that the individual is a user of alcohol habitually to excess which, in his opinion, causes or may cause significant defects in the individual's judgment and reliability. In addition, the LSO cites a 1985 arrest for Driving While Intoxicated (DWI), a 2012 arrest for Public Intoxication, and the individual's statements regarding his pattern of alcohol consumption over the past 20 years. Ex. 1.

I find that there is ample information in the Notification Letter to support the LSO's reliance on Criteria H and J. The excessive consumption of alcohol 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 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 Guideline G.

IV. Findings of Fact

The individual reported during his April 16, 2014, PSI that, for the last 20 years, he typically becomes intoxicated after drinking six to eight beers once or twice a month and drives while intoxicated once every two or three months. Ex. 12 at 28-42. At his psychological evaluation, he reported a similar pattern of alcohol consumption, and the DOE psychologist noted that the individual considers himself a "normal" drinker, despite the fact that he regularly drives while intoxicated and has had two alcohol-related arrests. Ex. 8 at 5. The individual does not challenge the facts surrounding his alcohol-related arrests in 1985 and 2012. Tr. at 66.

The DOE psychologist evaluated the individual in May 2014. He determined that the individual met the criteria for neither Alcohol Abuse nor Alcohol Dependence as set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association*, Fourth Edition Text Revised (DSM-IV-TR). Ex. 8 at 6. Nevertheless, based on the PSIs, his own interview with the individual, and an Alcohol Use Inventory that he administered, he reached the opinion that the individual uses alcohol habitually to excess. *Id.* He further observed that the individual had never been involved in a rehabilitation program, though he did complete an alcohol education program following his DWI arrest in 1985. *Id.* As

adequate evidence of rehabilitation or reformation from this alcohol condition, the DOE psychologist recommended abstinence from alcohol for 12 months, participation in Alcohol Anonymous (AA) at least three times weekly for 12 months, securing an AA sponsor for accountability, and random blood alcohol testing. *Id.* The DOE psychologist concluded that the individual's current and historical pattern of drinking habitually to excess demonstrated a significant defect in judgment or reliability. *Id.* at 5.

At the hearing, the individual testified that he received the DOE psychologist's evaluative report in June 2014, at about the same time that his security clearance was suspended. Tr. at 74-75. He did not disagree with the DOE psychologist's conclusion regarding his drinking, though he was "in shock" to learn that his drinking pattern was not normal; he had always considered himself a "normal drinker," who was in control of his alcohol consumption, despite two isolated arrests. *Id.* at 72, 75-76. He consumed his last alcoholic drink—two or three beers at a restaurant with his wife—on July 18, 2014. *Id.* at 38 (testimony of wife). Three days later, he enrolled in an intensive outpatient program (IOP), and by the date of the hearing, he had completed all 20 sessions of the program, begun attending a weekly aftercare program, and participated in four AA meetings. *Id.* at 22-25 (testimony of IOP counselor), 90 (testimony of individual); Exs. A, C, D, E.

The individual's counselor testified that she had met the individual at the IOP, where she led some of the sessions in which he participated. Tr. at 21. She had met with him once individually after he completed the IOP, as had another counselor, and further meetings were anticipated. *Id.* at 22-23. She found the individual to be shy and uncomfortable when surrounded by strangers, as in the IOP sessions, but direct and forthcoming when prompted to participate. *Id.* at 21. Before he entered the IOP, she evaluated the individual as suffering from alcohol abuse, lacking insight into the problem. *Id.* at 26-27. She contended that his lack of insight explained why he had taken no action regarding his alcohol issues between the time of his second arrest, in September 2012, and the suspension of his security clearance in June 2014. *Id.* at 26. In her opinion, the individual appears to have gained some insight through his treatment. *Id.* at 27. The counselor recommended that, for one year starting on July 18, 2014, the date of his last alcoholic drink, the individual abstain from all alcohol, participate in the aftercare program once a week, attend AA meetings twice a week, secure an AA sponsor, and one-on-one maintenance counseling once a month. *Id.* at 27-28. She stated that the individual's prognosis is good, provided he complies with her recommendations. *Id.* at 29. She explained that compliance with her recommendations would demonstrate the full remission of the individual's alcohol abuse, but she was unwilling to hazard a guess as to whether he might be rehabilitated sooner than in the one year established in her recommendations. *Id.* at 30.

In his testimony at the hearing, the DOE psychologist maintained his opinion that the individual consumes alcohol habitually to excess. He explained that the distinction between alcohol abuse—the diagnosis the counselor reached—and a conclusion that an individual consumes alcohol habitually to excess is a fine one, and when he is not entirely sure of a diagnosis, he will opt for the less severe diagnosis, as he did in this case. *Id.* at 95. He stated that the individual's significant defect in judgment or reliability "would be most evident when there is driving in an intoxicated condition," which he found to

have occurred repeatedly. *Id.* at 98. While he acknowledged that the individual has now gained some insight into his misuse of alcohol, or recognition of it as a problem, most likely through his IOP, he lacked the same as recently as when his clearance was suspended, as it took him a month to decide to take steps to address his alcohol consumption. Consequently, the DOE psychologist was of the opinion that the individual is at the very beginning stages of recovery. *Id.* He stated that the individual appears to be making a good start, and demonstrates positive factors for success, such as integrity and the support of his wife and extended family. Nevertheless, he concluded that the individual's relatively short period of abstinence and treatment, when compared to his decades-long habituated pattern of excessive alcohol consumption, were not a sufficient basis for revising or updating his opinion regarding the individual's alcohol issues. *Id.* at 100.

V. Analysis

I have thoroughly considered the record of 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) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot 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.

The individual has maintained a pattern of significant alcohol consumption for at least 20 years. Until recently, he regarded his consumption as normal behavior, despite two alcohol-related arrests, frequent intoxication, and less frequent, but still significant, episodes of driving while intoxicated. Even after he recognized that his alcohol consumption was a problem, most likely around the time his security clearance was suspended and he received the DOE psychologist's evaluation, his lack of insight delayed his taking action. In July 2014, the individual began abstaining from alcohol and enrolled in an IOP. By the time of the hearing, he had completed the IOP, started attending an aftercare program and AA, and initiated monthly individual sessions with a substance abuse counselor. While these actions are significant, positive steps toward addressing his alcohol condition, they represent a relatively short period of new, responsible behavior—slightly more than two months. In contrast, the DOE psychologist maintained at the hearing that the individual needed a full year of treatment and monitoring of his abstinence, and I find that his opinion was well-founded and reasonable. I am therefore convinced that, despite the treatment he is receiving, it is too soon to conclude that the individual has resolved his alcohol problem, as neither the counselor nor the DOE psychologist was willing to address the individual's likelihood of relapse. I have taken into consideration a number of mitigation factors in his favor, specifically, his acknowledgment of his alcohol problem, his abstinence, and his voluntary treatment program. Adjudicative Guidelines at Guideline G, ¶ 23. Despite these favorable factors, and after considering all the testimony and written evidence in the record, I am not convinced that the individual has resolved the LSO's security concerns that arise from his alcohol use.

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 have found that the individual has not brought forth sufficient evidence to mitigate the security concerns associated with these criteria. I therefore cannot find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Administrative Judge
Office of Hearings and Appeals

Date: November 6, 2014