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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 20, 2014)
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_____)

Case No.: PSH-14-0101

Issued: February 27, 2015

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXX (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 be restored.

I. BACKGROUND

This case involves an Individual who tested positive for alcohol during a random screening conducted at his workplace. The LSO conducted a Personnel Security Interview (PSI) of the Individual and requested that he be examined by a DOE consultant psychologist (the Psychologist), who found that the Individual habitually used alcohol to excess. Unable to resolve the derogatory information, the 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 his eligibility for a security clearance. Specifically, the LSO stated that the Individual had been found to habitually use alcohol to excess without evidence of rehabilitation or reformation. This information comes within the purview of Criterion J.¹

¹ Specifically, the Notification Letter alleges that the Individual is a “habitual user of alcohol to excess,” 10 C.F.R. § 710.8(j) (Criterion J).

The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his father, his brother, his girlfriend, his substance abuse counselor (the Counselor), and the Psychologist. *See* Transcript of Hearing, Case No. PSH-14-0101 (hereinafter cited as "Tr."). The LSO submitted ten exhibits, marked as Exhibits 1 through 10, while the Individual submitted no exhibits.

II. 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 or 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.

III. FACTUAL BACKGROUND

On April 28, 2014, the Individual arrived at his workplace, where he was administered a random alcohol screening. His breath alcohol content registered .067 percent at 9:33 a.m., and .065 percent at 9:50 a.m. Exhibit 8 at 2. This incident led the LSO to conduct a PSI of the Individual on June 13, 2014.

During this PSI, the Individual admitted drinking 12 to 15 beers during a four-hour period on the night of April 27, 2014. Exhibit 9 at 15. The Individual reported that he began counseling with the Counselor on May 8, 2014. Exhibit 9 at 29. He started attending an Intensive Outpatient Program (IOP) on May 12, 2014, at the recommendation of the Counselor. Exhibit 9 at 29, 31. The Individual further reported that he planned to begin attending aftercare as soon as he completed the IOP. Exhibit 9 at 33. The Individual admitted that after he separated from his wife in May 2010, his alcohol consumption increased. Exhibit 9 at 76-77. He began to drink almost every day that he was not on duty: at least three days a week, and up to 20 times a month.

Exhibit 9 at 77-78. After his separation, he started out drinking from six to ten beers over seven hours. Exhibit 9 at 79. He estimated that he was intoxicated two to three days a week. Exhibit 9 at 79. The Individual stated that he was drinking in order to self-medicate the pain he was experiencing because of the dissolution of his marriage and concern about its effects upon his two daughters. Exhibit 9 at 82-83. The Individual stated that he had not consumed any alcohol since April 27, 2014. Exhibit 9 at 83. The Individual noted that taking his daughters back to their mother would often trigger his heavy alcohol consumption. Exhibit 9 at 85-86. The Individual's coworkers had expressed their concerns about his drinking to him. Exhibit 9 at 89-90. The Individual admitted that he had become concerned about his alcohol use, and that he had tried, unsuccessfully, to quit using alcohol on his own. Exhibit 9 at 92-93. When he was asked what his future intentions towards alcohol were, he answered: "Abstain." Exhibit 9 at 101.

At the request of the LSO, the Psychologist evaluated the Individual on July 25, 2014. Exhibit 7 at 1. The Psychologist reviewed selected portions of the Individual's personnel security file, administered a battery of standardized psychological tests to the Individual, and interviewed the Individual. Exhibit 7 at 1-2. After completing his evaluation of the Individual, the Psychologist issued a report on July 29, 2014, in which he found that the Individual has "demonstrated a habitual pattern of alcohol use to excess during the period prior to . . . April 27, 2014."² Exhibit 7 at 4. The Psychologist concluded that the Individual was not reformed or rehabilitated from his habitual pattern of alcohol use to excess. Exhibit 7 at 4. The Psychologist recommended that the Individual continue aftercare, individual counseling, and random alcohol screening, for six months. Exhibit 7 at 4-5.

The Psychologist noted that the Individual appeared to be "forthright and candid" and to exhibit "generally good mental health and adjustment." Exhibit 7 at 3-4. He further noted that the Individual had completed the IOP, was attending aftercare, and was seeing the Counselor on a monthly basis. Exhibit 7 at 3.

IV. DEROGATORY INFORMATION AND SECURITY CONCERNS

The Individual's alcohol-related incident at work and his habitual use of alcohol to excess raise security concerns because his alcohol use might lead to the exercise of questionable judgment or the failure to control impulses, or negatively impact his 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. The Adjudicative Guidelines state that: "alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, . . . regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent," and "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent" are "conditions that could raise a security concern and may be disqualifying." Adjudicative Guideline G at ¶ 22 (b), and (c).

² The Psychologist specifically found that the Individual did not meet the eligibility criteria for alcohol abuse, however. Exhibit 7 at 4.

V. ANALYSIS

At the hearing, the Individual stipulated that he suffers from an alcohol problem. Tr. at 7. The Individual testified, and presented the testimony of his brother, his father, his girlfriend, and the Counselor to successfully show that he has obtained the proper treatment for his alcohol problem, has responded to his alcohol treatment, and has established a pattern of abstinence from alcohol use. *See* Adjudicative Guideline ¶ 23(b). The Individual has further shown that he successfully completed outpatient counseling or rehabilitation, in the form of the IOP, has been attending aftercare, has demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations, has been attending meetings of “Celebrate Recovery,” and has received a favorable prognosis by a licensed clinical social worker, who is a staff member of a recognized alcohol treatment program, i.e. the Counselor. *See* Adjudicative Guideline ¶ 23(d).

The Counselor testified that the Individual had “developed a maladaptive pattern of alcohol use.” Tr. at 13. She testified that the Individual had attended and successfully completed the IOP and is continuing to attend aftercare. Tr. at 17-18. The Counselor testified that the Individual “did exceptionally well” in the IOP. Tr. at 17. The Individual is also continuing to receive individual counseling. Tr. at 19. The Counselor noted that the Individual has been making significant progress in his alcohol treatment, having developed insight in how to avoid relapsing and developing the skills to resist using alcohol. Tr. at 20. She noted that the Individual was initially deeply saddened by his divorce and concerned about his relationship with his children, but now he is feeling better and managing his relationships with his ex-wife and children better. Tr. at 20-21. The Individual is now exhibiting a much more positive attitude. Tr. at 21. The Counselor testified that the Individual has taken his treatment very seriously and has worked very hard to recover. Tr. at 22. She further testified that the Individual’s prognosis is good and that the risk of him relapsing is low. Tr. at 22. The Counselor testified that his last reported alcohol use had occurred on April 27, 2014, and that all the reports and observations she had obtained very strongly suggest that the Individual has not used alcohol since that date. Tr. at 22-23.

The Individual’s brother and father both testified on his behalf at the hearing as well. The Individual’s brother testified that the Individual’s mood and outlook had greatly improved since the Individual stopped using alcohol. Tr. at 29. The Individual is now a “different person” and has “a lot of joy.” Tr. at 29. The Individual’s brother characterized these changes as “dramatic.” Tr. at 30. The Individual’s father testified that the Individual’s divorce had been very difficult for his son and granddaughters. Tr. at 39. The Individual’s father testified that his son’s outlook and attitude had improved, and that he was now a different person. Tr. at 43, 46. Both the brother and father noted that they had not observed any evidence of alcohol use since April of 2014. Tr. at 31, 42.

The Individual’s girlfriend also testified. She testified that before the Individual had stopped using alcohol, he had recognized that he needed to address his drinking, and that the incident at work had provided the final motivation he needed to start making the necessary changes. Tr. at 50-51. She testified that the Individual seemed relieved when he recognized that he was going to get help. Tr. at 51. She testified that she and the Individual had begun attending Celebrate

Recovery meetings together. Tr. at 61. She testified that the Individual is a very responsible person. Tr. at 53. She testified that the Individual likes his new alcohol-free lifestyle. Tr. at 56. She testified that the Individual does not keep alcohol in his house. Tr. at 110. She further testified that the Individual's mood had improved during the past year. Tr. at 57. The Individual's girlfriend testified that he had a great family and that they provided him with an excellent support system. Tr. at 58. She testified that the Individual is enjoying his alcohol-free lifestyle so much she cannot see him returning to alcohol use. Tr. at 58. She testified that she does not consume alcohol in the Individual's presence. Tr. at 60.

The Individual testified that he recognized that he had an alcohol problem, and no longer uses alcohol. Tr. at 65, 82. His last use of alcohol occurred on April 27, 2014. Tr. at 85. He testified that he was enjoying his treatment and Celebrate Recovery. Tr. at 72. He has learned and implemented strategies to cope with stress, and to avoid "triggers" that could lead to him relapsing. Tr. at 72-74. He has also learned to work with his ex-wife in order to care for his daughters, and to accept his family situation. Tr. at 73-75. He is exercising, umpiring baseball games and attending church to keep himself meaningfully occupied. Tr. at 75-76, 83. He noted that he feels much better about himself now, and that he is much happier. Tr. at 73, 77. He testified that his life is better without alcohol. Tr. at 81. He intends to continue attending aftercare, individual counseling, and Celebrate Recovery. Tr. at 79, 89. He no longer has any urges to use alcohol. Tr. at 80, 82. He does not see himself using alcohol in the foreseeable future. Tr. at 80. He sees his involvement with alcohol as a negative experience. Tr. at 86.

At the hearing, the Psychologist listened to each of the other witnesses' testimony before he testified. He testified that the Individual had a significant problem with alcohol, which he was using as a "maladaptive strategy to deal with grief and the loss of a family and relationship." Tr. at 94. He further testified, however, that the Individual had immediately sought help for his problem and had completely complied with his treatment plan. Tr. at 95. He noted that the Individual had always been very transparent about his problems, had exhibited "strong character," and had "a good foundation in terms of his upbringing." Tr. at 95. The Psychologist testified "I'm more optimistic about his prognosis than anybody that I've seen in a long, long time." Tr. at 95. The Psychologist testified that the Individual was rehabilitated, and that "there is every reason to believe that it will be long term." Tr. at 95-96. The Psychologist noted that the Individual: has established a stable relationship with his children and ex-wife, has focused on his physical fitness, is attending church, is structuring his free time, and attending aftercare. Tr. at 96-97. Each of these factors support the likelihood that he is rehabilitated. Tr. at 97.

As the evidence set forth above shows, the Individual has acknowledged his alcohol problem, has shown that he has taken several actions to address this disorder (including successfully completing the IOP, attending individual counseling, attending Celebrate Recovery, and making the necessary changes in his life) and has established an eight-month pattern of abstaining from alcohol use. Accordingly, I find that the Individual has resolved the security concerns raised by his past excessive use of alcohol under Criterion J.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criterion J. I find,

however, that the Individual has sufficiently mitigated the security concerns under Criterion J. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's security clearance should be restored at this time. The DOE 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: February 27, 2015