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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: May 7, 2015 )

Case No.: PSH-15-0033

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Issued: August 18, 2015

**Administrative Judge Decision**

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1</sup> For the reasons set forth below, I conclude that the individual's security clearance should not be restored at this time.<sup>2</sup>

**I. BACKGROUND**

The individual is employed by the Department of Energy (DOE), and was granted a security clearance in connection with that employment. In February 2014, the individual fell approximately eight feet off of the roof of her sunroom after consuming alcohol, resulting in serious injury. Afterwards, she reported to the DOE that she believed that she had a drinking problem. Because this information raised significant security concerns, the Local Security Office (LSO) summoned the individual for an interview with a personnel security specialist in October 2014. After this Personnel Security Interview (PSI) failed to resolve the concerns, the LSO

<sup>1</sup>An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will also be referred to in this Decision as a security clearance.

<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (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>.

referred the individual to a local psychiatrist (hereinafter referred to as “the DOE psychiatrist) for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report based on that evaluation, and submitted it to the LSO. After reviewing that report and the rest of the individual’s personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual’s eligibility for access authorization. It informed the individual of this determination in a letter that set forth the DOE’s security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning her eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. The DOE introduced eight exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist at the hearing. The individual presented the testimony of six witnesses, in addition to testifying herself.

## **II. THE NOTIFICATION LETTER AND THE DOE’S SECURITY CONCERNS**

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual’s eligibility to hold a clearance. This information pertains to paragraphs (h) and (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Under criterion (h), information is derogatory if it indicates that an individual has an illness or mental condition which, in the opinion of a psychiatrist or licensed clinical psychologist causes, or may cause, a significant defect in the individual’s judgment or reliability. 10 C.F.R. § 710.8(h). Criterion (j) defines as derogatory information indicating that the individual “has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j). As support for these criteria, the Letter cites the diagnosis of the DOE psychiatrist that the individual suffers from Alcohol Abuse, and her conclusion that this condition causes, or may cause, a significant defect in the individual’s judgment or reliability. As additional support for criterion (j), the Letter cites statements that the individual made during her PSI indicating that she (i) drank half a pint of “fireball” whiskey over a two-hour period on the morning that she fell off of the roof; and (ii) drank two beers almost every night during the week and two to four beers and a pint of whiskey over two days of each weekend from November 2013 to February 2014, becoming intoxicated almost every time she drank on the weekends.

These circumstances adequately justify the DOE’s invocation of criteria (h) and (j), and raise significant security concerns. Mental conditions that involve the excessive consumption of alcohol often lead to the exercise of questionable judgment or the failure to control impulses, and can therefore raise questions about an individual’s reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines G and I.*

### III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, an Administrative Judge must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting or restoring a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring 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). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

### IV. FINDINGS OF FACT AND ANALYSIS

#### A. Mitigating Evidence

At the hearing, the individual did not contest the allegations set forth in the Letter or the DOE psychiatrist’s diagnosis of Alcohol Abuse. Instead, she attempted to demonstrate, through her own testimony and that of her psychologist, her husband, her father, two co-workers, and a former supervisor, that she has been rehabilitated, and that she is not currently suffering from any defect in her judgment or reliability.

The individual testified that she started drinking whiskey in November 2013 to help her cope with the stress that she was experiencing, and that prior to that time, she would drink beer. Hearing Transcript (Tr.) at 88. She would drink the whiskey alone, because she did not want her husband to worry about her, or to consider her weak. Tr. at 89. However, after her accident in February 2014, she decided to reveal the full extent of her alcohol consumption to her family and to the DOE. Tr. at 90-91.

During her October 2014 PSI, the individual described the accident. She said that she and her husband kept their garden hose on the roof of their sunroom to keep their dogs from chewing on

it. On the day of the accident, she climbed out of her bathroom window onto the roof of the sunroom to retrieve her hose so that it could be used. After throwing the hose to the ground, it was her intention to climb down by grabbing and hanging off of the edge of the roof, and then dropping to the ground. However, she moved to the edge of the roof, and the next thing that she remembered was “waking up on the ground.” DOE Ex. 7 at 14. According to her husband, the individual fractured two vertebrae in her fall and was taken to a local hospital, where she had to have spinal fusion surgery. Tr. at 13.

After leaving the hospital, she began seeing a psychologist on a weekly basis. Tr. at 93, 121. She testified that they “focus on a lot of things,” including “coping skills” and “relapse prevention.” Tr. at 102. In July 2014, the individual began participating in an Intensive Outpatient Program (IOP) that focused on her alcohol use disorder. She testified that this Program sought to teach her the effects that alcohol has on the body and ways to refrain from drinking, including setting up a support structure and identifying and avoiding “triggers” of alcohol consumption. Tr. at 114-116. She has been attending Aftercare, and intends to continue doing so “for the foreseeable future.” Tr. at 120.

She then discussed some of the benefits of the counseling that she has received. She said that one such benefit is that she realizes that she is not alone in her affliction, and that it is nothing to be ashamed of. Tr. at 95-96. Another benefit is that she now believes that she can handle social situations in which she feels that she is expected to consume alcohol. Tr. at 96. She is now more open and honest, she continued, and realizes that it is OK to have weaknesses and to ask people for help. Tr. at 105. Her relationship with her mother, which was the source of a lot of stress, has improved. Tr. at 106-107. She concluded by saying that “I really don’t see [alcohol] in my future right now. I don’t see any future benefit of it, and it’s just not in my plans.” Tr. at 108-109.

The individual’s psychologist also testified. He stated that alcohol consumption has caused problems for the individual, and that he agrees with the DOE psychiatrist’s diagnosis of Alcohol Abuse. Tr. at 138, 142. The individual’s period of excessive drinking, he continued, was caused by a combination of factors, with job-related stress and the demands of motherhood being major contributors. Tr. at 144-145. She has learned to cope with these stresses more constructively, which should lessen the chances that she would return to drinking. Tr. at 145. The fact that her excessive drinking was limited to a relatively short period of time is also a positive prognostic factor, he said, along with her motivation, determination, and intelligence. Tr. at 145-153. The individual’s psychologist concluded by saying that he “feels more confident about a low probability [of the individual returning to a pattern of excessive drinking] than most anybody I’ve seen.” Tr. at 153.

The individual’s husband testified that, between himself and her psychologist, the individual has a strong support system to help her abstain from alcohol. Tr. at 24. He further stated that the individual has abstained since September 2014, and that she “doesn’t care to drink anymore.” Tr. at 21. The individual’s father stated that the individual is committed to her treatment program, and that it has given her a much more relaxed and positive attitude towards life in general. Tr. at 51, 53-54.

## B. Administrative Judge's Decision

Despite this mitigating evidence, I find that the individual has not demonstrated adequate evidence of reformation or rehabilitation from Alcohol Abuse. I base this finding largely on the fact that, although much of her testimony and that of her witnesses focused on the benefits that she received from counseling, she failed to adhere to one of the key components of that counseling, *i.e.*, abstinence from drinking, on at least three occasions. She admitted that when she met with her psychologist shortly after leaving the hospital, he told her that she needed to abstain from alcohol “for a while.” Tr. at 112. Yet in March 2014, after seeing her psychologist, she drank at least one beer while at home. Tr. at 122-123. Furthermore, the individual acknowledged that she started IOP in late July 2014, attended four weeks of the five week program, drank on at least two occasions while on work-related travel during the next two weeks, and then returned for a final week of IOP. Tr. at 99. The individual attempted to explain these incidents by saying that she was “testing herself,” and that she was not prepared to handle the situations that arose while on travel with co-workers in which everyone else was drinking and she felt obliged to do the same. Nevertheless, these instances raise serious doubts as to the individual’s commitment to her treatment program.

Another major factor in my conclusion that the individual has not produced adequate evidence of reformation or rehabilitation is her failure to satisfy the requirements set forth by the DOE psychiatrist. In her report, the DOE psychiatrist specified that in order to make such a showing, the individual would have to have at least one year of documented sobriety. She also stated that the individual should participate in another IOP, since she did not “adequate[ly] benefit from [the] previously attended IOP.” DOE Ex. 5 at 8. The individual’s psychologist testified that these requirements were “realistic,” Tr. at 142, and that the one year of abstinence provision is “a good rule of thumb.” Tr. at 158. <sup>3</sup> As of the date of the hearing, the individual had approximately nine months of sobriety, and had not participated in a second IOP. After witnessing all of the testimony at the hearing, the DOE psychiatrist testified that she saw no reason to change her assessment of the individual or her specifications regarding rehabilitation or reformation, Tr. at 164, and that the individual had not demonstrated adequate evidence of reformation or rehabilitation. Tr. at 168-169. <sup>4</sup>

In finding that the individual has not demonstrated adequate evidence of reformation or rehabilitation, I note that the *Adjudicative Guidelines* do not require abstinence in order to show mitigation in cases of Alcohol Abuse. *See Adjudicative Guideline G, ¶ 23(b)* (the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions

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<sup>3</sup> However, he indicated that the circumstances in each case needed to be considered, and that the individual had “done a good job” regarding alcohol in the months since her accident. Tr. at 158.

<sup>4</sup> On cross-examination, the DOE psychiatrist did opine that the individual’s risk of relapsing into drinking “in the foreseeable future” was “very low.” Tr. at 186. However, given the totality of her testimony and the vagueness of the phrase “in the foreseeable future,” I did not view this statement as contradicting the DOE psychiatrist’s conclusions regarding the individual.

taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)). However, I believe that the individual's repeated use of alcohol after the recommendation of abstinence by her psychologist, and during her treatment for alcohol abuse, was itself irresponsible. Moreover, her inability or unwillingness to abstain for one year calls into question her ability to establish a long term pattern of responsible use. The individual has not adequately addressed the DOE's security concerns under criterion (j).

## **V. CONCLUSION**

For the reasons set forth above, I find that significant security concerns remain regarding the individual's alcohol usage. Consequently, I cannot conclude that restoring her access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not restore the individual's security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer  
Administrative Judge  
Office of Hearings and Appeals

Date: August 18, 2015