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

In the Matter of: Personnel Security Hearing)
)
Filing Date: June 5, 2015)
_____)

Case No.: PSH-15-0046

Issued: August 11, 2015

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXX X. XXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should be granted at this time.²

I. BACKGROUND

The Individual is an applicant for a DOE security clearance. In October 2005, police arrested the Individual and charged him with Minor in Possession of Alcohol (MIP). The Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual on January 9, 2015, and sponsored a forensic psychological evaluation of the Individual which occurred on March 13, 2015. Because the PSI and forensic psychological evaluation raised concerns about the extent and frequency of the Individual’s alcohol consumption, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him 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. *See* 10 C.F.R. § 710.21. 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 8, 2015.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his co-habitant, his friend, his supervisor, and a DOE consultant psychologist (the

¹ 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.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.doe.gov/OHA>.

Psychologist). *See* Transcript of Hearing, Case No. PSH-15-0046 (hereinafter cited as “Tr.”). The LSO submitted nine exhibits, marked as Exhibits 1 through 9, while the Individual submitted one exhibit, which is marked as Exhibit A.

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

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That 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.

Criterion H refers to information indicating that the Individual has: “An illness or mental condition of a nature which, in the opinion of a . . . licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Specifically, the Notification Letter alleges that a psychologist “concluded that [the Individual] is a user of alcohol habitually to excess, without adequate evidence of rehabilitation or reformation” which in the opinion of the Psychologist “is an illness or mental condition, which causes, or may cause a significant defect in his judgment or reliability.” Exhibit 1 at 1. These circumstances adequately justify the DOE’s invocation of Criterion H, and raise significant security concerns. The 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) state that an opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, reliability, or trustworthiness, raises a security concern under Adjudicative Guideline I at ¶¶ 27 and 28(b).

Criterion J refers to information indicating that the Individual has: “Been, or is, a user of alcohol habitually to excess...” 10 C.F.R. § 710.8(j). Specifically, the Notification Letter alleges that the Psychologist “concluded that [the Individual] is a user of alcohol habitually to excess, and that the Individual has admitted that he consumes “one to two, 16 ounce beers, two to three times a week,” and “becomes intoxicated one to two times per month when he consumes more than three alcoholic drinks.” Exhibit 1 at 1. These circumstances adequately justify the DOE’s invocation of Criterion J, and raise significant security concerns. The Adjudicative Guidelines provide that “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 Guideline G at ¶ 21.

Adjudicative Guideline G sets forth a series of conditions that could raise a security concern and may be disqualifying, including: (a) alcohol-related incidents away from work, . . . or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; . . . (c) 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; . . . [and] (g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.” Adjudicative Guideline G at ¶ 22(a), (c), and (g).

III. REGULATORY STANDARDS

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. FINDINGS OF FACT AND ANALYSIS

The Individual has history of one alcohol-related arrest, which occurred almost ten years ago. In October 2005, he was arrested and charged with MIP. He was 19 years old at the time of this arrest.

During his January 9, 2015, PSI, the Individual stated that the MIP charge occurred when he was a sophomore in college. Exhibit 8 at 11. At the time of this arrest, the Individual had a BAL of .07 percent. Exhibit 8 at 16. The Individual further admitted that he had violated the terms of his probation for that offense by consuming alcohol once a month. Exhibit 8 at 23. The Individual stated that he would become intoxicated when he consumed over three alcoholic beverages, depending upon the time period over which the alcoholic beverages are consumed. Exhibit 8 at 37, 61. The Individual stated that he consumed alcohol two to three times a week. Exhibit 8 at 57. He then stated that he gets a six-pack a week and has two beers at a sitting. Exhibit 8 at 59. The Individual indicated that he would get intoxicated once every other week. Exhibit 8 at 60-61. He recalled becoming intoxicated on New Year's Eve. Exhibit 8 at 64. He further recalled becoming intoxicated at a research workshop he had attended the week before the PSI.³ Exhibit 8 at 66. The Individual reported having a hangover once every two months. Exhibit 8 at 70.

At the request of the LSO, the Psychologist evaluated the Individual on March 13, 2015. Exhibit 6 at 2. In addition to conducting a one-hour forensic psychological interview of the Individual, the Psychologist reviewed the Individual's personnel security file. Exhibit 6 at 6. After completing his evaluation of the Individual, the Psychologist issued a report (the Psychological Report) on March 13, 2015, in which he found that the Individual had a mental condition: “Being a user of alcohol habitually to excess” which, he opined, causes, or may cause, a significant defect in judgment or reliability. Exhibit 6 at 5. The Psychologist further opined that the Individual was

³ Accordingly, the Individual admitted that he had become significantly intoxicated on two occasions during the nine days preceding the January 9, 2015, PSI. In fact, the Individual admitted consuming six alcoholic beverages at the research workshop, and two shots of vodka, four beers and from 6 to 12 ounces of champagne on New Year's Eve. Exhibit 8 at 61-66.

neither reformed nor rehabilitated because the Individual had last become intoxicated two months prior to his psychological examination, and therefore, according to the Psychologist, had not had sufficient time to demonstrate self-control. Exhibit 6 at 5. The Psychologist found that the Individual needed to limit his consumption of alcohol to two or three drinks on most occasions for a period of six months in order to demonstrate “adequate evidence of rehabilitation or reformation.” Exhibit 6 at 11.

At the hearing, the Individual testified that he did not believe that he has a problem with alcohol. Tr. at 43. He noted that the term “intoxication” can be somewhat ambiguous. He further stated that if intoxication is defined as having a blood alcohol level of .08, he is only intoxicated a few times a year. Tr. at 58-59, 61. The Individual testified that he began consciously limiting his drinking to two or three drinks at a sitting after his January 9, 2015, PSI (over six months prior to the hearing). Tr. at 69-70. The Individual further testified that he intends to avoid drinking to intoxication in the future. Tr. at 73, 77. In order to avoid intoxication, the Individual testified that he intends to drink no more than two or three alcoholic beverages in a sitting, spread out over a period of several hours. Tr. at 73, 77. The Individual’s witnesses corroborated his description of his alcohol consumption since the PSI.

Before he testified at the hearing, the Psychologist observed each of the other witnesses’ testimony. The Psychologist admitted that, at the time he evaluated the Individual, he was not drinking “to a large level of intoxication.” Tr. at 84. The Psychologist testified that since that time the Individual had fully complied with his recommendations and had therefore demonstrated adequate reformation. Tr. at 86.

After carefully considering the evidence in the record, I find that the Individual has mitigated the security concerns raised by his use of alcohol habitually to excess, by establishing that he has significantly moderated his alcohol intake and now uses alcohol in a responsible, controlled manner. Moreover, I am convinced that the Individual has modified his behavior so that, going forward, his alcohol consumption is unlikely to present an unacceptable risk to national security.

V. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H, and J. However, after considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has sufficiently mitigated the Criteria H and J security concerns. Accordingly, the Individual has demonstrated that granting his request for a security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be granted at this time. The LSO 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 11, 2015