

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

In the Matter of Personnel Security Hearing)

Filing Date: May 25, 2016)
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Case No.: PSH-16-0041

Issued: September 14, 2016

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXXX XXXXXX (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 fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should be restored.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. In November 2015, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address concerns about his alcohol use. In addition to the PSI, the LSO requested the individual’s medical records

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.

and recommended a psychological evaluation of the individual by a DOE consultant psychologist (DOE psychologist). The DOE psychologist examined the individual in January 2016 and memorialized his findings in a report (Psychological Report). According to the DOE psychologist, the individual uses alcohol habitually to excess, and currently meets the *Diagnostic and Statistical Manual of Mental Disorders IVth Edition TR (DSM-IV-TR)* criteria for Alcohol-Related Disorder NOS. The DOE psychologist further concluded that the individual had not demonstrated adequate

evidence of rehabilitation or reformation.

In April 2016, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (j) (hereinafter referred to as Criterion J).²

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Administrative Judge in this case. At the hearing that I convened, the individual presented his own testimony. The DOE Counsel called one witness, the DOE psychologist. Both the LSO and the individual submitted a number of written exhibits prior to the hearing.

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 denial”); *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 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 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 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 in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites one criterion as a basis for suspending the individual's security clearance: Criterion J. To support Criterion J, the LSO cites the DOE psychologist's opinion that the individual uses alcohol habitually to excess, and meets the DSM-IV-TR criteria for Alcohol-Related Disorder NOS. The LSO also cites the individual's admission to consuming one to two glasses of wine nightly in order to help him sleep. *See* DOE Exh. 1.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under Criterion J. The excessive consumption of alcohol itself 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* Guideline G of 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).

IV. Findings of Fact

The individual began drinking alcohol in 1977 at the age of 19 or 20, when he consumed beer for the first time. Over the following ten years, he estimated that he would consume alcohol one time per week, drinking an average of three beers on each occasion. In the mid-1980's, the individual estimated that he consumed alcohol five times per year on special occasions, such as weddings or other family events. From 2004 to 2010, the individual reported that his alcohol consumption increased to approximately two times per month and would typically consist of one to two glasses of wine per instance. In 2010, the individual began having some medical issues, including ongoing problems with sleep. He developed the routine of consuming one to two glasses of wine four to five nights per week to help him sleep so that he could be rested for work. The individual reported that he does not drink alcohol on the weekends and does not consume alcohol to the point of intoxication. During a personnel security interview (PSI) conducted on November 3, 2015, when questioned about his alcohol consumption, the individual admitted that he consumed one to two glasses of wine nightly in order to help him sleep. Although he was prescribed a sleep medication aide by his primary care physician, the individual admitted that he consumes alcohol four to five work nights in order to assist in sleeping. He further admitted that this pattern of almost nightly usage has been taking place since approximately 2010. Exh. 4.

Based on this information, the individual was referred to the DOE psychologist for an evaluation. During the evaluation, the psychologist concluded that the individual uses alcohol habitually to excess and currently meets the DSM-IV-TR criteria for Alcohol-Related Disorder NOS. He further concluded that the individual's alcohol consumption to help with sleep and to manage stress constitutes a problematic pattern of use. Although the individual has successfully reduced his level of stress in the past few years, the psychologist opined that the individual needs to be more thoughtful and intentional about his use of alcohol and recommended that the individual work more closely with his physicians to better manage his sleep difficulties and to continue to develop better strategies for stress management. *Id.*

V. Analysis

I have thoroughly considered the record in 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)³ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. Based on the facts in this record, I 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.

A. Evidence of Rehabilitation and Reformation from Alcohol-Related Disorder

During the hearing, the individual acknowledged that he consumed two glasses of wine per night, except weekends, to help him fall asleep. Transcript of Hearing (Tr.) at 12. He testified that he has sleep apnea and wanted to discontinue his use of sleeping pills because he did not like taking the medication. *Id.* He further testified that his sleep medication caused other physical problems, including fatigue and grogginess. *Id.* According to the individual, he began drinking wine in the evenings in an effort to get off of his medication, and denies that he drank wine nightly to manage stress. *Id.* at 12-14. He stated that he did not believe that two glasses of wine was excessive. *Id.* at 14. The individual testified that, as recommended by the DOE psychologist, he has addressed his sleep apnea problem. He has spoken to his physician about changing his medication and has been prescribed a lower dose sleep medication. *Id.* at 13. Most significantly, the individual is now using a Continuous Positive Airway Pressure (CPAP) machine and testified that he is now getting a good night's sleep with the combination of the CPAP machine and a low dose sleep medication. *Id.* at 15.

With respect to his current alcohol use, the individual testified that he drinks a minimal amount of wine. *Id.* at 16. He estimated that during the month of August he only had five glasses of wine. *Id.* He again testified that he has never drunk to intoxication. *Id.* The individual also stated that

³ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his 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.

his physician referred him for an intake appointment with chemical dependency services to evaluate his alcohol use as a sleep aid. His chemical dependency evaluation indicated that he is not chemically dependent on alcohol and no treatment was recommended for the individual. *Id.* at 17, Ex. A. The individual testified that he does not believe he has an alcohol problem. *Id.* at 18. He reiterated that, based on the advice of the DOE psychologist, he has worked closely with his physician to change his medication and utilize the CPAP machine for his sleep apnea. *Id.* The individual states that he now feels good, and he does not have cravings for alcohol. He also testified that it has been about six months since he stopped drinking wine at night to fall asleep. *Id.* at 30. The individual testified that his future intention is to only consume alcohol on a social basis, in moderation. *Id.* at 28.

The DOE psychologist listened to all the testimony at the hearing before testifying himself. He testified that after evaluating the individual in January 2016, he diagnosed him with Alcohol-Related Disorder NOS based on the fact that the individual's consumption of alcohol to help with sleep or to manage stress constitutes a problematic pattern of use. Ex. 4. At the time of his evaluation, he recommended that the individual work more closely with his physician to better manage his sleep difficulties and to continue to develop better strategies for stress management. *Id.* During the hearing, the DOE psychologist testified that he was pleased that the individual has followed his recommendations and taken steps to address the concerns related to his alcohol use. *Id.* at 33. He noted that it has been six months since the individual last consumed alcohol habitually at night to fall asleep and that he does not have cravings for alcohol. He further noted that the individual is using a CPAP machine and taking a lower dose of medication to address his sleep apnea. The DOE psychologist also testified that the individual's current level of stress is moderate and noted that the individual has developed strategies such as going for walks and socializing to reduce stress. Given the individual's level of alcohol consumption now as well as the steps he has taken to address alcohol concerns, the DOE psychologist opined that the individual has achieved adequate rehabilitation. *Id.* at 34. He further opined that the individual has a good prognosis. *Id.* Finally, the DOE psychologist testified that the individual does not currently have an illness or mental condition that causes or may cause a significant defect in his judgment or reliability. *Id.* at 36.

B. Administrative Judge's Evaluation of the Evidence

In the administrative process, Administrative Judges accord deference to the expert opinion of psychiatrists, psychologists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing, Case No. TSO-0728 (2009)*.⁴ At the outset, I am persuaded by the testimony of the DOE psychologist that the individual has achieved adequate evidence of rehabilitation. Moreover, the Adjudicative Guidelines describe factors that could mitigate security concerns involving psychological conditions and alcohol consumption. *See Adjudicative Guideline, Guidelines G*. In this case, the individual has satisfied the following mitigating factors: (1) the individual has acknowledged his alcohol problem, provided evidence of actions taken to address his problem and has established a pattern of responsible use; (2) the individual has received a favorable prognosis by a duly qualified medical professional; and (3) the

⁴ Decisions issued by 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>.

DOE psychologist has opined that the individual's condition has a low probability of recurrence and that he has a good prognosis. *Id.* For these reasons, I find that the individual has sufficiently resolved the DOE's security concerns under Criterion J.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Criterion 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 find that the individual has brought forth convincing evidence to resolve the security concerns associated with Criterion J. I therefore find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Officer of Hearings and Appeals

Date: September 14, 2016