

the security regulations at 10 C.F.R. § 710.8(h) and (j) (hereinafter referred to as Criterion H and Criterion J).²

After receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. The LSO forwarded this request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Administrative Judge. At a hearing convened pursuant to § 10 C.F.R. § 710.25 (e) and (g), the DOE introduced ten exhibits (DOE Exs. 1-10) into the record and presented the testimony of a DOE psychiatrist. The Individual presented his own testimony, the testimony of one co-worker, his wife, his Alcoholics Anonymous (AA) sponsor, his psychologist, and introduced five exhibits (Ind. Exs. A-E). *See* Transcript of Hearing, Case No. PSH-16-0047 (Tr.).

II. Regulatory Standard

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictates 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 and 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 [or her] 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). This standard implies that there is a presumption against granting or restoring a security clearance. 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); *see also Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard indicates “that security determinations should err, if they must, on the side of denials”).

III. Notification Letter and Associated Security Concerns

As previously noted, the LSO cites Criteria H and J as the basis for suspending the Individual’s security clearance. The LSO cites the Individual’s alcohol-related arrest in August 2015, and an

² Criterion H refers to information indicating that an individual has “[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 references information showing that an individual 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).

evaluative report from the DOE psychiatrist opining that the Individual suffers from Alcohol Dependence with Physiological Dependence in Early Full Remission without adequate evidence of rehabilitation or reformation, as Criteria H and J derogatory information. Ex. 1; see Ex. 4 at 7-8. 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 Guidelines, Guideline G, at ¶ 21.

IV. Hearing Testimony and Evidence

The Individual was arrested for DUI in August 2015. DOE Ex. 1 at 3; DOE Ex. 7; DOE Ex. 8; DOE Ex. 9; Ind. Ex. E; Tr. at 56. Immediately after his DUI, the Individual notified his supervisor and began searching for an inpatient treatment program (ITP). Tr. at 55, 56. Prior to entering the ITP, approximately 10 days after the DUI, the Individual met with his psychologist twice. Tr. at 56. The ITP diagnosed the Individual with alcohol use disorder, severe. DOE Ex. 6 at 4. The Individual's psychologist and the DOE psychiatrist agreed with the ITP's diagnosis. Tr. at 75, 81; DOE Ex. 4 at 8.

The Individual and his wife both testified that the Individual has not had an alcoholic beverage since his DUI on August 16, 2015. Tr. at 25-26. The Individual, his wife, and his sponsor testified that the Individual is attending AA regularly. Tr. at 15, 26, 58. The Individual's sponsor testified that they meet weekly to work on the AA steps, and he is presently working on step 3 of the 12 steps. Tr. at 14.

In his report, the DOE psychiatrist opined that the Individual needed to be abstinent for nine months to be considered rehabilitated or reformed. DOE Ex. 4 at 9. As of the date of the hearing, the Individual had been abstinent for almost one year. Tr. at 25-26. Both the Individual's psychologist and the DOE psychiatrist testified that, after hearing all the testimony, they believed that the Individual had shown adequate evidence of reformation and rehabilitation and that his risk of relapse was low. Tr. at 80, 82.

V. Administrative Judge's Findings and 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 be restored. 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.

As an initial matter, I find that the LSO has properly raised security concerns under Criteria H and J, regarding the Individual's alcohol use and diagnosis. Alcohol-related incidents, such as driving while under the influence and a diagnosis by a duly qualified medical professional of alcohol dependence, are specifically mentioned in the Adjudicative Guidelines as a condition that could raise a security concern. Adjudicative Guidelines, ¶ 22(a), (d). The Individual does not dispute the diagnosis or that his DUI occurred.

In considering whether the Individual has resolved the properly raised security concern, I must look to the Adjudicative Guidelines in evaluating the evidence before me. The relevant paragraph lists conditions that could mitigate this type of security concern, including:

- (b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);
- (c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;
- (d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Adjudicative Guidelines, ¶ 23(a)-(d).

Given the above factors, I find that the Individual has resolved the security concerns raised by the LSO. With respect to ¶ 23(b), the Individual acknowledges his alcohol disorder. He did not dispute either the ITP or DOE psychiatrist's diagnosis. Immediately following his DUI, he began researching inpatient treatment programs, finally selecting the ITP he attended. In addition, he began seeing his psychologist prior to going to the ITP. He has not had an alcohol beverage since his DUI and admitted to his wife the day after his DUI that he had a problem. Similarly, regarding ¶ 23(c), the Individual is a current employee who is presently participating in one-on-one counseling and attending AA. He has no history of previous treatment or relapse and according to both experts is making excellent progress. Finally, the Individual successfully completed the ITP and is attending AA, as required by the ITP and suggested by the DOE psychiatrist. The Individual's AA sponsor said that he is working the steps appropriately.

Finally, I must note that both the Individual's psychologist and the DOE psychiatrist opined that the Individual's risk of relapse is very low. The Individual's psychologist testified that his risk of relapse is the lowest possible percentage. Tr. at 80. The DOE psychiatrist stated that his risk of relapse was very low. Tr. at 82.

Based on the foregoing, I find that the Individual has resolved the security concerns raised by his August 2016 DUI and subsequent diagnosis of Alcohol Use Disorder, Severe.

VI. Conclusion

In the above analysis, I have found that there was derogatory information in the possession of the DOE that was sufficient to raise 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 brought forth sufficient evidence to resolve the security concerns associated those criteria. I therefore 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 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.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals

Date: September 1, 2016