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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: July 11, 2016)

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Case No.: PSH-16-0063

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Issued: September 30, 2016

Administrative Judge Decision

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXX (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."¹ For the reasons set forth below, I conclude that the individual's security clearance should be restored.²

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor, and was granted a security clearance in connection with that employment. In December 2015, the individual was arrested for Driving Under the Influence of Alcohol (DUI). Because this information raised significant security concerns, the Local Security Office (LSO) summoned the individual for an interview with a personnel security specialist in February 2016. After this Personnel Security Interview (PSI) failed to resolve the concerns, the LSO referred the individual to a local psychologist (hereinafter referred to as "the DOE psychologist) for an agency-sponsored

¹An 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.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>.

evaluation. The DOE psychologist prepared a written report based on that evaluation, and submitted it to the LSO.

In her report, she concluded that the individual did not suffer from any diagnosable mental or emotional disorder. However, she found that he habitually used alcohol to excess, and that this practice caused, or could cause, a significant defect in his judgment or reliability. In order to demonstrate rehabilitation or reformation from his pattern of excessive use, the DOE psychologist stated that the individual would have to complete an alcohol outpatient program of at least eight weeks' duration, comply with all recommendations made by his treatment providers, and demonstrate a responsible pattern of alcohol use for an additional four months, consisting of no more than two drinks on any given occasion. DOE Exhibit 7 at 11.

After reviewing this 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 he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning his 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 10 exhibits into the record of this proceeding and presented the testimony of the DOE psychologist at the hearing. The individual introduced seven exhibits and presented the testimony of two witnesses, in addition to testifying himself.

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 relies on the DOE psychologist's report and on the individual's December 2015 and November 2005 DUI arrests.

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

At the hearing, the individual did not contest the allegations set forth in the Letter or the DOE psychologist’s findings. Instead, he attempted to demonstrate, through his own testimony and that of his supervisor and his friend, that he no longer consumes alcohol to excess, and that he is not currently suffering from any defect in his judgment or reliability.

The individual testified that he has not consumed any alcohol since his clearance was suspended in May 2016, approximately four months prior to the date of the hearing. Hearing Transcript (Tr.) at 31. He said that he quit drinking after thinking about the things that the DOE psychologist said to him during his evaluation, and about the effects that alcohol had had on his life. Tr. at 32. He does not keep alcohol in his house. Tr. at 35. The individual then talked about the therapy that he has received. After his arrest, he participated in a court-ordered 12 week DUI education program and later in a voluntary 12 week alcohol treatment program. Tr. at 37. In these programs, he learned about the physiological effects of alcohol abuse, the underlying causes of his excessive drinking, and ways of coping with the urge to consume alcohol and with situations that could lead to such consumption. Tr. at 40-41. He further testified that he intends to

enroll in a relapse prevention program at the same facility at which he participated in voluntary treatment, that he does not experience urges to drink, and that he has no intention of drinking again. Tr. at 43-44, 55.

The individual's supervisor testified that he has not seen any signs at work of alcohol abuse on the part of the individual, and that the individual is reliable and trustworthy. Tr. at 14, 16-17. The individual's friend stated that he has not seen the individual consume any alcohol since the date of his DUI arrest or seen any alcohol in the individual's home, and that the individual takes his treatment program seriously. Tr. at 23, 25, 28.

After hearing all of this testimony, the DOE psychologist testified. She concluded that the individual had done everything that she had recommended, and that he was now demonstrating adequate evidence of rehabilitation and reformation. Tr. at 61. She described his risk of returning to an abusive pattern of drinking as "low," and his prognosis as "favorable." Tr. at 62-63. In support of these conclusions, she cited the ending of his dysfunctional marriage, which she believed triggered some of his drinking, and the quality of his treatment program. Tr. at 62.

Based on this testimony and on the record as a whole, I also conclude that the individual is now exhibiting adequate evidence of reformation and rehabilitation. In this regard, I find it significant that the individual was not diagnosed with an alcohol use disorder. I also believe that the education and treatment that the individual has received has raised his awareness of the effects of excessive alcohol consumption, and provided him with the tools necessary to control that consumption. Finally, his testimony convinced me that he is taking his recovery seriously and applying the lessons that he has learned to his daily life. I therefore find that he has adequately addressed the DOE's security concerns regarding his alcohol usage.

V. CONCLUSION

As set forth above, I conclude that no valid security concerns remain under criteria (h) and (j). Consequently, I find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. I therefore conclude that the DOE should restore the individual's security clearance. 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: September 30, 2016