

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

In the Matter of Personnel Security Hearing)
)
Filing Date: June 3, 2016) Case No.: PSH-16-0046
)
_____))

Issued: November 15, 2016

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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 discussed below, after carefully considering the record before me, I have determined that the DOE should not restore the Individual’s access authorization.

I. Background

The Individual is employed by a DOE facility in a position that requires him to hold a security clearance. In April 2015, the Individual was escorted off an airplane due to the aircrew’s belief that the Individual was suffering from alcohol intoxication (April 2015 Incident). Exhibit (Ex.) 9 at 1. The Local security office (LSO) then conducted a personnel security interview with the Individual in May 2015 (May 2015 PSI). Ex. 10. Later, the LSO referred the Individual for a forensic psychiatric examination by a DOE-contractor psychiatrist (DOE Psychiatrist). Ex. 3. Because neither the forensic psychiatric examination nor the May 2015 PSI resolved the concerns arising from the April 2015 Incident or his history of other alcohol-related incidents, the LSO

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.

informed the Individual, in an April 2016 letter (Notification Letter), that it had reliable information that created a substantial doubt regarding the Individual's eligibility to hold a security clearance. Ex. 1.

The Notification Letter explained that the derogatory information fell within the purview of the potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (j) and (l) (Criteria H, J and L respectively).² The Notification Letter also cited Guidelines E (Personal Conduct), G (Alcohol Consumption) and I (Psychological Conditions) of the Revised Adjudicative Guidelines for Determining Eligibility for Access Classified Information. *See Revised Adjudicative Guidelines for Determining Eligibility for Access Classified Information, The White House (December 19, 2005) (Adjudicative Guidelines).*

Upon his receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. The DOE submitted 14 Exhibits (Exs. 1-14) into the record and presented the testimony of the DOE Psychiatrist. At the hearing, the Individual presented his own testimony along with seven Exhibits (Ex. A-G). *See Transcript of Hearing, Case No. PSH-16-0046 ("Tr.")*.

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 (1998) ("clearly consistent with the national interest standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *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).

An individual must come forward 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

² Criterion H describes information demonstrating 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 indicating 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). Criterion L refers to information that suggests that an individual has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l).

present evidence supporting his or her 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 evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the 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 eligibility in favor of the national security. *Id.* In considering these factors, the Administrative Judge also consults the Adjudicative Guidelines that set forth a more comprehensive listing of relevant factors and considerations.

III. The Notification Letter and the Security Concerns at Issue

As Criteria H, J, and L derogatory information, the LSO cites the April 2015 Incident along with a 2010 arrest for driving under the influence of alcohol (DUI), a 2010 incident (2010 Incident) where the Individual missed his flight for government-related travel because of his alcohol use and a November 2014 incident where his supervisor asked him about his possible use of alcohol while on the job. Additionally, the LSO cited three incidents, two occurring in October 2015 (October 2015 Incidents) and one in December 2015 (December 2015 Incident) where the Individual's supervisor smelled alcohol on his breath during working hours. Also cited as Criteria H, J, and L derogatory information, was a report by the DOE Psychiatrist diagnosing the Individual as suffering from alcohol abuse. The LSO cited, as Criterion L derogatory information, the Individual's admission, during a May 2015 personnel security interview, that he believed his behavior during the April 2015 Incident resulted from being under the influence of Ambien, a prescription sleep medication for which he had not been prescribed.³ Given the Individual's admission in the May 2015 PSI and the DOE Psychiatrist's Report, I find that the LSO had sufficient grounds to invoke Criteria H, J, and L.

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. Adjudicatory Guidelines, Guideline G at ¶ 21. Further, certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. Adjudicatory Guidelines, Guideline I at ¶ 27. Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's

³ The Individual stated during the May 2015 PSI that he had obtained this medication legally while overseas. Ex. 10 at 25.

reliability, trustworthiness and ability to protect classified information. Adjudicatory Guidelines, Guideline E at ¶ 15.

IV. Findings of Fact

The Individual admits that he has an alcohol problem and essentially does not dispute the derogatory information recorded in the Notification Letter.⁴ Tr. at 11-12, 15. The Individual testified that three months after his 2010 arrest for DUI he began to attend Alcoholic Anonymous (AA) and began to see a licensed clinical social worker (Therapist). Tr. at 12, 56. The Individual currently sees his Therapist once every two weeks. Tr. at 56. He stopped consuming alcohol for a period of approximately 26 months. However, while attending AA meetings, the Individual did not actively work on the recommended 12 steps of the AA program. Tr. at 31-32, 62.

Sometime in 2013, the Individual again began to consume alcohol. Tr. at 32. After the April 2015 incident, the Individual recognized that he had a significant problem regarding alcohol and decided to seek intensive treatment. Tr. at 33. In December 2015, the Individual sought help from a physician (Physician) regarding his alcohol problem. Tr. at 35.

During 2016, the Individual experienced three separate occasions where he relapsed and consumed alcohol. Tr. at 38. The most recent relapse occurred when the Individual received a copy of the DOE's Exhibits in this matter during the summer of 2016. Tr. at 35-36. In July 2016, the Individual then decided to enter an eight day detoxification program at a local treatment facility. Tr. at 36. At the treatment facility, the Individual was eventually prescribed a prescription medication, Antabuse, which produces discomfort if the Individual consume alcohol. Tr. at 36. Additionally, the Individual was prescribed another medication to reduce his craving for alcohol. This prescription has recently been discontinued. Tr. at 36-37, 41.

The Individual is also currently participating an intensive outpatient treatment program (IOP) at a treatment facility. Tr. at 36. He currently speaks to a substance abuse counselor once a week. Tr. at 37, 56. While participating in the IOP, the Individual is subject to breath and blood tests to detect the use of alcohol. Tr. at 38, 59. During his participation in the IOP, the Individual has attended approximately 100 AA meetings and intends to participate in AA meetings for the rest of his life. Tr. at 37, 40-41. As of the date of the hearing, the Individual has been abstinent from

⁴ The Individual challenged the factual accuracy of the derogatory information regarding the October 2015 Incidents and the December 2015 Incident. Tr. at 19. Specifically, the Individual asserts that the supervisor involved with the incidents had engaged in a pattern of harassment and bullying and had made another false allegation that required the Individual to undergo another personnel security interview. Tr. at 19. The Individual testified that during these incidents he volunteered to take an alcohol test but that the DOE facility did not have the means to perform such a test. Tr. at 20, 23. The Individual has also submitted a letter from a co-worker alleging a hostile workplace environment. Ex. G at 1. As described *infra*, the Individual admits that he has an alcohol problem and asserts that he is sufficiently rehabilitated to have his clearance restored. Despite this evidence, I do not find sufficient evidence before me to discount the October 2015 Incidents or the December 2015 Incident. However, these incidents are not directly relevant to my determination regarding the Individual's rehabilitation.

alcohol for 37 days. Tr. at 39. As part of the IOP, the Individual is required to talk daily to two other individuals who suffer from substance abuse problems.

The Individual believes that he is now better able to manage stress. When he first met with his Physician, he was uncomfortable with the Physician's determination that he had "relapsed into alcoholism." Tr. at 58. Now the Individual accepts this fact and realizes that he will have to deal with this problem for the rest of his life. Tr. at 58. He now is able to deal with triggers for alcohol consumption. Tr. at 58. If tempted to consume alcohol, the Individual plans to immediately attend an AA meeting. Tr. at 59. Further, he believes now that he has a better medical support team to help him maintain sobriety. Tr. at 62.

As for his use of Ambien, the Individual was able to obtain Ambien because it is available outside of the U.S. without a prescription. Tr. at 26. Because the Individual travelled internationally for his job, he would take Ambien to help him sleep. The Individual no longer takes Ambien and has been prescribed a different sleep medication. Tr. at 27-28.

A Behavioral Health Coordinator (Coordinator), who is a licensed therapist, testified that she works with the Individual to provide support services and coordinate the Individual's care. Tr. at 47. She has been working with him since May 2016. Tr. at 48. The Individual has been receptive towards her suggestions regarding treatment. Tr. at 49. The Individual has an AA sponsor and an AA home group. Tr. at 49. The Individual has reached out to her when he experiences "periods of struggle." Tr. at 49. The Individual accepted her recommendation regarding his need to enter a detoxification program and has reached out to her during periods where he has had cravings. Tr. at 50. The Coordinator believes that the Individual has a social support network but is not familiar with the individuals that comprise his support network. Tr. at 51.

The Coordinator testified that the Individual has been attending his IOP faithfully. Tr. at 51-52. In the Coordinator's opinion, the Individual has been one of the most dedicated in working towards recovery. Tr. at 52. She characterizes the Individual's attitude as "[t]ell me what I need to do and I will do it." Tr. at 53. The Individual has also demonstrated significant insight recently in recognizing that he cannot "fix" other people's problems. Tr. at 53-54.

The DOE Psychiatrist testified that after hearing the hearing testimony, he believes that the Individual suffers from alcohol dependence. Tr. at 66. He also believes that the Individual is serious about his rehabilitation and now accepts the fact that he has an alcohol problem. Tr. at 67. The DOE Psychiatrist testified that, if the Individual maintains his dedication to his treatment program, the Individual's prognosis is "very good." Tr. at 68-69. However, the DOE Psychiatrist further testified that, in order to make an accurate assessment as to the Individual's ability to maintain his sobriety, the Individual would have to maintain sobriety for a minimum period of six months. Tr. at 73-74.

With regard to the Individual's use of Ambien, the DOE Psychiatrist testified that he had visited a pharmacy in another country and Ambien is indeed available without a prescription. Tr. at 69. He

also testified that he believes that the Individual was using Ambien for sleep and that he does not now find that the Individual has a problem with Ambien that requires specific treatment. Tr. at 69.

V. 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 security clearance should not be restored at this time.

With regard to the Criteria H and J derogatory information, the Individual has not presented sufficient evidence whereby I can find that the concerns raised by his alcohol problem have been resolved. I believe that the Individual is very committed to his treatment program. *See* Ex. E (letter from Therapist). In this regard, the DOE Psychiatrist testified that the Individual has now accepted that he has a serious alcohol problem. Tr. at 67. Nevertheless, as of the date of the hearing, the Individual has been abstinent from alcohol for a relatively brief period (37 days) and he has not yet completed his IOP. Tr. at 39, 72. I also find it significant that the Individual's problem with alcohol has been long standing. *See* Tr. at 70. Significantly, the DOE Psychiatrist testified that in order to have better assurance that the Individual will not relapse, a period of abstinence of at least six months would be required. Tr. at 74. While I believe that the Individual, with a commitment to his current treatment program, could eventually obtain rehabilitation from his alcohol problem, it is too early in his treatment program for me to be able to make a finding that the Criteria H and J concerns have been resolved.

For the same reasons, I also must find that the Criterion L concerns have not been fully resolved.⁵ The Individual has submitted evidence regarding his distinguished service in the military, in other agencies and his excellent work performance. Ex. G. However, this evidence does not outweigh the Individual's significant alcohol problem and the preliminary state of his recovery. In making these determinations, I find that none of the relevant Adjudicatory Guideline mitigating factors are applicable in this case. *See* Adjudicative Guidelines, Guideline G at ¶ 23; Adjudicative Guidelines, Guideline I at ¶ 29; Adjudicative Guidelines, Guideline E at ¶ 17.

VI. Conclusion

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the Individual's eligibility for a security clearance under Criteria H, J, and L of the Part 710 regulations. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other

⁵ With regard to the Individual's purchase of Ambien and the allegation that the Individual could have a problem with Ambien misuse, I find that there is no evidence in the record which indicates that the Individual improperly obtained Ambien in violation of U.S. law. Further, I found the DOE Psychiatrist's testimony persuasive as to his finding that the Individual does not have a problem regarding his prior Ambien use.

evidence presented at the hearing, I find that the Individual has not presented sufficient information to resolve the security concerns raised by the Criteria H, J, and L derogatory information recorded in the Notification Letter. Thus, I cannot conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, I find that the Individual's access authorization should not be restored at this time.

Richard A. Cronin, Jr.
Administrative Judge
Official of Hearings and Appeals

Date: November 15, 2016