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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 26, 2016) Case No.: PSH-16-0068
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Issued: October 31, 2016

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxxxxx (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 her to hold a DOE security clearance. In February 2016, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address concerns about her alcohol use. In addition to the PSI, the LSO requested the individual’s medical records and recommended a psychological evaluation of the individual by a DOE consultant psychologist (DOE psychologist). The DOE psychologist examined the individual in April 2016 and memorialized his findings in a report (Psychological Report). According to the DOE psychologist, the individual is a user of alcohol habitually to excess without adequate evidence of rehabilitation or reformation. The DOE psychologist further concluded that the individual’s use of alcohol habitually to excess is a mental illness that causes or may cause a significant defect in his judgment and reliability.

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.

In June 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 two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j) (hereinafter referred to as Criteria H and J respectively).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 her own testimony and that of four witnesses. The DOE Counsel called one witness, the DOE psychologist. Both the DOE 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 her 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 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 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.

B. Basis for Administrative Judge's Decision

² Criterion H relates to information that a person 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 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).

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 two criteria as bases for suspending the individual's security clearance: Criteria H and J. To support Criterion H, the LSO relies on the diagnosis of the DOE psychologist that the individual has been a user of alcohol habitually to excess, and the expert's opinion that the individual's use of alcohol habitually to excess is a mental illness that could cause a significant defect in the individual's judgment and reliability. As for Criterion J, the LSO cites the DOE psychologist's opinion and the individual's alcohol use. *See Ex. 1.*

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under both Criteria H and J. First, a mental condition such as the use of alcohol habitually to excess can impair a person's judgment and reliability and trustworthiness. *See* Guideline I 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). Second, 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 id.* at Guideline G.

IV. Findings of Fact

The individual has a history of alcohol use beginning at approximately 18 years of age, when she entered college. During her freshman year, the individual learned to drink heavily, becoming intoxicated on average once a week. According to the individual, there were periods when she drank to intoxication three nights a week and other times where she did not drink for several weeks at a time. This pattern of drinking characterized her consumption of alcohol until about age 24. Between ages 28 and 40, the individual stated that her consumption of alcohol varied depending on her stress level. She described her drinking between the ages of 40 and 45 as mild. She admitted to drinking two to four glasses of wine, two to three nights a week with dinner. In the summer of 2015, the individual's drinking increased to a bottle of wine six or seven days a week. The individual stated that the increase of her alcohol consumption was due to mounting stress with her supervisor. Ex. 1 and 4.

On December 9, 2015, shortly after she arrived at work, the individual's supervisor smelled alcohol on her breath. She was immediately escorted to occupational medicine where two breath tests were performed as well as a urinalysis. The individual tested positive for alcohol, registering .034 on the breathalyzers. She admitted that she reported to work around 9:00 am after consuming three drinks of Bourbon and Coke between the hours of 2:30 am and 4:30 am. According to the

individual, the night before, she had been working at home until about 1:30 am and attempted to go to sleep around 2:30 am. However, she stated that she could not fall asleep and had “racing thoughts” because she could not stop thinking about the tasks she had to complete for a project at work. She stated that she poured herself a “stiff” bourbon drink, further stating that she did not measure while pouring the drink. At 4:00 am, the individual stated that she was still awake so she made another Bourbon and Coke drink and then another at about 4:30 am. The individual further stated that when she left for work she did not feel the effects of the alcohol she consumed. *Id.*

Based on this information, the individual was referred to a DOE psychologist for a psychological evaluation. On April 11, 2016, the DOE psychologist evaluated the individual. In his Report, he concluded that the individual is a user of alcohol habitually to excess and under the Diagnostic Statistical Manual of Mental Disorders, 5 (DSM-5) warrants the diagnosis of Substance Use Disorder, mild. The DOE psychologist also concluded that the individual possesses an illness or mental condition, which causes, or may cause, a significant defect in judgment and reliability. *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.

The individual does not dispute the DOE psychologist’s diagnosis that she is a user of alcohol habitually to excess. Therefore, the focus of the analysis will be on whether the individual has demonstrated adequate evidence of rehabilitation or reformation.

A. Evidence of Rehabilitation and Reformation

During the hearing, the individual testified about her December 2015 alcohol-related incident at work. Transcript of Hearing (Tr.) at 66. She readily acknowledged that her alcohol consumption has been excessive at times and testified that she takes full responsibility for her actions. *Id.* at 67. However, the individual testified that since the incident at work, she has actively participated in rigorous alcohol treatment. *Id.* She completed an intensive outpatient treatment program (IOP) on February 29, 2016, and has been participating in weekly aftercare meetings since March 1, 2016. *Id.* at 68. The individual testified that she viewed her IOP as an opportunity to get better physically, mentally and emotionally. *Id.* She further testified that she enjoyed the IOP,

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.

participated fully and learned a great deal about her alcohol problem. *Id.* Before her first day at IOP, the individual started attending Alcoholic Anonymous (AA) meetings. *Id.* at 69. She currently attends daily meetings and is actively working the Twelve Steps of AA with a sponsor. *Id.* In addition to IOP, aftercare meetings and AA meetings, the individual testified that she has a strong support network including her fiancé, who regularly attended IOP and aftercare meeting with her, her mother and friends. *Id.* at 70. Finally, the individual testified that she has been completely abstinent from alcohol since the incident in December 2015, almost ten months. *Id.* at 67. She further testified that she is fully committed to living a life of complete sobriety. *Id.* According to the individual, she has become a new person and has changed her perspective, her priorities and attitude toward life. *Id.* at 71. The individual stated that her urge to drink has been replaced by her faith. *Id.*

During the hearing, the individual also offered the testimony of her IOP therapist, her fiancé, and two of her co-workers. Her IOP therapist, who is a licensed alcohol and drug counselor, testified that the individual entered IOP with a great deal of motivation to succeed and was not in denial. *Id.* at 83. He further testified that the individual's risk of relapse is low, if she continues to work the program, noting that he had high confidence that the individual will continue with her treatment. *Id.* at 86. The individual's fiancé, who has known the individual since 2001, testified that after the individual's December 2015 incident, she immediately confided in both him and the individual's mother. *Id.* at 15. He testified that the individual took complete responsibility for her actions, voluntarily removed alcohol from her home, and immediately began a course of action to address her alcohol problem by entering in an IOP. *Id.* The individual's fiancé corroborated the individual's testimony that she has been completely abstinent from alcohol for about ten months. *Id.* at 16. He further testified that since her sobriety date, the individual has successfully managed holidays and other important life events. *Id.* at 20. The individual's fiancé stated that the individual no longer has an urge or desire to drink and has a new positive outlook on life. *Id.* at 21. He stated that the individual is a dedicated, reliable and trustworthy person and believes that she will remain abstinent for the rest of her life. *Id.* at 24. Finally, the individual's two co-workers both testified that they have never seen the individual in an intoxicated state and believe the individual has changed her life for the better. *Id.* at 42 and 51. They also testified that the individual is honest and trustworthy. *Id.* at 46 and 58.

In his April 2016 Report, the DOE Psychologist recommended that the individual should remain abstinent for another six months to support her assertion that she will not drink again and to provide sufficient evidence of her control over her use of alcohol. Ex. 4. After listening to all of the testimony at the hearing before testifying himself, the DOE psychologist opined that the individual has fulfilled her recommendation and believes that she has a very good prognosis with a low risk for relapse. Tr. at 109. He noted that the individual has strong support system. The DOE psychologist further opined that although he cannot give a lifetime prognosis, he is confident that the individual "will not drink for the next couple of years and probably not drink beyond that." *Id.*

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 and I, ¶ 23 and ¶ 29, respectively. In this case, the individual has satisfied the following mitigating factors: (1) the individual has readily acknowledged her alcohol problem, and has established a pattern of responsible use; (2) the individual has successfully completed an inpatient or outpatient alcohol program, and has demonstrated a clear and established pattern of abstinence in accordance with her treatment recommendations, i.e., she has participated in recovery meetings such as AA or a similar organization, and has received a favorable prognosis by a duly qualified medical professional; and (3) the DOE psychologist has opined that the individual's condition has a low probability of recurrence. *Id.* For these reasons, I find that the individual has sufficiently resolved the DOE's security concerns under Criteria H and 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 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 find that the individual has brought forth convincing evidence to adequately resolve the security concerns associated with Criteria H and 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: October 31, 2016

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>.