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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: September 7, 2016)	Case No.: PSH-16-0072
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Issued: November 22, 2016

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (“the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, 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 access authorization should be restored at this time.

I. Background

The Individual is employed by a DOE Office in a position that requires him to hold a DOE security clearance. The Local Security Office (LSO) received potentially derogatory information regarding the Individual’s arrest for Driving Under the Influence (DUI) and two arrests for simple assault. In order to address those concerns, the LSO summoned the Individual for an interview with a personal security specialist in January 2016.

On June 17, 2016, the LSO sent a letter (Notification Letter) to the Individual advising him that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21. In the Notification Letter, the LSO explained that the derogatory information fell within the purview of three potentially disqualifying criteria set forth

¹ Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

in the security regulations at 10 C.F.R. § 710.8(h), (j), and (l) (hereinafter referred to as Criterion H, Criterion J, and Criterion L).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 eighteen exhibits (DOE Exs. 1-18) into the record and presented the testimony of a DOE psychologist. The Individual presented his own testimony and the testimony of three co-workers. The Individual also submitted two exhibits (Ind. Exs. A-B). *See* Transcript of Hearing, Case No. PSH-16-0072 (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”).

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). Criterion L refers to information indicating that the Individual has “engaged 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. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.” 10 C.F.R. § 710.8(l).

III. Notification Letter and Associated Security Concerns

As previously noted, the LSO cites Criteria H, J, and L as the bases for suspending the Individual's security clearance. The LSO cites as Criteria H and J derogatory information an evaluative report from the DOE psychologist opining that the Individual suffers from alcohol abuse, without adequate evidence of rehabilitation or reformation, which is a mental condition which causes, or may cause, a significant defect in judgment or reliability. DOE Ex. 8 at 15-16; DOE Ex. 1. Certain emotional, mental, and personality conditions can impair judgment, reliability and trustworthiness. *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House* (December 19, 2005), Guideline I, at ¶ 27 (Adjudicative Guidelines). In addition, excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about the individual's reliability and trustworthiness. Adjudicative Guidelines, Guideline G, at ¶ 21. With regard to Criterion L, the LSO cites the Individual's (1) November 2015 DUI arrest, (2) admission that he consumed alcohol despite knowing he was restricted from consuming alcohol due to the conditions of his release from a Simple Assault arrest, (3) May 2015 simple assault arrest, and (4) May 2008 Resisting Arrest, Simple Assault, and Battery arrest. DOE Ex. 1; *see* DOE Ex. 17 at 16-31, 40-41, 110-11, 136, 52-59; DOE Ex. 11; DOE Ex. 12; DOE Ex. 14; DOE Ex. 15. Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Adjudicative Guidelines, Guideline E, at ¶ 15.

IV. Hearing Testimony and Evidence

In May 2008, the Individual was arrested for Simple Assault. Prior to this arrest, the Individual stopped to speak with a woman and her male friends appeared to take offence. They began telling the Individual to leave. DOE Ex. 14 at 2, 3. The Individual was elbowed in the chest by one of the people involved and he retaliated by slapping the head of the person who elbowed him. DOE Ex. 14 at 2, 3. Police were called and the Individual was arrested. DOE Ex. 14. The charges were eventually dismissed. DOE Ex. 16 at 1.

Seven years later, in May 2015, the Individual was again arrested for Simple Assault. The Individual and his one co-worker testified that they were celebrating Memorial Day and reminiscing. Tr. at 34. His witness testified at the hearing and in his statement made immediately after the incident, that the Individual's wife was showing aggressive behavior. Tr. at 35; DOE Ex. 13 at 15. The police report and the Individual both state that he was asleep at the time of his arrest. DOE Ex. 18 at 18-19; DOE Ex. 13 at 13. As a condition of his release, he was to refrain from consuming alcohol. Tr. at 80. The only alcohol he consumed was the evening prior to receiving the DUI. Tr. at 81.

In November 2015, after learning that his wife, from who he was separated but hoping to reconcile, was seeing another man, the Individual consumed alcohol and received a DUI. Tr. at 65; DOE Ex. 1 at 2; DOE Ex. 10; DOE Ex. 11. Feeling betrayed and disappointed because his wife was seeing another man, the Individual wanted to do something fun and a friend suggested going to dinner. Tr. at 66. After dinner at the restaurant, the Individual went to a bar alone. DOE Ex. 17 at 18. He stated at the PSI that he had two or three drinks before the bartender told him that a woman was buying him a drink. DOE Ex. 17 at 18. His receiving that drink is his last memory from the night. DOE Ex. 17 at 18. He does know from his bank records that he withdrew \$160

from the ATM at the bar, even though he had \$160 in his wallet. DOE Ex. 17 at 23. The next morning, he only had \$40 remaining. DOE Ex. 17 at 23. Also at the PSI, he stated that he did not know why he was in the parking lot where he was found asleep, since it is not near where he lives nor in the direction he would have to travel to get to his home from the bar. DOE Ex. 17 at 30.

After his PSI in January 2016, the Individual was evaluated by a DOE psychologist. DOE Ex. 8. Following the evaluation, the DOE psychologist opined that the Individual suffered from Alcohol Abuse. DOE Ex. 8 at 15. She continued that there was not adequate evidence of rehabilitation or reformation. DOE Ex. 8 at 15-16. At the hearing, held six months after the DOE psychologist's evaluation, she opined that she was persuaded by his abstinence and confident that he would not be triggered to consume alcohol in the future. Tr. at 96. The DOE psychologist stated that he has a strong support system. Tr. at 96. The DOE psychologist concluded that the Individual was reformed from his Alcohol Abuse disorder and that his risk of relapse was low. Tr. at 95, 104.

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, J, and L, regarding the Individual's diagnosis by the DOE psychologist, his November 2015 alcohol consumption and DUI, and his Simple Assault arrests. A diagnosis by a duly qualified medical professional that an individual suffers from a medical condition that can impair judgment, reliability or trustworthiness, is specifically mentioned in the Adjudicative Guidelines as a condition that could raise a security concern. Adjudicative Guidelines, ¶ 27(b). Further, 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, ¶ 21. A diagnosis by a medical professional of alcohol abuse is a condition that could raise a security concern. ¶ 22(d). Finally, the Individual's alcohol use, even though his May 2015 arrest required abstinence, and his two arrests for Simple Assault create a doubt about the Individual's judgment, reliability, and trustworthiness. Adjudicative Guidelines, ¶ 30.

In considering whether the Individual has resolved the properly raised security concerns, I must look to the Adjudicative Guidelines in evaluating the evidence before me. The relevant paragraph lists conditions that could mitigate the Criterion H security concern, including: "recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation." Adjudicative Guidelines, ¶ 29 (c). The relevant paragraph lists conditions that could mitigate the Criterion J security concern, including: "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).” Adjudicative Guidelines ¶ 23 (b). The relevant paragraphs list conditions that could mitigate the Criterion L security concern, including: “(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment; (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life; (c) evidence that the person did not commit the offense; (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.” Adjudicative Guidelines, ¶ 32 (a)-(d).

Given the above factors, I find that the Individual has resolved the security concerns raised by the LSO. With respect to the Criteria H and J concerns, the DOE psychologist opined at the hearing that the Individual is reformed from his Alcohol Abuse and that he has a low risk of relapse. The DOE psychologist based her testimony on the Individual’s demeanor at the hearing; the testimony from his co-workers that he is an exceptionally skilled worker who has exhibited no previous signs of a problem; the fact that he has rid himself of the “toxic” relationship with his wife and his insight into how the relationship contributed to his problems; his sincerity in his abstinence. The DOE psychologist testified that:

It's very clear that [the Individual] is an exceptionally skilled worker. He commands respect. He is reliable. He is responsible. He has extremely high appraisals. He is dedicated. He is very motivated to keep his clearance. He has rid himself of a bad relationship, which was a primary -- a very important aspect of what fueled the episodes that happened. His testimony from witnesses was very positive. So he has a lot going for him. He also shows a fair amount of insight about ways that his choice to remain in a relationship that was toxic contributed to his problems. He is not a man devoid of insight or of a capacity for self-reflection, and these are strengths in his favor. And I think that we can agree on all of those qualities of his character and of his work life.

Tr. at 85. The DOE psychologist’s testimony satisfies ¶¶ 29 (c) and 23 (b) above. Further, I found the Individual to be candid and earnest in his statement that he intends to continue his abstinence. He testified, quite sincerely in my opinion, that alcohol has no place in his life and that he does not miss consuming beer. Tr. at 23. He stated that his priority in life is his relationship with his children and his employment. Tr. at 73.

With respect to the Criterion L concern regarding the Individual’s use of alcohol in November 2015, although required by his arrest to be abstinent, the Individual testified that he was motivated to consume alcohol because of his relationship with his wife. Tr. at 66. He also testified that he has signed divorce papers and is just waiting for his wife to do the same. Tr. at 12. Although they still have contact because of their children, the Individual testified that their parenting is “flawless.” Tr. at 17. The DOE psychologist stated,

He has taken a lot of steps, gone through a lot of pain to distance himself, separate himself from that marriage, and I will say this seems important, has been able to work with his ex-wife cooperatively regarding the children, which suggests that it's

not likely that that -- even that relationship is likely to undermine his sense of social support, because I think he's worked hard to keep that relationship cooperative.

Tr. at 98. With the dissolution of his marriage, he no longer faces the pressures raised by that relationship, thereby satisfying ¶ 32 (b) above.

With regard to the Individual's Simple Assault arrests, the Individual's witnesses testified that they have not witnessed any aggressive nature on the part of the Individual. Tr. at 34-35; 40. Following his May 2015 arrest, the Individual lived with one of his co-workers who testified that "I've never seen him have any aggressive nature towards anyone at work or outside of work. And I would never put my family and my wife in jeopardy with someone who I believe would in any way do these things." Tr. at 38, 40. The Individual's co-worker who was with him on the night of the May 2015 arrest stated that he saw the Individual's wife being aggressive, but not the Individual. Tr. at 35. As to paragraph 32 (a), eight years has elapsed since the Individual's criminal behavior in May 2008. I find that the length of time has resolved the concern raised by the May 2008 arrest. Further, statements made at the time of that arrest indicate that the Individual may have been retaliating from being elbowed. DOE Ex. 14 at 3. Finally, the testimony from the Individual's co-workers indicate that he has an exemplary employment record. Tr. at 40-41, 46-47. One co-worker stated, "He's just the epitome of a reliable, high-performing, strong-willed characted individual." Tr. at 47. As to the May 2015 arrest, the Individual's wife is no longer involved in the Individual's life, except for in relationship to their children. The Individual has testified that their parenting is "flawless." Tr. at 17. Further, the Individual claims that his wife retracted her allegations and that the charges were expunged in August 2016. Tr. at 15; Doe Ex. 18 at 33.

Based on the foregoing, I find that the Individual has resolved the security concerns raised by his diagnosis of Alcohol Abuse, which is a mental condition, his failure to remain abstinent as required by his May 2015 Simple Assault arrest, and his two Simple Assault arrests.

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, J, and L. 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: November 22, 2016