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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: June 9, 2016)

Case No.: PSH-16-0078

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Issued: January 23, 2017

Administrative Judge Decision

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXX XXX XXXXXX (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 not be restored at this time.²

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor, and was granted access authorization in connection with that employment. In February 2016, the individual was arrested for Driving While Intoxicated (DWI). Because this arrest raised security concerns, the Local Security Office (LSO) summoned the individual for an interview with a personnel security specialist in April 2016. After this Personnel Security Interview (PSI) failed to resolve these concerns, the LSO referred the individual to a local psychologist (hereinafter referred to as "the DOE psychologist") in June 2016 for an agency-sponsored evaluation.

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.

²Decisions 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>.

The DOE psychologist prepared a report of his evaluation of the individual for the LSO. In this report, he concluded that the individual suffers from alcohol abuse and is a consumer of alcohol habitually to excess. DOE Exhibit (DOE Ex.) 4 at 7. The DOE psychologist also stated that as part of his evaluation, he had the individual undergo a Phosphatidylethanol (PETH) test.³ During the evaluation, the individual told the DOE psychologist that he had not consumed any alcohol since his February 2016 arrest. *Id.* at 6. However, according to the DOE psychiatrist's report, the PETH test results indicated with a very high degree of certainty that the individual had been drinking very heavily on a regular basis during the few weeks before the June 2016 test or binge drinking exceedingly heavily during the few days before the test. *Id.*

The DOE psychologist concluded that in order to demonstrate adequate evidence of reformation or rehabilitation from his alcohol use disorder, the individual would have to demonstrate active participation in Alcoholics Anonymous (AA) or a similar program, with a sponsor, consisting of at least five meetings a week for a year, beginning after he stops drinking. Given the individual's "demonstrated inability to control his many year pattern of excessive consumption," the DOE psychologist concluded that the individual should become permanently abstinent. *Id.* at 8. He further stated that because the individual's claims of abstinence could not be trusted, he should undergo three additional random PETH tests over the next nine months, beginning at least three months after he stops drinking. *Id.*

After reviewing the DOE psychologist's 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 11 exhibits into the record of this proceeding and presented the testimony of the DOE psychologist at the hearing. The individual introduced 12 exhibits and presented the testimony of six 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 Guidelines G and J of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005) (Adjudicative Guidelines)*.

³ This is a blood test used to determine whether the subject has been drinking alcohol. The DOE psychologist stated that he used this test because, unlike others, it is not affected by conditions such as a fatty liver, which he said the individual has.

Guideline G relates to alcohol consumption, and it provides that alcohol-related incidents such as driving while under the influence, habitual or binge consumption to the point of impaired judgment, and diagnoses by a medical professional of alcohol abuse or dependence are conditions that could raise a security concern and may be disqualifying. As circumstances raising security concerns under this Guideline, the Letter cites the individual's 2016 and 1993 arrests for DWI, his 1985 arrest for Driving Under the Influence, his failure to reduce his alcohol consumption despite a recommendation from his doctor that he do so, and the DOE psychologist's diagnosis that the individual suffers from alcohol abuse. The Letter also refers to the discrepancies between the PETH test results and the statements made by the individual during the evaluation and during his PSI.

Guideline J refers to criminal conduct, and it indicates that a single serious crime or multiple lesser offenses are circumstances that could raise a security concern and may be disqualifying. Under this Guideline, the Letter cites the individual's arrests that are set forth above.

These allegations adequately support the invocation of Guidelines G and J, and they raise serious security concerns. 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. Criminal activity also raises doubts about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations. *Adjudicative Guidelines*, ¶ 30

III. REGULATORY STANDARDS

The procedures 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

A. Mitigating Evidence

For the most part, the individual did not contest the allegations set forth in the Letter or the DOE psychologist's diagnosis. Instead, he attempted to demonstrate, through his own testimony and that of his witnesses, that he no longer drinks and that he is not currently suffering from any defect in his judgment or reliability.

The individual admitted that he lied to the DOE psychologist about not having used alcohol since his February 2016 arrest, and said that he did so out of fear of losing his job. Hearing transcript (Tr.) at 90. He testified that he drank nine 16 ounce beers over the course of the three-day Memorial Day weekend just prior to his meeting with the DOE psychologist. He didn't know if it was his "last stance" or his way of saying "that's it, farewell" to drinking, "but it happened," and it was "absolutely" a mistake. Tr. at 134.

He further testified that he saw the psychologist at his jobsite shortly after his February 2016 arrest, and continues to see him on a monthly basis. Tr. at 91. This psychologist referred the individual to the jobsite's Employee Assistance Program (EAP) Counselor, who in turn referred the individual to a local intensive outpatient alcohol treatment program (IOP). The individual said that his attendance at IOP sessions was "perfect," and that they discussed medical data, diagnosis of the "disease," and the process of recovery. Tr. at 96. He also has individual counseling sessions with the EAP Counselor. The individual testified that he and the Counselor discuss his family history and underlying problems, and the nature of his disorder. Tr. at 97. He and the Counselor have a good relationship, and he can be open and honest with her. *Id.* He attends a one-hour session of aftercare one day a week.

The individual admitted that he initially did not like attending AA, but he resolved that if he had to do it, he would try to get something out of it. Tr. at 100. Eventually, his perception of the meetings changed to the extent that he now enjoys going, "because it's a good time of fellowship," and it just "works out" for him. Tr. at 101. He and his wife talk about what goes on in the meetings, and the individual reads and studies abstinence-related materials at home. Tr. at 110. Because of these meetings and the other aspects of his rehabilitation, he no longer thinks about drinking, and has adopted a new daily routine that does not involve alcohol. Tr. at 105. He has also worked out an informal sponsorship arrangement with a couple of other AA participants. Tr. at 108-109. He has been subject to random breath tests at work since his arrest, and all have been negative. Tr. at 102; Individual's Exhibits (Ind. Ex.) A and J.

The individual then testified about the PETH tests that he has taken. After the first test, which he took in June 2016 in conjunction with his psychological evaluation, he took three additional tests in October and November 2016, in accordance with the DOE psychologist's recommendations. The first of these three tests took place on October 28, 2016, and the individual tested positive for alcohol consumption. Ind. Ex. C. Despite this result, the individual insisted that he had not been

drinking, and that he had not consumed any alcohol since Memorial Day weekend. Tr. at 119. In fact, when he learned of the results, he “couldn’t believe it,” testifying that the tests were expensive, and that if he thought that the results were going to be positive, he wouldn’t have wasted “money that he didn’t have” by taking the test. Tr. at 117-118. Five days later, his doctor asked him if he could run another PETH test on him, and the individual agreed. This test came back negative. Ind. Ex. B. The individual speculated that the October 28th test was a false positive that might have been caused by the blood collection site being swabbed by an alcohol pad before the individual’s blood was drawn. Before blood was collected for the last two tests, iodine was used to disinfect the area. Tr. at 119. Both of these tests yielded negative results. Ind. Exs. B, K.

The individual also discussed the positive changes in tests measuring his liver enzymes. In tests conducted in 2015 in connection with his employment, three of his liver enzymes were elevated. Tr. at 121. In 2016, these tests were run again, and the results were “almost all normal.” Tr. at 123. These changes helped him to realize the importance of what he was doing, and convinced his doctor that the individual was no longer drinking. Tr. at 123-124. The individual intends to abstain permanently from alcohol use. Tr. at 120.

The EAP Counselor also testified. She said that the individual began seeing her shortly after his February 2016 arrest, and told him that he needed to stop drinking immediately and remain sober. Tr. at 141. He “really struggled” with this, because “it was a complete upside down change in his world.” *Id.* As time went on, he became less negative and more relaxed, always participating in group and individual therapy sessions. Tr. at 142.

When he got the positive results from the second PETH test, his participation in these sessions increased and became more positive and less self-focused. He also came to the EAP Counselor’s office and insisted on seeing her. The individual “was just so distraught over the results” and insisted to her that he had stopped drinking. Tr. at 143. The EAP Counselor recommended another PETH test for the individual, and the test was conducted five days after the previous one. The EAP Counselor expected the results of this test to be negative, and they were. Tr. at 145.

After she met with the individual about the positive results on the October 2016 test, she called the director of the laboratory that conducted the test. According to the EAP Counselor, he told her that using alcohol instead of iodine to disinfect the area from which blood was to be drawn would not have made a difference in the results. She also learned that this was the first PETH test ever conducted by this particular laboratory, and, according to the EAP Counselor, “they had to get all of their . . . protocols in line.” Tr. at 146.

Despite this positive test result, she believes that his treatment is heading in the right direction. Tr. at 147. He “no longer normalizes abusive [alcohol] use or to excess use.” Tr. at 154. The individual “also has a good concept of relapse prevention,” and of “how to manage situations so that he doesn’t put himself at risk.” *Id.* She termed his drinking after his February 2016 arrest a “lapse,” and differentiated it from a “relapse” in that, according to the EAP Counselor, he never “went back into full-blown addictive behaviors and usage.” *Id.* She indicated that such “lapses” were common among people in recovery from an alcohol use disorder, and could in fact be beneficial in that “they see that it’s not something they can do . . . responsibly. *Id.*

Regarding his liver enzyme results, she said that the tests taken in 2015 were “truly concerning,” and that the significant change in those results that were manifested on his most recent tests would not have occurred if he was still drinking. Tr. at 158-159. The individual is doing “very, very well,” and is in “early sustained remission” from his alcohol use disorder. Tr. at 151. She “believes in” the individual, and thinks that he will continue to follow her advice moving forward. Tr. at 152. His “prognosis for ongoing abstinence, recovery and remission is good.” Tr. at 155.

The individual’s wife also testified. She said that after his February 2016 arrest, the individual was “very stressed out about his job,” and realized that he needed “to make some changes.” Tr. at 16. He decided at that time to quit drinking “because it wasn’t helping him in his life.” *Id.* At first, adjusting to his treatment program was difficult for him. However, in time he “started accepting it and actually looking forward to it.” Tr. at 18. The counseling that he has participated in has made him a calmer, happier person. Tr. at 20.

Prior to the June 2016 PETH test, she believed that the individual had been abstinent since his February arrest, and when she learned the results of the test months later, she became “very angry.” Tr. at 22. They discussed his drinking on the Memorial Day weekend preceding the test and afterwards, and the individual told her that he had not had anything to drink after that weekend. The wife added that she “know[s] for a fact” that the individual has not consumed any alcohol since May 2016 because she’s “even more aware of it,” and she “constantly go[es] and check[s] things, monitor[s] things.” Tr. at 25. She stated that her reaction to his positive PETH test in October 2016 was totally different from her reaction to his previous positive test, because “there is no way” that the individual could have been drinking. Tr. at 26. She based this conclusion in part on the fact that there was very little time during which the individual was not either at work or in therapy or AA meetings. Tr. at 28-29.

Three of the individual’s friends and a former manager testified as well. One of the friends was someone whom the individual met at AA. He said that the individual’s seriousness about his recovery “sticks out . . . like a sore thumb,” Tr. at 44, and that his participation in meetings is “very sincere.” Tr. at 45. The other two friends are people with whom the individual used to drink. Both of them testified that they no longer drink with him, and that his friends are supportive of the individual’s sobriety. Tr. at 59-60, 78, 82. One friend stated that the individual gave him beer that the individual kept at his workshop, where the two of them used to drink. Tr. at 59. The former manager testified that the individual is a very good employee who has good judgment and is reliable. Tr. at 67, 70.

B. Administrative Judge’s Decision

The evidence in this case demonstrates that the individual has very significantly reduced his level of alcohol consumption since the 2016 Memorial Day weekend. Liver function tests performed in the fall of 2016 showed more than a tenfold decrease in gamma glutamyltransferase (GGT) levels over similar tests performed approximately one year earlier.⁴ Ind. Exs. E and F. The PETH test that the individual took late in October 2016 indicated alcohol consumption that was far below the

⁴ GGT is an enzyme found in the liver. Elevated GGT levels are typically associated with the ingestion of large amounts of alcohol.

amount indicated on the June 2016 test, and the two later tests taken by the individual were negative for alcohol use. Moreover, I found the testimony of the EAP Counselor, the individual's wife, and his friends to be credible concerning the seriousness with which he has approached his alcohol treatment.

Nevertheless, I continue to harbor serious doubts about the individual's suitability for access authorization. The recommendations for reformation or rehabilitation set forth in the DOE psychologist's report clearly call for a total of one year's abstinence on the part of the individual. DOE Ex. 4 at 7-8. However, he admittedly drank approximately six months prior to the hearing, during Memorial Day weekend, and his positive PETH test in late October 2016 indicates that he consumed alcohol again less than three months before the hearing.

In this regard, I did not find the testimony of the individual that he had not consumed any alcohol since Memorial Day weekend to be credible. The individual has a history of untruthful and deceptive behavior regarding his drinking. The record indicates that he falsely stated to the police on the night of his February 2016 arrest that he had not been drinking, DOE Ex. 4 at 2, misrepresented the amount of alcohol that he consumed on that night during his PSI, *Id.* at 3, lied during his psychological evaluation about not having drunk since his arrest, and deceived his wife about his consumption of alcoholic beverages just prior to that evaluation. The explanation for the positive test offered by the individual (i.e., the use of alcohol to disinfect the area from which the blood sample was drawn) was refuted by the testimony of both the EAP Counselor and the DOE psychologist. Tr. at 187. The negative results from the PETH test that was administered five days later are adequately explained by the testimony of the DOE psychologist that the "half-life" of the PETH molecule detected by the test administered to the individual is five and one half to seven days. Tr. at 187. Accordingly, I believe that the levels of that molecule detected in the individual's blood fell to below the cutoff level for a positive result during that period. I did not find the testimony of the individual's wife concerning the validity of the October 2016 PETH test to be compelling, either, as the individual has a history of successfully concealing his alcohol consumption from her.

Even if I was to conclude that the individual had remained abstinent since Memorial Day weekend, I would not be able to find that six months constituted a sufficient period of responsible behavior concerning alcohol to convince me that a return to the individual's previous pattern of abuse was unlikely. This is because of his lengthy history of alcohol-related problems. The DOE psychologist diagnosed him as suffering from Alcohol Abuse from ages 21 to 29, and found that diagnosis to still be active because of the individual's habitual use of alcohol to excess. At the time of his psychological evaluation, the individual was 52 years old. The EAP Counselor indicated that the individual has been drinking to excess since his teen-aged years. Tr. at 149, 158. After witnessing all of the testimony at the hearing, the DOE psychologist opined that, although the individual had completed "all of the treatment things . . . that [he] would ask," Tr. at 214, he would still need to see a much longer period of period of abstinence before he could conclude that the individual had truly changed his behavior concerning alcohol. Tr. at 194, 215. I agree, and I conclude that the individual's six months of responsible behavior concerning alcohol are insufficient to convince me that his chances of reverting to his previous pattern of abuse are acceptably low. I therefore find that the individual has not successfully addressed the DOE's security concerns under *Adjudicative Guideline G*.

I reach a similar conclusion with regard to *Adjudicative Guideline J*. I note that all of the criminal activity cited by the DOE under this *Guideline* is alcohol-related, and if the individual returns to his previous abusive consumption, I believe that his chances of committing similar illegal acts in the future would be unacceptably high.

V. CONCLUSION

For the reasons set forth above, I find that significant security concerns remain regarding the individual's alcohol usage and history of illegal activity. Consequently, I cannot conclude that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not restore the individual's security clearance at this time. 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: January 23, 2017