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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: October 18, 2016) Case No.: PSH-16-0080
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Issued: February 9, 2017

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

This Decision concerns the eligibility of XXXX XXXXXXXX (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 him to hold a DOE security clearance. In June 2015, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address concerns about his alcohol-related arrests and his 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 August 2015 and memorialized his findings in a report (Psychological Report). According to the DOE psychologist, the individual suffers from Alcohol Use Disorder, Mild. The DOE psychologist further concluded that the individual’s Alcohol Use Disorder is a mental illness that causes or may cause a significant defect in his judgment and reliability.

In July 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

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.

information fell within the purview of three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (j) and (l) (hereinafter referred to as Criteria H, J and L 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 his own testimony and that of two witnesses. The DOE Counsel called one witness, the DOE psychologist. Both the LSO 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 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 present evidence supporting his 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

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

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). Criterion L relates, in relevant part, to information that a person 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 interest of the national security. . . ." 10 C.F.R. § 710.8(l).

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 three criteria as bases for suspending the individual's security clearance: Criteria H, J and L. To support Criterion H, the LSO relies on the diagnosis of the DOE psychologist that the individual suffers from Alcohol Use Disorder, Mild, and the expert's opinion that Alcohol Use Disorder 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 as well as 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 Alcohol Abuse can impair a person's judgment, 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.

To support its reliance on Criterion L, the LSO cites the individual's criminal conduct, including two alcohol-related arrests. Criminal activity creates a doubt about a person's judgment, reliability and trustworthiness and by its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations. *See* Guideline J of the Adjudicative Guidelines.

IV. Findings of Fact

The individual has had two alcohol-related arrests. In November 1997, he was involved in a two-vehicle accident caused by his failure to stop at a stop sign. Ex. 2. The individual was arrested for Operating a Motor Vehicle Under the Influence of an Intoxicating Beverage (DUI). On January 27, 1998, the offense was amended to Reckless Driving. The individual asserts that alcohol was not involved at the time of the accident. According to the individual, at the time of the accident, police searched his car and found some prescription medication. He asserts that he was never taken to jail, but that he was charged with DUI pending his blood test results. Transcript of Hearing (Tr.) Tr. at 32. After his blood test results did not reveal the presence of alcohol, the individual's offense was amended to Reckless Driving. Ex. 2.

On March 14, 2015, the individual was involved in a single-vehicle accident. He was administered a breathalyzer test and his blood-alcohol concentration (BAC) registered .136. The individual was arrested for DUI and Expired Registration Plates. *Id.* In June 2015, the individual participated in a PSI. During this PSI, the individual reported that he had been prescribed Pristiq to treat low testosterone levels and was taking the medication the day of the incident. *Id.* The individual further explained that Pristiq can also be prescribed to treat anxiety. He asserted that this medication inflated his BAC. During the course of this PSI, the individual also described his

typical alcohol use as consuming approximately four to five, eight-ounce glasses mixed with approximately an ounce to an ounce and a half of rum weekly. *Id.*

Based on this information, the individual was referred to a DOE psychologist for a psychological evaluation. On August 31, 2015, the DOE psychologist evaluated the individual. In his report, he concluded that the individual met the *Diagnostic Statistical Manual of Mental Disorders: DSM-5* (5th Ed.) criteria for Alcohol use Disorder, Mild. He further concluded that “until adequate rehabilitation or reformation is achieved, the intrinsic relapsing nature of the condition (and pharmacological effects of alcohol) potentially places [the individual’s judgment and reliability] at risk.” The DOE psychologist also opined that a BAC of .13 implies very substantial intoxication, and the individual’s reasoning about anxiety medication artificially elevating his BAC is not correct. *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.

1. Criteria H and J: The Diagnosis of Alcohol Use Disorder, Mild

The individual does not dispute the DOE psychologist’s diagnosis of Alcohol Use Disorder. 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 from Alcohol Use Disorder, Mild

During the hearing, the individual described his past alcohol use and explained the circumstances surrounding his 2015 DUI.⁴ He acknowledged that he consumed alcohol as a teenager, but stated that he did not consistently drink alcohol until he was in the military. Although he testified that he had been alcohol-free for about fifteen years, the individual stated that he resumed drinking more regularly around 2011 or 2012 as he began to see a shift in his wife’s attitude towards him. *Id.* at 23. According to the individual, his wife began to isolate him and on occasion physically abused him. Subsequently, his wife filed for divorce. The individual testified that he drank alcohol to deal with his marital stress and described his drinking habits prior to the 2015 incident as having

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.

⁴ During the hearing, the individual testified that his 1997 arrest for DUI was not alcohol-related and that the offense was later reduced to Reckless Driving. Tr. at 32 and 33.

four to five drinks per week, with each drink containing one to one-and-a-half ounces of rum. He further testified that his March 2015 DUI occurred three or four days after his wife filed for divorce. *Id.* The individual stated that he had a number of mixed drinks on the day of the 2015 DUI after getting upset with his mother-in-law. He admitted that he made a mistake by getting “behind the wheel” after drinking. *Id.*

The individual testified that he was evaluated by the DOE psychologist in June 2015 who recommended that he abstain from alcohol for six months with counseling or abstain from alcohol for twelve months without counseling. *Id.* at 24. Although he and the DOE psychologist discussed this recommendation at the conclusion of his evaluation, the individual testified that he did not understand that the recommendation was “supported by DOE as a path to resolve” the DOE’s security concerns until he was interviewed during his April PSI. He stated that had he known this, he would have abstained from the three drinks that he consumed since September 2015. Specifically, the individual testified that in September 2015, he had a glass of wine with his meal on his birthday, and in March 2016, he had a glass of champagne at his nephew’s wedding and a beer at a friend’s house. *Id.* at 25. Other than these three drinks, the individual testified that he has abstained from alcohol. The individual also stated that he has completed a 20-hour DUI course, participates in outpatient counseling, and is currently participating in an online Alcoholics Anonymous program. *Id.* at 27. He further stated that he feels better now that he has stopped drinking and that his overall health has improved. *Id.* at 30. Finally, the individual testified that he has abstained from alcohol for nine months and has no intention to drink alcohol in the future. *Id.* at 50.

During the hearing, the individual also offered the testimony of a certified alcohol and drug counselor and his girlfriend. The counselor testified that the individual has completed a 20-hour DUI education class which she stated is required for DUI first offenders. *Id.* at 58. She added that the individual is currently participating in an outpatient treatment program. The counselor further testified that the individual appears sincere and is willing to participate in treatment. She believes the individual has a good prognosis. *Id.* at 66. The individual’s girlfriend, who has known the individual for about five years, testified that she has observed the individual drink only one glass of champagne in the last eighteen months, which occurred at his nephew’s wedding. *Id.* at 14. She further testified that the individual is an honest, trustworthy and reliable person who is committed to abstaining from alcohol. *Id.* at 16.

The DOE psychologist listened to all the testimony at the hearing before testifying himself. He testified that he evaluated the individual in August 2015 and noted his concern about the individual’s drinking pattern. *Id.* at 69. The DOE psychologist stated that he recommended abstinence for the individual at the time of the evaluation. *Id.* He further testified that, at the time of his evaluation, the individual seemed sincere and he noted that the individual had a good prognosis if he addressed the concerns that he discussed with him. *Id.* at 70. The DOE psychologist stated that the testimony during the hearing reinforces his notion that the individual is sincere and committed. *Id.* He noted that the individual has been essentially abstinent for many months with the exception of three minor occasions in which the individual had a drink in a celebration-type situation. *Id.* at 71. The DOE psychologist opined that the individual seems to be on a very positive, constructive road. *Id.* Although he wished the individual had commenced some of his more formal interventions sooner, he was nevertheless impressed by the individual’s integrity, commitment and motivation. *Id.*

The DOE psychologist further testified that the individual is just a little shy of addressing his original recommendations and noted that the individual's formal rehabilitation efforts are just beginning. Nevertheless, he testified that the individual has personal and external incentives for him to continue on a constructive path, noting that the individual has been abstinent for close to nine months, which he believes is a positive sign. *Id.* at 73. When questioned about the individual's risk for relapse, the DOE psychologist stated that because the individual has not demonstrated a chronic alcohol use disorder, the general relapse rates for alcohol disorders do not apply to him. He noted that the individual's alcohol abuse was relatively brief over a period of time and specifically related to marital stress. *Id.* at 74. The DOE psychologist opined that the individual has a good prognosis. Finally, he testified that the individual has achieved rehabilitation and reformation at this point, but he recommends that the individual continue with his current rehabilitation program to complete twelve months. *Id.* at 74.

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)*.⁵ 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 alcohol consumption and psychological conditions. *See Adjudicative Guidelines, 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 his 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 his treatment recommendations, i.e., he 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 has a good prognosis. *Id.* For these reasons, I find that the individual has sufficiently resolved the DOE's security concerns under Criteria H and J.

2. Criterion L: Criminal Conduct

The DOE's concerns under Criterion L relate to the individual's criminal conduct, which is limited to his 1997 arrest for DUI and his March 2015 DUI.

Among the factors which could serve to mitigate the security concerns raised by the individual's criminal conduct are: (1) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; (2) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life; (3) evidence that the person did not commit the offense; and (4) 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, a good employment record, or constructive community involvement. *See Adjudicative Guidelines, Guideline J at ¶ 32(a)-(d).* In

⁵ Decisions issued by OHA are available on the OHA website located at <http://www.oha.doe.gov>.

this case, with respect to the individual's 1997 DUI arrest which was later amended to Reckless Driving, over 19 years have elapsed since the criminal behavior happened. I find this incident has been mitigated by time and does not cast doubt on the individual's reliability, trustworthiness or good judgment. With respect to the individual's 2015 DUI, the individual credibly testified that he has changed his lifestyle, no longer consumes alcohol, and does not intend to consume alcohol in the future. In addition, the individual has established evidence of successful rehabilitation and he has received a favorable prognosis by a duly qualified medical professional. Moreover, I find that the individual's 2015 DUI occurred under such unusual circumstances that it is unlikely to recur and does not cast doubt on his current honesty and reliability. In the end, I find that the individual has resolved the Criterion L concerns relating to his alcohol-related arrests.

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, 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 find that the individual has brought forth convincing evidence to adequately resolve the security concerns associated with Criteria H, J and L. 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: February 9, 2017