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

In the Matter of: Personnel Security Hearing)
)
Filing Date: November 15, 2016)
_____)

Case No.: PSH-16-0085

Issued: March 8, 2016

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXX XXXXXXXX (hereinafter referred to as “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 security clearance should not be restored at this time.²

I. BACKGROUND

The Individual informed the LSO that he had been admitted for inpatient treatment for an alcohol disorder. In order to evaluate the security concerns raised by the Individual’s alcohol treatment, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual on March 10, 2016, and had the Individual evaluated by a psychologist (the DOE Psychologist) prior to March 21, 2016. Ex. 4, Ex. 9. The LSO also obtained treatment records from the inpatient facility that had treated the Individual. Those records indicated that the Individual’s past consumption of illegal drugs significantly exceeded the amounts that he had previously reported to the LSO. Because this information raised a concern that the Individual had previously intentionally provided the LSO with false information, and because the PSI and the DOE Psychologist’s evaluation of the Individual did not resolve the security concerns raised by the Individual’s treatment for an alcohol disorder, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing and the LSO

¹ An 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.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.doe.gov/OHA>.

forwarded the Individual's request to OHA. The Director of OHA appointed me as the Administrative Judge in this matter on November 15, 2016.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his spouse, his father, his coworker, his pastor, and the DOE Psychologist. See Transcript of Hearing, Case No. PSH-16-0085 (hereinafter cited as "Tr."). The LSO submitted ten exhibits, marked as Exhibits 1 through 10, while the Individual submitted three exhibits, marked as Exhibits A through C.

II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to paragraphs (h), (j), and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion H refers to information indicating that the Individual has: "An illness or mental condition of a nature that, 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). Specifically, the Notification Letter alleges that the Individual has been diagnosed by a psychologist with Alcohol Dependence with Physiological Dependence in Early Full Remission." Ex. 1 at 1. These circumstances adequately justify the DOE's invocation of Criterion H, and raise significant security concerns. 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) state that an opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, reliability, or trustworthiness, raises a security concern under Adjudicative Guideline I at ¶¶ 27 and 28(b).

Criterion J refers to information indicating that the Individual has: "Been, or is, a user of alcohol habitually to excess, or has been diagnosed by a . . . psychologist. . . as alcohol dependent. . ." 10 C.F.R. § 710.8(j). Specifically, the Notification Letter alleges that the DOE Psychologist diagnosed the Individual with Alcohol Dependence under the American Psychiatric Association's Diagnostic and Statistical Manual, fourth edition, text revision (DSM-IV-TR). These circumstances adequately justify the DOE's invocation of Criterion J, and raise significant security concerns. 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) provide that "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 Guideline G at ¶ 21. "Conditions that could raise a security concern and may be disqualifying include: . . . Diagnosis by a duly qualified medical professional (*e.g.*, physician, clinical psychologist, or psychiatrist) of . . . alcohol dependence..." Adjudicative Guideline G at ¶ 22(d).

The LSO also alleges, under Criterion L, that the Individual failed to provide accurate information concerning his illegal drug use during an interview of him conducted by the Office of Personnel Management (OPM) on December 15, 2005, and during a March 13, 2006, PSI conducted by the

LSO. The Individual's failure to provide accurate information to the OPM and the LSO, as alleged, adequately justifies the LSO's invocation of Criterion L, and raises significant security concerns. The Adjudicative Guidelines state in pertinent part: "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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process." Adjudicative Guideline E ¶ 15. Specifically, the Adjudicative Guidelines set forth several conditions relating to an individual's obligation to provide full and accurate information to government officials during the security clearance process, which could raise a security concern and may be disqualifying, stating in pertinent part that: "Deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . .determine security clearance eligibility or trustworthiness, [and that] deliberately providing false or misleading information concerning relevant facts to an . . . investigator, security official, competent medical authority, or other official government representative..." are among those circumstances which may be disqualifying. Adjudicative Guideline E at 16(a) and (b).

III. REGULATORY STANDARDS

The Administrative Judge's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. See 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). In rendering this opinion, I have considered the following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's 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. See 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

On December 15, 2015, the Individual was interviewed by an OPM Investigator as part of a background investigation for his security clearance. Ex. 8 at 1. During this investigation, the Individual was asked about his past illegal drug use. The Individual reported that he had used marijuana a total of fifteen times between August 1995 and September 1998. Ex. 8 at 1. The Individual also reported that he had used cocaine on one occasion during that period. Ex. 8 at 1. The Individual stated that he had never used any other illegal drugs. Ex. 8 at 4.

During a March 13, 2006, PSI, the Individual was asked to provide a history of his past illegal drug use. The Individual reported that his first use of illegal drugs occurred in 1987 or 1988, when he

was in 7th or 8th grade. Ex. 10 at 7. He then reported that he used marijuana once a week in high school. Ex. 10 at 8. He left high school for military school in 1991 or 1992. Ex. 10 at 8. The Individual stated that he used marijuana approximately 15 times after he left the Army. Ex. 10 at 17. He stated that he had definitely used marijuana over 60 times, and admitted that he may have used marijuana over 100 times. Ex. 10 at 17-18. He reported that he last used marijuana in 1999. Ex. 10 at 13. The Individual stated that he had only used cocaine on one occasion, and that this cocaine use occurred in 1996. Ex. 10 at 22. Apparently, the security concerns raised by the Individual's past illegal drug use were resolved, and he received a DOE security clearance.

On December 2, 2015, the Individual self-admitted to an inpatient treatment program (the ITP). Ex. 7 at 1. Records from the ITP indicated that, at the time of his admission, the Individual had been consuming one to two pints of whisky and six to ten beers every day for the past 30 days. Ex. 7 at 1. The treatment records further state that the Individual had used cocaine on twelve occasions; Psilocybin mushrooms on 50 to 60 occasions; and had smoked marijuana on a daily basis until 1998. Ex. 7 at 2. The treatment records indicate that the Individual was being treated for Alcohol Dependence. Ex. 7 at 21.

Because of the security concerns raised by the Individual's treatment for Alcohol Dependence, the LSO conducted a PSI of the Individual on March 10, 2016. Ex. 9 at 1. During this PSI, the Individual provided an alcohol use history and reported that he had been receiving treatment. The Individual was unaware of his specific clinical diagnosis. Ex. at 16. The Individual stated that he had sought inpatient treatment when he could not fulfill his promise to his wife to stop using alcohol. Ex. 9 at 14. He reported that he was in the inpatient facility for 27 days. Ex. 9 at 15. The Individual stated that he intended to abstain from using alcohol in the future. Ex. 9 at 40, 44. The Individual reported that he had been attending Alcoholics Anonymous (AA) meetings. Ex. 9 at 20-21. The Individual stated that he has an AA sponsor and that he was also receiving counseling from his pastor on a weekly basis. Ex. 9 at 41.

Since the PSI did not resolve the security concerns raised by the Individual's Alcohol Dependence, the LSO requested that the DOE Psychologist evaluate the Individual. The DOE Psychologist conducted her evaluation of the Individual at some time before April 21, 2016, when she issued her report.³ The DOE Psychologist's Report states that the treatment program's staff diagnosed the Individual with Alcohol Dependence, and concurred with this diagnosis, further concluding that the Individual's Alcohol Dependence included Physiological Dependence. Ex. 4 at 4, 7-8. The DOE Psychologist noted that the Individual reported to her that his last consumption of alcohol occurred on December 2, 2015. Ex. 4 at 5. The DOE Psychologist noted that the Individual has benefited from his treatment program: he recognized that he is not a "normal drinker" and that he has to learn and use communication skills to address stressors rather than using "the bottle" to address these issues. Ex. 4 at 7. She further noted that the Individual has a good support system. Ex. 4 at 7. However, the DOE Psychologist opined that the Individual had not reformed or rehabilitated himself from his Alcohol Dependence, since he had only been sober for less than five months. Ex. 4 at 7-9. The DOE Psychologist opined that the Individual needed to maintain his sobriety for at least one year in order to establish that he has been rehabilitated from his Alcohol Dependence. Ex. 4 at 9. The DOE Psychologist further opined that the Individual's "diagnosis of

³ The DOE Psychologist's report states that she conducted an examination of the Individual, but does not indicate the date on which that examination occurred.

Alcohol Dependence With Physiological Dependence . . . in Early Full Remission is an illness which causes, or may cause, a significant defect in judgment or reliability.” Ex. 4 at 9.

The DOE Psychologist reported that the Individual “presented as open and honest.” Ex. 4 at 5. The DOE Psychologist noted, however, that there were a number of discrepancies between the information that the Individual had provided during his inpatient treatment, his OPM interview, his March 13, 2006, PSI, and his psychological evaluation. Ex. 4 at 4. The DOE Psychologist’s Report cites six specific examples of these discrepancies, including the following description of the information that the Individual had provided concerning his history of illegal drug use:

He reported during [the OPM Interview] and during this Clinical Interview, that he had used cocaine only once at a party when he was in the Army. . . However, [the inpatient treatment facility’s] records reflect that [the Individual] told them he had used cocaine 12 times, mushrooms/LSD (psilocybin) 50-60 times over a 4-year period, and methamphetamine approximately 12 times. This drug use occurred when he was 20-21 years of age except for the mushrooms which he first took at age 17.

Ex. 4 at 4-5.

V. ANALYSIS

A. Alcohol Dependence

The Individual acknowledges that he is Alcohol Dependent. He has resolved the security concerns arising from his Alcohol Dependence by submitting the testimony of his spouse, his father, his coworker, his pastor, and himself, as well as letters from his Employee Assistance Program Counselor (Ex. A), and two of his coworker’s (Ex. B and Ex. C), showing that he has received adequate and effective treatment for his Alcohol Dependence, and has abstained from using alcohol since December 2, 2015.

During his hearing testimony, the Individual testified that he believes that he is Alcohol Dependent, and that he realizes he can never drink again. Tr. at 128-129. He has continued attending AA meetings, but has dropped his sponsor, and decreased his attendance to once a week. Tr. at 100-101. He testified that he knows he cannot use alcohol. Tr. at 106. The Individual testified that the ITP taught him he had to pay attention to his feelings, and that he had a problem with alcohol. Tr. at 108-109, 111, 129. He realizes that he needs to prevent stress from building up by being open and honest with people. Tr. at 118. He also realized that he isolated himself socially. Tr. at 110. He has learned to talk honestly with people. Tr. at 110. He testified that the ITP discharged him ahead of schedule because of his rapid progress. Tr. at 112. The Individual testified about his determination to never use alcohol again. Tr. at 117.

The Individual’s spouse testified on his behalf at the hearing. She testified that she has been married to the Individual for 11 years. Tr. at 12. The Individual’s spouse testified that they are together during most of time when the Individual is not at work. Tr. at 28-29. She testified that the last time that she was aware of the Individual using alcohol was on December 2, 2015. Tr. at 14, 33. She testified that she does not use alcohol. Tr. at 14. She testified that since the Individual

has been sober: "I feel like our marriage is in a very good place, our family is in a very good place. I feel like he's much more present, in -- involved in day-to-day life with me and the kids and home." Tr. at 15. She noted that the Individual states that he is very happy that he has stopped drinking, and that there is now "a calmness about him." Tr. at 15, 29. The Individual's spouse testified that he was very committed to making the ITP succeed and is currently very committed to his sobriety. Tr. at 18, 21. Upon his release from the ITP, the Individual appeared to be "happy and focused on a forward path." Tr. at 19. The Individual's spouse testified that the Individual began attending AA meetings immediately upon his release from the ITP, although he is not attending them as frequently as he once was. Tr. at 19, 33. She testified that the Individual's learning to communicate and be honest is the key to his successful sobriety. Tr. at 30.

The Individual's pastor testified on his behalf at the hearing. The pastor has known the Individual for 8 years. Tr. at 74. The pastor testified that he meets with the Individual on a weekly basis to provide counseling and as an "accountability check-in." Tr. at 76. The pastor has counseled the Individual on a number of issues, including his drinking. Tr. at 76. The pastor testified that the Individual has maintained his sobriety for over a year. Tr. at 76. The pastor testified that he is encouraged by the changes he has seen in the Individual, and the Individual's commitment to staying sober. Tr. at 77. He further testified that he believed that the Individual was a very honest and forthright person. Tr. at 86.

The DOE Psychologist testified after observing the testimony of the Individual, his spouse, his father, his coworker, and his pastor. The DOE Psychologist testified that, after observing the other witnesses testify, she was of the opinion that the Individual had met the requirements for reformation and rehabilitation that she had recommended in her report. Tr. at 133. She further testified that the Individual's prognosis is "very good to excellent" and that the likelihood that the Individual will relapse is "very low." Tr. at 134.

The Adjudicative Guidelines set forth four conditions that could mitigate security concerns arising from alcohol consumption. As the above discussion indicates, the Individual has shown that at least three of the four mitigating conditions set forth at Guideline G ¶ 23 are present in the instant case. First, the Individual has clearly acknowledged his issues of Alcohol Dependence, and has provided evidence of actions taken to overcome this problem, in the form of his completion of the ITP, and his participation in individual counseling, his attendance of AA meetings, and his pastoral counseling. The testimony of the Individual, his spouse, his father, his pastor, and the letter supplied by his individual counselor show that he has established a fourteen-month pattern of abstinence. Guideline G at ¶ 23(b). Second, the Individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress. Guideline G at ¶ 23(c). Third, the Individual has successfully completed counseling, in the form of the ITP, along with his individual counseling and AA, and has therefore demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations. He has also received a favorable prognosis by the DOE Psychologist. Adjudicative Guideline G at ¶ 23(d).

Since the Individual has shown convincingly that he has met three of the four mitigating conditions for security concerns arising from alcohol consumption, I find that Individual has provided sufficient mitigation to resolve the security concerns arising from his Alcohol Dependence under Criterion H and J.

B. Omission of the Full Extent of His Illegal Drug Use during a Background Investigation for His Security Clearance.

During the Individual's testimony at the hearing, the Individual testified that the ITP's records concerning his illegal drug use were inaccurate. Tr. at 120. As an initial matter, the Individual noted that he was under the influence when he provided his drug history, and that he kept telling the ITP staff that he couldn't really remember his earlier drug use and that they told him to "guess." Tr. at 120. The Individual testified that he had not used mushrooms or LSD from 50 to 70 times, although he had used those drugs "a few times" maybe five to seven times. Tr. at 121. He further testified that: "I did not say that I had used methamphetamines and cocaine six to twelve times. I stated that I had tried them both, speed and cocaine, maybe six to twelve times, and they had written them both down in the same column. I did not say I had used each of those that much." Tr. at 121. The Individual further testified that he had "never been a daily user of marijuana since age 12." Tr. at 121. The Individual also described a number of other incidences where he claimed that the ITP's records were inaccurate, each of which were irrelevant to the issue of whether he had inappropriately omitted information about his illegal drug use during his background investigation. Tr. 122-123.

During my examination of the Individual, he admitted that during his March 13, 2006, PSI, he stated that he only used cocaine once, when in fact at that time, he had actually used cocaine on six to twelve occasions. Tr. at 124. When I asked the Individual if he had denied using any other illegal drugs during the OPM interview, he testified: "I am saying that I do not recall ever denying ever using any other illegal drugs." Tr. at 126. He further testified that that the OPM investigator could have recorded his answer wrong or misunderstood him. Tr. at 126. The Individual admitted that he had used Psilocybin mushrooms and LSD as well. Tr. at 126-127. The Individual testified that he only used LSD one or twice, mushrooms a few times, and only used methamphetamine a few times. Tr. at 127-128.

The record shows that the Individual omitted a great deal of his illegal drug history during his OPM interview. The Individual also deliberately minimized his cocaine use during the March 13, 2016, PSI when he stated that he had only used cocaine on one occasion, when in fact he had used cocaine on six to twelve occasions.

The Adjudicative Guidelines set forth four conditions that could mitigate security concerns arising from personal conduct at issue in the instant case.⁴ As the above discussion indicates, the Individual has not shown that any of these conditions exist.

First, the Individual has not shown that he has "made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." Guideline E at ¶ 17(a). The Individual's omissions were not intentionally brought to the LSO's attention by the Individual, and ten years passed before this information was brought to the LSO's attention.

⁴ Two of the six conditions, those set forth at ¶17(e) and ¶17(f) have no relevance to the circumstances of the present case.

Second, there is no evidence in the record indicating that the Individual's omissions or concealment were "caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process." Guideline E at ¶ 17(b).

Third, the Individual has not shown that "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Guideline E at ¶ 17(c). While ten years have passed since the Individual made his omissions, his testimony at the hearing revealed a continuing concern about the Individual's reliability, trustworthiness, and good judgment. When asked about these omissions, instead of acknowledging that they occurred, showing remorse, and showing that he had learned from his past mistake, the Individual attempted to argue that they did not occur by questioning the accuracy of the OPM report and the ITP's records. The Individual did not admit that he had omitted information during the OPM interview and during the PSI, until he was cross-examined by the Administrative Judge. Accordingly, the record shows that the Individual continued to be less than candid about his illegal drug use as recently as his security clearance hearing.

The Individual has clearly not "acknowledged the behavior." Guideline E at ¶ 17(d). Moreover, although the record shows that he has "obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior," the Individual's less than candid testimony at the hearing shows that I cannot safely conclude that "such behavior is unlikely to recur." Guideline E at ¶ 17(d).

Accordingly, I find that the Individual has not resolved or mitigated the security concerns raised under Criterion L by his omission of information during an OPM Interview and during a PSI.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H, J, and L. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has sufficiently mitigated the Criteria H and J security concerns. However, the Individual has not mitigated or resolved the Criterion L security concerns. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest.

Therefore, the Individual's security clearance should not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals

Date: March 8, 2016