

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

In the Matter of: Personnel Security Hearing)
)
Filing Date: November 30, 2016)
_____)

Case No.: PSH-16-0086

Issued: March 3, 2016

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXX XXX XXX (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 be restored at this time.²

I. BACKGROUND

The Individual’s employer informed the LSO that it had administered a random blood alcohol screening test to the Individual. The screening test detected that the Individual had reported to work with an excessively high Blood Alcohol Level (BAL). In order to address the security concerns raised by this incident, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual on April 21, 2016, and had the Individual evaluated by a Psychologist (the DOE Psychologist) on July 18, 2016. Ex. 8, Ex. 6. Because the PSI and the DOE Psychologist’s evaluation of the Individual raised additional security concerns about the Individual, 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 forwarded the Individual’s request to OHA. The Director of OHA appointed me as the Administrative Judge in this matter on December 1, 2016.

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>.

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 mother-in-law, his fellow Alcoholics Anonymous (AA) attendee, his coworker, his substance abuse counselor (the Counselor), and the DOE Psychologist. *See* Transcript of Hearing, Case No. PSH-16-0086 (hereinafter cited as “Tr.”). The LSO submitted nine exhibits, marked as Exhibits 1 through 9, while the Individual submitted no exhibits.

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) and (j) 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 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). Specifically, the Notification Letter alleges that the Individual has been diagnosed by a psychologist as a “user of alcohol habitually to excess.” 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” 10 C.F.R. § 710.8(j). Specifically, the Notification Letter alleges that the Individual has consumed alcohol to the point of intoxication about twice a month. These circumstances adequately justify the DOE’s invocation of Criterion J, and raise significant 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 Guideline G at ¶ 21. “Conditions that could raise a security concern and may be disqualifying include: . . . (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, . . . regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent, [and] (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.” Adjudicative Guideline G at ¶ 22(a) and (c).

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 February 18, 2016, the Individual reported for work at a DOE facility. The Individual's employer administered a random blood alcohol screening test to the Individual at approximately 9:30 a.m. Ex. 3 at 1; Ex. 6 at 1. This test indicated that his blood alcohol level (BAL) was .026%. *Id.* The Individual's employer then conducted a second test which indicated that the Individual's BAL was .023%. *Id.* The employer then sent the Individual home, since the employer's work rules forbid employees from working with a BAL in excess of .02%. *Id.*

Because of the security concerns raised by the February 18, 2016, incident, the LSO conducted a PSI of the Individual on April 21, 2016. Ex. 8 at 1. During this PSI, the Individual provided a detailed history and description of his alcohol use.

Since the PSI did not resolve the security concerns raised by the Individual's positive alcohol test, the LSO requested that the DOE Psychologist evaluate the Individual. The DOE Psychologist conducted his evaluation of the Individual on July 18, 2016. The DOE Psychologist's Report stated that the Individual's description of his alcohol use provided in his PSI and during his Psychological Examination indicated that, prior to the February 18, 2016, incident, the Individual was consuming alcohol to the point of intoxication twice a month.³ Ex. 6 at 3-4. Accordingly, the DOE Psychologist concluded that the Individual habitually consumes alcohol to excess. Ex. 6 at 5. The DOE Psychologist further opined that: “To gain adequate confidence in his ability to control his drinking (his reformation) it is recommended that he continue his abstinence for a minimum of one year from the date of his last drink (02/18/16) . . . To support his sustaining his abstinence, at least monthly individual counseling with an alcohol counselor (in addition to his weekly group aftercare meetings) is strongly recommended during the remainder of the year.” Ex. 6 at 5-6.

V. ANALYSIS

The Individual resolved the security concerns discussed above by submitting the testimony of his Counselor, spouse, mother-in-law, coworker, and fellow AA attendee, as well as by providing his own testimony. After, the Individual and his spouse, mother-in-law, coworker, and fellow AA

³ The Individual informed the DOE Psychologist that he last consumed alcohol on February 18, 2016. Ex. 6 at 3.

attendee testified, but before the Counselor testified, the DOE Psychologist testified that the Individual had resolved the concerns about the Individual's judgment and reliability leading him to conclude that the Individual had been reformed or rehabilitated from his habitual use of alcohol to excess.

During his hearing testimony, the Individual testified that shortly after he tested positive on the alcohol screening, he met with the Plant Psychologist, who recommended that he receive counseling and who provided the Individual with the Counselor's contact information. Tr. at 60-61. The next day, the Individual met with the Counselor and agreed to enroll in the Intensive Outpatient Program (IOP) and to stop using alcohol. Tr. at 62-63. The Individual testified that he successfully completed the IOP, which helped him realize that he was abusing alcohol. Tr. at 63-64. The Individual testified that after he completed the IOP, he began attending aftercare meetings, and AA meetings as well. Tr. at 64, 65. Through AA, he met a friend who understands his recovery and provides him with support. Tr. at 67. The Individual testified that he has continued to receive individual counseling services from the Counselor. Tr. at 69. The Individual meets with the plant psychologist for one hour each month to discuss his recovery as well. Tr. at 60-61. The Individual testified that he plans to continue attending aftercare and receiving individual counseling. Tr. at 70. The Individual testified that he has not used alcohol since the night before he tested positive for alcohol at work. Tr. at 62, 73-74. He recognizes that he has an alcohol problem, and therefore cannot use alcohol safely. Tr. at 69, 72, 74. He is now committed to his sobriety and he intends to permanently refrain from using alcohol. Tr. at 72, 74. The Individual testified that he has been subjected to a number of random alcohol tests, since February 18, 2016, and that none of them have detected alcohol. Tr. at 73. The Individual testified that he has the support of his friend from AA, his spouse, his mother-in-law, and his Counselor to help him with his recovery. Tr. at 68.

The Individual's Spouse testified on his behalf at the hearing. She testified that she has been married to him since 1998. Tr. at 12. She and the Individual spend about 90 percent of their non-working time together. Tr. at 19. She testified that she has not observed him using alcohol since February 2016, and has had no reason to believe that he has used alcohol in her absence during that time. Tr. at 19, 23, 25. She felt that the IOP made an impression on the Individual and helped him recognize the effect that alcohol had on his life. Tr. at 16-17. She stated that he now realizes that using any amount of alcohol would be dangerous for him. Tr. at 20. The Individual told her he intends to permanently abstain from alcohol use, and she plans to support him by abstaining from alcohol use as well. Tr. at 20. They do not keep alcohol in their house. Tr. at 21, 23. She has noticed that the Individual does not seem to be bothered when family members use alcohol around him. Tr. at 21.

A friend of the Individual testified on his behalf at the hearing. The friend identified himself as the Individual's "Sponsor." Tr. at 38-39. The friend, who described himself as a "recovered alcoholic," testified that he met the Individual at an AA meeting. Tr. at 30, 33. The friend testified that the Individual has a positive attitude towards his sobriety. Tr. at 31. Although the friend did not believe that AA was right for the Individual, he felt that AA had been of benefit to the Individual. Tr. at 32. The friend testified that he sees the Individual at aftercare meetings on occasion. Tr. at 33. They talk almost every Thursday night, about the Individual's recovery. Tr. at 34, 40. He testified that the Individual is committed to his recovery. Tr. at 36.

The Individual's coworker also testified on the Individual's behalf. He testified that he regularly socializes with the Individual. Tr. at 44. The coworker testified that he no longer observes the Individual using alcohol, and has not seen him do so since February 18, 2016. Tr. at 44-45. He stated that the Individual has told him that he will not use alcohol in the future. Tr. at 48.

The Individual's mother-in-law also testified on his behalf. She testified that she lives on the same property as the Individual and sees him on a frequent basis. Tr. at 50, 51. She testified that she has not observed him drinking since the February 2016 incident, even when others were drinking in his presence. Tr. at 52, 54.

The DOE Psychologist testified after observing the testimony of Individual, his spouse, mother-in-law, coworker, and fellow AA attendee. The DOE Psychologist testified that, after observing the other witnesses testify, the Individual now has "a positive prognosis," and that he does not think the Individual will drink again. Tr. at 78-79. The DOE Psychologist testified that he no longer has any concerns about the Individual's judgement and reliability. Tr. at 78.

The Counselor testified on the Individual's behalf, after the DOE Psychologist. She testified that she agreed with the DOE Psychologist's testimony. Tr. at 81.

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 abuse, and has provided evidence of actions taken to overcome this problem, in the form of his completion of the IOP, and his participation in individual counseling with two professionals, the Plant Psychologist, and the Counselor. The testimony of the Individual, his spouse, his coworker, his Sponsor, and his mother-in-law show that he has established a one-year 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 outpatient counseling, in the form of the IOP along with aftercare, has demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations, and has received a favorable prognosis by two duly qualified medical professionals. 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 habitual use of alcohol to excess.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H and J. 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. Accordingly, the Individual has 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 be restored at this time. The National Nuclear Security Administration

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 3, 2016