

United States Department of Energy  
Office of Hearings and Appeals

In the Matter of Personnel Security Hearing )  
 )  
Filing Date: December 12, 2016 )  
 )  
\_\_\_\_\_ )

Case No.: PSH-16-0090

Issued: April 6, 2017

**Administrative Judge Decision**

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (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.”<sup>1</sup> For the reasons set forth below, I conclude that the individual’s security clearance should not be restored at this time.<sup>2</sup>

**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 Aggravated Driving Under the Influence (DUI).<sup>3</sup> Because this arrest raised security concerns, the Local Security Office (LSO) summoned the individual for an interview with a personnel security specialist in June 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”) for an agency-sponsored evaluation. The DOE psychologist prepared a report of his evaluation of the individual for the LSO.

<sup>1</sup>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.

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

<sup>3</sup>This was his second alcohol-related arrest. The individual was previously arrested in 1991 for Driving While Under the Influence of Alcohol.

After reviewing this report and the individual's personnel security file as a whole, 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 18 exhibits and presented the testimony of a licensed alcohol counselor, 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 I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005) (Adjudicative Guidelines)*.

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. Guideline I, "Psychological Conditions," is implicated when a government-contracted mental health professional concludes that an individual suffers from a mental or emotional condition that can impair judgment, reliability, or trustworthiness. As evidence of circumstances raising security concerns under these Guidelines, the Letter cites the DOE psychologist's diagnosis that the individual suffers from Alcohol Dependence, with physiological dependence, in early remission, and his conclusion that this constitutes an illness or mental condition that causes, or could cause, a significant defect in his judgment or reliability. The Letter also cites the individual's statements during his PSI indicating that, over the past two or three years, he would consume a half pint of vodka nightly over a period of one to one-and-one-half hours.

These allegations adequately support the invocation of Guidelines G and I, and they raise serious security concerns. The excessive consumption of alcohol and emotional or mental conditions involving such consumption often lead 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 and ¶ 27.

## **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**

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 alcohol counselor, that his alcohol use disorder is now in remission.

The individual testified that he started drinking at around the age of 19, primarily on weekends, and then over the years it slowly increased from two to three drinks generally three or four times a week to a half pint of vodka every day, which was his typical level of consumption at the time of his 2016 arrest. Hearing transcript (Tr.) at 31. Stress stemming from marital trouble and from work drove the individual to drink. Tr. at 31-32. He asserted that, prior to his arrest, he did not believe that he had a drinking problem, and thought that he could use alcohol to relax, but he “was wrong.” Tr. at 32. He tried to stop drinking on his own about eight years ago because of earlier problems with his security clearance, but relapsed after approximately nine months of sobriety.<sup>4</sup>

---

<sup>4</sup> During a 2009 PSI, the individual admitted that he used cocaine while he was going through the process of reinstating his security clearance with the DOE. He claimed that he was drunk at the time, and he promised during the PSI that he would never drink to intoxication again. This incident led to the initiation of Administrative Review proceedings against the individual. DOE Exhibit (DOE Ex.) 5.

The individual then talked about his February 2016 DUI arrest and the events that led up to it. As was his practice at the time, he had consumed a half pint of vodka while “trying to relax,” but because he had had an argument with his wife, “that didn’t work out.” Tr. at 34. He then consumed 10 vodka “minis,” all in a period of approximately two and one half hours. DOE Ex. 8 at 2. Thereafter, he went outside, got into his vehicle, and began listening to music. Then, “for some reason,” he “decided to drive in the neighborhood.” Tr. at 34. Realizing that he was very intoxicated, he parked the vehicle, got out, and tried to walk home. He fell down, and a concerned neighbor called an ambulance. The police were also summoned, and they followed him to the hospital. Tr. at 35.

The individual attempted to stop drinking after this incident, and succeeded in abstaining until May 2016, when he “relapsed.” Tr. at 36. He drank a half pint of vodka after another argument with his wife. This latest incident, along with a summons that he received as a result of the February 2016 incident, prompted him to seek professional help. He enrolled in a local intensive outpatient alcohol treatment program (IOP). *Id.*

He acknowledged that marital difficulties have been a primary cause of his dysfunctional drinking, and he said that he and his wife “have been working on” it. Tr. at 38. She saw a counselor for approximately six months after their May argument. The individual stated that his wife only spoke to him “a little bit” about this counseling, but that he was aware that it concerned her “issues” with her parents. Tr. at 60. She is now employed, which he said helps him in terms of supporting the family, and helps her in that it gets her out of the house and gives her a means of defining herself now that their children have moved out. *Id.* The individual asked his wife whether she wanted to go to marriage counseling, and she replied that she didn’t think that they needed it “because everything is going good (*sic*) now.” Tr. at 39. He added that he was “open to” going to marriage counseling, and that he would raise the subject with her again at a later date. *Id.* He has discussed with his alcohol counselor issues relating to his marriage, and both he and his wife have talked to his mother and to her mother about their marital problems. The individual said that they learned a lot about marriage and about each other from those discussions. He stated that he intends to handle any future arguments with his wife by taking a “timeout” if things start to get too heated, rather than by resorting to alcohol. Tr. at 45. They have started to spend more time together, and he is paying more attention to her needs. Tr. at 59. He described their marriage as being “in a very good place” now. Tr. at 40.

The individual began attending Alcoholics Anonymous (AA) meetings in August 2016. He attends one meeting per week, and he has a sponsor. Tr. at 42. He has remained abstinent since May 2016. It has “totally changed [his] life for the better,” Tr. at 71, and it is his intention to refrain from alcohol consumption for the rest of his life. Tr. at 43. The individual acknowledged that he had previously tried to stop drinking and was unsuccessful, but he insisted that this time would be different, because he now has the knowledge and support provided by his IOP and by AA. He stated that towards this end, he intends to continue going to AA indefinitely and to complete his IOP, including aftercare. Tr. at 44, 63. He asserted that through these programs, he has learned how to deal with stress without resorting to drinking. Tr. at 46.

The individual’s licensed alcohol counselor also testified. He said that the individual began seeing him in May 2016 when he enrolled in the IOP. The program staff performed an intake assessment,

and diagnosed him as suffering from alcohol dependence. They developed a treatment plan for the individual, which initially consisted of three group sessions and one individual counseling session per week. After 90 days, they suggested that he consider attending AA, and he agreed. The individual began attending one AA session, two group sessions, and an individual counseling session per week. Tr. at 13. The focus of the individual's treatment has been to reinforce the idea that he doesn't need to resort to drinking to deal with his problems. Tr. at 21. The individual and the counselor have discussed the individual's marital situation, the stressors arising from it, and the possibility of the individual and his wife participating in marriage counseling. The counselor said that the individual has done "great," has remained sober, and has been compliant with his treatment regimen. Tr. at 14.

The counselor recommended that the individual remain in treatment for at least a year, and that he participate in aftercare. Tr. at 24. He termed the individual's current status as "early remission," and stated that the individual would be considered to be in "full remission" only after one year of treatment and sobriety. Tr. at 25. Although the individual had not yet achieved a year of treatment as of the date of the hearing, the counselor believes that he is "in full recovery," and that his prognosis is "good" for remaining sober, given his age, his maturity, and "the consequences that he's faced." Tr. at 15, 25.

## **B. Administrative Judge's Decision**

The evidence in this case indicates that the individual had abstained from alcohol use for approximately nine months as of the date of the hearing, that he acknowledges his alcohol use disorder and has taken steps to overcome it, and that he has received a positive prognosis from the substance abuse professional who is treating him. These are significant mitigating factors. *See Adjudicative Guidelines*, ¶ 22(b) and ¶ 22(c). Nevertheless, I am not convinced that the chances of a relapse are sufficiently remote to warrant restoration of the individual's security clearance. I reach this conclusion primarily due to his failure to satisfy any of the reasonable recommendations for reformation or rehabilitation set forth in the DOE psychologist's report.

In that report, the DOE psychologist opined that, in order to demonstrate adequate evidence of reformation or rehabilitation, the individual would have to remain abstinent for 12 months, complete his treatment program, and enter into marriage counseling. DOE Ex. 8 at 7. As indicated above, as of the date of the hearing, the individual had been abstinent for nine months, had not completed his treatment program, and had not entered into marriage counseling.

I am particularly concerned about the fact that the individual and his wife have not entered into marriage counseling. At the hearing, the DOE psychologist testified that the individual is "on the right path" with his abstinence and treatment, Tr. at 94, and that his prognosis for "the next year or two" would be good *if* he finishes his treatment program, continues with aftercare, and enters marital therapy. Tr. at 92. He specifically noted that marital counseling is not "an optional thing," because the individual's marital difficulties were a significant "fuel" for his drinking. Tr. at 85.

The evidence in this case amply supports the conclusion that marital therapy is integral to the individual's rehabilitation. The individual's last two instances of excessive drinking, the one leading up to his February 2016 DUI and his relapse in May 2016, were triggered by stress and

anger caused by arguments with his wife. The amount of stress and anger experienced by the individual in February 2016 was apparently so severe that, after drinking a half pint of vodka failed to achieve the desired effect, he consumed 10 vodka “minis,” all in a period of approximately two and one half hours. DOE Ex. 8 at 2. According to the DOE psychologist, the individual had consumed nearly enough alcohol to reach a blood alcohol content that would kill 50 percent of the population. Tr. at 95. The level of dysfunction in his marriage was so significant that, at the time of his psychological evaluation, the individual was considering separating from his wife. DOE Ex. 8 at 7. While the individual’s testimony that their marriage has improved and that his wife has received counseling is a positive factor if true, I note that the individual has indicated that his wife has not been fully open with him regarding counseling; this raises a question regarding whether an adequate level of trust and communication has been established between the individual and his wife.

As previously mentioned, the *Adjudicative Guidelines* require me to resolve any doubts about the individual’s eligibility for access authorization in favor of the national security. For the reasons set forth above, I continue to harbor significant doubts about the individual’s ability to refrain from excessive drinking in the future, and therefore about his eligibility for a security clearance. The individual has not adequately addressed the DOE’s security concerns under guidelines G and I.

## V. CONCLUSION

I find that significant security concerns remain regarding the individual’s alcohol usage. 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: April 6, 2017