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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: July 20, 2017)
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Case No.: PSH-17-0048

Issued: October 25, 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.”¹ For the reasons set forth below, I conclude that the individual’s security clearance should be restored.²

I. BACKGROUND

The following facts are undisputed. The individual is employed by a Department of Energy (DOE) contractor, and was granted a security clearance in connection with that employment. Because his alcohol consumption began to concern him, in early 2016 the individual sought help through the contractor’s Employee Assistance Program, and in March of that year he voluntarily enrolled in a local substance abuse treatment program.

Upon learning of his enrollment, the Local Security Office (LSO) summoned the individual for a Personnel Security Interview (PSI) in July 2016. During this PSI, the individual discussed his history of alcohol consumption, the events that led up to his enrollment in the treatment program, and what

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.

² Decisions 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>.

that program included. At the end of the PSI, the individual signed a form authorizing the DOE to obtain the substance abuse program's records of the individual's participation.

After this PSI, 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 written report based on her evaluation, and transmitted that report to the LSO.

After reviewing that 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 10 exhibits into the record of this proceeding and presented the testimony of the DOE psychologist at the hearing. The individual introduced three exhibits and presented the testimony of seven 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 E, G, H, and I of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, Security Executive Agent Directive 4, (June 8, 2017) (*Adjudicative Guidelines*), and to 50 U.S.C. § 3343(b) (the Bond Amendment).

Guideline E relates to personal conduct, and it provides that 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. In support of its invocation of this Guideline, the LSO alleges that during his October 2016 PSI, the individual:

- Admitted to having used cocaine while holding a security clearance, while denying such use on a January 2016 Questionnaire for National Security Positions (QNSP);
- Admitted to using cocaine approximately three times between October 2015 and March 2016, despite having denied that he had illegally used drugs during the seven years preceding his January 2016 QNSP;
- Admitted to using cocaine approximately three times between October 2015 and March 2016, which the LSO claims is inconsistent with information that he provided during the intake process at the substance abuse facility; and
- Denied having purchased cocaine, while admitting during his treatment at the substance abuse facility that he would spend \$80 on cocaine when he used.

The LSO also alleges under this Guideline that the individual lied about his cocaine use to an OPM investigator, and failed to report this use to the DOE, despite being familiar with the DOE's reporting requirements.

Guideline G states 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. Under this Guideline, the LSO cites the finding of the DOE psychologist that the individual suffers from Alcohol Dependence with Physiological Dependence in Early Full Remission. The LSO also relies on the individual's statements during his July 2016 PSI indicating that from October 2015 through March 2016, he was drinking anywhere from three to five miniatures of vodka to three pints of beer every day from Sunday to Thursday, and eight to 15 drinks per day every Friday and Saturday. Finally, the LSO cites the individual's 1994 and 1998 arrests for Driving While Intoxicated.

Guideline H, "Drug Involvement and Substance Misuse," provides that the illegal use of controlled substances can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about an individual's ability or willingness to comply with laws, rules and regulations. Pursuant to this Guideline, the LSO cites the individual's admitted usage of cocaine, including his usage while holding a security clearance.

Guideline I relates to psychological conditions, and it states that certain mental, emotional or personality disorders can impair judgment, reliability, or trustworthiness. In support of its invocation of this Guideline, the LSO cites the DOE psychologist's diagnosis of Unspecified Cocaine-Related Disorder in Early Remission, and her conclusion that this is a condition that can impair judgment, reliability, and trustworthiness. The LSO also relies upon the DOE psychologist's finding that the individual's decision to use cocaine and his subsequent failure to provide accurate, honest information about that use indicates that he suffers from a personality disorder that can impair judgment, reliability, and trustworthiness.

The Bond Amendment prohibits a Federal agency from granting or renewing the security clearance of any covered person who is an unlawful user of a controlled substance or an addict. As support for its application of the Bond Amendment, the LSO cites the DOE psychologist's diagnosis, and the individual's admission during his October 2016 that he used cocaine approximately three times between October 2015 and March 2016.

These circumstances adequately justify the DOE's invocation of Guidelines E, G, H, and I, and of the Bond Amendment, and they raise significant security concerns. Deliberately providing false or misleading information on a QNSP, to an investigator, or during a PSI raises security concerns and may be disqualifying. *Adjudicative Guidelines*, ¶ 16(a) and ¶ 16(b). Habitual consumption of alcohol to the point of impaired judgment and an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness are also circumstances that raise security concerns and may be disqualifying. *Adjudicative Guidelines*, ¶ 22(c) and ¶ 28(b). Finally, the individual's illegal drug usage can raise security concerns that may be disqualifying, *Adjudicative Guidelines*, ¶ 25(a), and fully justifies the DOE's application of the Bond Amendment.

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 Information

At the hearing, the individual did not dispute the allegations set forth in the Notification Letter. Instead, he attempted to demonstrate, through his own testimony and that of his Alcoholics Anonymous (AA) sponsor, a fellow AA participant, four co-workers, and his supervisor, that he is now a trustworthy person who has been rehabilitated from his substance abuse problems.

The individual testified that he knows that he has a drinking problem, and that that is why he sought treatment. Hearing Transcript (Tr.) at 58. However, after participating in a substance abuse treatment program and in AA, the individual believes that he is in a “much better place now.” Tr. at 59. He tries to stay away from the people he used to associate with, and he now spends time with his father and with people whom he has met through AA. Tr. at 60. The individual further testified that he went to EAP to seek help with his drinking in 2015. The EAP counselor suggested going into a rehabilitation program or attending AA. However, the individual continued, he left and resumed his consumption of alcohol. Eventually, he said, he “hit rock bottom” in that he tired of being sick and of lying to his supervisor about why he was missing work, and he entered into a treatment program. Tr. at 65. The individual testified that he stays away from bars now, and that his intention regarding his future is to remain sober. Tr. at 67, 73.

Regarding his cocaine usage and his lack of candor regarding that usage, the individual testified that he decided to change his life insofar as his drug and alcohol usage is concerned because of his two daughters. Tr. at 56. He explained that he believes that he has to be an example for them because their mother has had a long history of drug abuse and is in and out of jail. *Id.* The individual said that he

was not truthful about his cocaine usage because he was “scared” and “embarrassed.” Tr. at 61. However, he continued, through the substance abuse program he learned that he had “to be honest with [himself] if he was going to be honest with anyone else.” *Id.* When he was being deceitful about his cocaine use, the individual testified, he was “brand new” to the rehabilitation program and to sobriety. *Id.* He further stated that he hadn’t “come clean” with himself, and that was something that he was working on. He used cocaine, he said, when “he was intoxicated, out of stupidity,” and has never used the drug when he was not intoxicated. Tr. at 64, 78. He has informed his boss about his cocaine use, the individual testified, which “was one of the hardest things I’ve done.” Tr. at 72.

Finally, the individual related the message that his sponsor had imparted to him. The sponsor told him that

You’ve got to be bitterly honest. And he says that’s what it is in early recovery, you still don’t know, you’re still up to your own ways and you’re always trying to be deceitful, and he says . . . if you want to stay sober, you have to be honest, because if you can’t be honest with yourself, you can’t be honest with anybody else .

Tr. at 72-73. The individual testified that he agreed with this statement. Tr. at 73.

The sponsor testified that he is working through AA’s twelve steps with the individual. He said that he sees the individual “all the time” at AA meetings, and sometimes outside of the meetings, and he is in contact with the individual “several times a week.” Tr. at 42-43. In all of these encounters, the sponsor has never seen any signs of alcohol or illegal drug usage on the part of the individual. The sponsor believes that the individual has definitely changed his life, and has been truthful at the AA meetings. Tr. at 44.

The AA participant testified that she was also the individual’s case manager at the substance abuse treatment program, and that he completed the program with “flying colors.” Tr. at 49. She said that the individual’s program included 30 days of inpatient treatment, followed by 90 AA meetings in 90 days. The program had a psychiatrist on staff, whom the individual met with regularly. Tr. at 53-54. The fellow AA participant sees the individual every Monday night at their AA meetings. She said that the individual is following the “path of recovery,” is “amazing,” and is an inspiration to others in the room. Tr. at 51. According to her, the individual attends several meetings a week, and is a truthful and honest person. *Id.*

The individual’s four co-workers all testified that he is honest and trustworthy. Tr. at 18-19, 25, 29, 35. Two of them said that he had never shown any signs of alcohol or drug abuse. Tr. at 23, 28. Two indicated that they had not seen the individual consume alcohol since he entered the substance abuse program. Tr. at 24, 34. The individual’s supervisor testified that he is very dependable. Tr. at 14.

The individual also submitted a letter dated September 11, 2017, from an occupational psychologist at his worksite. In that letter, she said that she had been working with the individual for approximately 15 months, since his self-referral for treatment. The individual relapsed into alcohol use in August 2016, and promptly disclosed that relapse to her and to his EAP Counselor the next day. This honesty was important, the psychologist said, because he had been made aware of the possible disciplinary consequences of further alcohol use, and his disclosure indicated that he might now be willing to face the consequences of his use and to make changes. The individual subsequently became more involved

in his therapy, the psychologist continued, attending multiple AA and Narcotics Anonymous (NA) meetings each week. Individual's Exhibit (Ind. Ex.) B.

Regarding his initial failure to disclose his cocaine use, the psychologist said that while she does not condone it, she understands that such dishonesty is common during the early stages of recovery. She concluded by stating that the individual had remained sober for one year as of the date of the letter. *Id.*

B. Administrative Judge's Analysis and Findings

After reviewing this testimony and the record as a whole, I find that there are substantial mitigating factors in this case. As an initial matter, I conclude that as of the date of the hearing, the individual had refrained from using alcohol or cocaine. *Id.* During this time, he has been subject to frequent urinalysis and Breathalyzer tests, all of which he has passed. DOE Ex. 4 at 4, 6. Additionally, the individual has successfully completed a 30 day residential substance abuse treatment program, and has regularly attended AA and/or NA meetings, in accordance with his aftercare program. Ind. Ex. A and C; DOE Ex. 4. He has therefore acknowledged his alcoholism, provided evidence of his successful completion of a treatment program, and has demonstrated a clear pattern of abstinence in accordance with treatment recommendations. *See Adjudicative Guidelines*, ¶ 23(b), ¶ 23(d).

Furthermore, I attribute significant weight to the positive prognosis offered by the DOE psychologist. In her report, she concluded that the individual was receiving adequate treatment for his alcoholism, but that that treatment, and his abstinence, had not been of sufficient duration (eight months) as of the date of the evaluation. As sufficient evidence of rehabilitation, she concluded that he would have to show abstinence and continued participation in AA or its equivalent for a total of at least 12 months. She offered no opinion as to what would serve as adequate evidence of reformation or rehabilitation from his Unspecified Cocaine-Related Disorder or from the personality disorder that manifested itself in the individual's using cocaine and then lying about it.

However, after witnessing all of the testimony at the hearing, the DOE psychologist testified that the individual has "more than met" her recommendations for rehabilitation from his alcohol use disorder, and has also demonstrated adequate evidence of rehabilitation from his cocaine use disorder. Tr. at 81. Regarding the individual's lack of candor, the DOE psychologist agreed with the occupational psychologist that dishonesty about their substance use is common in the early stages of recovery. However, based on the individual's honesty with the EAP regarding a relapse that he suffered in August 2016, the testimony of his sponsor and another witness at the hearing, and, most importantly, the individual's testimony, the DOE psychologist concluded that he had successfully addressed her concerns about his honesty and trustworthiness. Tr. at 82-83. The DOE psychologist was particularly impressed by the individual's testimony at the hearing, finding him to be "very credible, in fact, refreshingly credible about some things that oftentimes people don't say in these hearings but probably are feeling." Tr. at 83. I too was favorably impressed with the individual's openness and candor at the hearing. The individual's substance abuse treatment and the positive prognosis offered by the DOE psychologist are significant mitigating factors, both with regard to the individual's honesty (*See Adjudicative Guidelines*, ¶ 17(d), ¶ 29(b) and ¶ 29(c)) and his cocaine use (*See Adjudicative Guidelines*, ¶ 26(d)).

For the reasons set forth above, I find that the individual has successfully addressed the DOE's security concerns under *Adjudicative Guidelines* E, G, H and I. I further conclude that he is no longer an unlawful user of a controlled substance or an addict, within the meaning of the Bond Amendment.

V. CONCLUSION

Consequently, the individual has convinced me 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 restore the individual's security clearance. 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: October 25, 2017