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

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	October 22, 2014)	
)	Case No.: PSH-14-0095
)	

Issued : January 30, 2015

Administrative Judge Decision

Wade M. Boswell, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXX (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 February 2014, the individual voluntarily entered a one-month residential program for alcohol treatment. Security regulations require such treatment to be reported, which the individual’s wife did on his behalf during his residence at the treatment facility. *See* Exhibit 6. Subsequent to his return to work, the Local Security Office (LSO) conducted a personnel security interview (PSI) with the individual on April 25, 2014. *See* Exhibit 7. Since the PSI did not resolve concerns about the individual’s alcohol usage, the LSO referred the individual for evaluation by a DOE

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.

consulting psychologist, who conducted a psychological assessment of the individual on June 27, 2014. *See* Exhibit 4.

Since neither the PSI nor the DOE psychologist's evaluation resolved the security concerns arising from the individual's alcohol usage, the LSO informed the individual in a letter dated August 19, 2014 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j) (hereinafter referred to as Criterion H and Criterion J, respectively).² *See* Exhibit 1.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. *See* Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO introduced eight numbered exhibits into the record and presented the testimony of one witness, the DOE consulting psychologist. The individual, represented by counsel, introduced seven lettered exhibits (Exhibits A – G) into the record and presented the testimony of eight witnesses, including that of himself and that of his licensed professional counselor. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.³

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 denials”); *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 with evidence to convince the DOE that granting or restoring his or her 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 or her

² See Section III below.

³ OHA decisions are available on the OHA website at www.oha.doe.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

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 evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the 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 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 eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cited two criteria as the bases for suspending the individual's security clearance: Criterion H and Criterion J. Criterion J refers to information indicating that an individual 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). Excessive alcohol consumption raises a security concern because it can lead to questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. See Guideline G 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); *Personnel Security Hearing*, Case No. PSH-11-0035 (April 19, 2012). With respect to Criterion J, the LSO noted the individual's admissions during the PSI that, *inter alia*, (1) during the year prior to his alcohol treatment he typically consumed two to five glasses of wine each night, resulting in intoxication, (2) he considered himself a heavy drinker and, approximately twice a month, would binge drink on his days off, consuming up to two bottles of wine, which would cause him to pass out, (3) he hid his alcohol consumption from his wife, (4) he ignored warnings of his neurologist to stop drinking, and (5) concerns about his alcohol consumption resulted in an "intervention" by his family, pastor and friends. See Ex. 1. Additionally, the LSO relied upon the report of the DOE consulting psychologist, dated June 30, 2014, which concluded that the individual has been a user of alcohol to excess for most of his adult life and met the *Diagnostic Statistical Manual of the American Psychiatric Association, IVth Edition, Text Revision (DSM-IV-TR)*, criteria for alcohol dependence with physiological dependence, without adequate evidence of rehabilitation or reformation. *Id.*; Ex. 4 at 3 – 4.

Criterion H concerns information that a person 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). It is well

established that “certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” *See* Adjudicative Guidelines at Guideline I. Conduct influenced by such psychological conditions can raise questions about an individual’s ability to protect classified information. With respect to Criterion H, the LSO relied on the June 2014 report of the DOE consulting psychologist which concluded that the individual “manifest[s] alcohol dependence with a physiological component..., which is a mental condition that can cause significant defects in judgment and reliability.” Ex. 1; Ex. 4 at 4.

In light of the information available to the LSO, the LSO properly invoked Criterion H and Criterion J.

IV. Findings of Fact

The individual does not contest the factual accuracy of the behavior cited by the LSO in the Notification Letter. Ex. 2; Tr. at 194.

The individual has consumed alcohol most of his adult life. *Id.* at 145 – 146. Such consumption occurred at home and increased over time. *Id.* at 146. The individual had consumed alcohol prior to an event in 2000, which led to the individual being charged with battery of his wife. Ex. 7 at 149 – 150. This was an isolated incident and there have been no other times in which the individual has initiated unwanted physical contact with a family member. Tr. at 141 – 143.

During the prior three to five years, the individual’s alcohol usage progressed to the point that he characterized himself as a “heavy drinker.” *Id.* at 146. He typically consumed two to five glasses of wine each evening, which resulted in intoxication. Ex. 7 at 59 – 61. Additionally, he consumed up to two bottles of wine on weekends, approximately twice per month, and, occasionally, he called in sick at the beginning of the work week in order to continue drinking. Tr. at 146 – 147; Ex. 7 at 17 – 19, 61 – 66.

During this period, he attempted to hide his alcohol consumption from his wife, although both his wife and the pastor from his church expressed concerns about his alcohol consumption. *Id.* at 66 – 69, 75. He ignored advice from his neurologist that he should stop drinking alcohol as it was likely to exacerbate a neurological condition; instead, the individual continued to consume alcohol on a daily basis. *Id.* at 21, 27 – 29; Tr. at 18 – 19.

The individual’s wife discussed her concerns about his alcohol consumption with her counselor and, ultimately, with an alcohol treatment professional (an “interventionist”) who orchestrated an “intervention” in which the individual’s wife, daughter, pastor and two close friends confronted the individual about his alcohol consumption. *Id.* at 21 – 22. The intervention occurred on February 22, 2014. *Id.* at 22. After approximately two hours of discussion, the individual voluntarily agreed to enter an out-of-state residential treatment facility that his wife had selected with the assistance of the interventionist. *Id.* at 23 – 24. The interventionist transported the individual to the facility at the conclusion of the discussion. *Id.* at 23.

The facility diagnosed the individual as alcohol dependent. Ex. C at 1. He was discharged from the facility after 32 days of treatment, having completed his treatment goals and objectives. *Id.* Upon discharge, the facility evaluated the individual's prognosis as good and referred him to a counselor, with whom the facility had an affiliation, in the individual's community and recommended that the individual attend 90 meetings of Alcoholic Anonymous (AA) in 90 days and work with an AA sponsor. *Id.* at 2 – 3.

A DOE consulting psychologist evaluated the individual approximately three months after his discharge from the treatment facility. Ex. 4 at 1. The DOE psychologist concluded that the individual had been a user of alcohol to excess for most of his adult life and met the *DSM-IV-TR* criteria for alcohol dependence with physiological dependence. *Id.* at 3. The DOE psychologist further opined that (1) the individual would not evidence adequate rehabilitation or reformation until he had been free from the symptoms of alcohol dependence for 12 months or March 2015, at the earliest, and (2) the individual's alcohol dependence with a physiological component was a mental condition that can cause significant defects in judgment and reliability. *Id.* at 4.

The individual had no history of alcohol treatment prior to his voluntary admission to the residential treatment facility in February 2014. Tr. at 117. The individual last consumed alcohol on February 21, 2014, which was the evening prior to the intervention. *Id.* at 169. During the nine-month period between the individual's discharge from the facility (March 2014) and the administrative review hearing (December 2014): the individual has met with the recommended aftercare counselor on a weekly basis (*Id.* at 114 – 115); he has attended at least one AA meetings every day, with few exceptions (*Id.* at 172 – 173; Ex. F); and he obtained an AA sponsor within weeks of his return to his community and he has had daily contact with his sponsor (Tr. at 49 – 68, 173 – 175; Ex. 4 at 2). He has fulfilled (and exceeded) the aftercare recommendations of the residential treatment facility. Tr. at 136 – 138. The individual testified that his intent is to never consume alcohol in the future. *Id.* at 169 – 170. His local treatment counselor evaluates his prognosis for continued abstinence as very good and his risk of relapse as minimal. *Id.* at 124, 135.

At the hearing, the DOE consulting psychologist, who had been present throughout the hearing, testified as the final witness. He testified that the individual would always retain the diagnosis of alcohol dependence; however, based upon the information presented at the hearing, he concluded that the individual had evidenced adequate rehabilitation and reformation of his alcohol dependence as of the date of the hearing. *Id.* at 200, 202 – 203.

V. Analysis

I have thoroughly considered the record of 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)⁴ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. The specific findings that I make in support of this decision are discussed below.

Legitimate security concerns arose as a result of the individual's historic pattern of alcohol consumption, his treatment for alcohol use and his *DSM-IV-TR* diagnosis of alcohol dependence. *See* Ex. 1. The question is whether those concerns have been sufficiently mitigated.

The individual had had no alcohol treatment prior to his voluntarily entering a residential treatment program at the conclusion of the "intervention" initiated by his wife. Tr. at 117. He has consumed no alcohol since February 21, 2014, the evening prior to the intervention and entering treatment. *Id.* at 169. He completed a 32-day residential treatment program for alcohol and has complied with all of the program's recommendations for aftercare. Ex. C; Tr. at 136 – 138. He credibly testified as to his ability to be in settings in which he previously consumed alcohol and comfortably abstain from consumption. *Id.* at 166 – 169. Beyond the aftercare requirements of AA participation for 90 days, the individual has attended AA meetings at least once per day and had done so for approximately nine months. Ex. F; Tr. at 172 – 173. Additionally, he has worked with an AA sponsor for eight months and continues to have daily communication with him. *Id.* at 173 – 175. The individual continues to be in weekly counseling with the counselor recommended by the residential treatment facility. *Id.* at 114 – 115.

The individual's counselor testified at the hearing that the individual had fully complied with the residential facility's aftercare treatment recommendations. Ex. C; Tr. at 136 – 138. His current diagnosis of the individual is "alcohol dependent in full remission with no psychological or physiological dependence," noting that the individual meets the clinical definition of "full remission" as a result of not being affected by thoughts, obsessions or compulsions around alcohol on a daily basis. *Id.* at 131 – 133. He evaluates the individual's prognosis for continued abstinence as very good and his risk of relapse as minimal; an additional two months of abstinence by the individual (at which point the individual would have one year of abstinence) would give the counselor no greater certainty as to the individual's risk of relapse than he had as of the date of the hearing. *Id.* at 124 – 136.

The DOE consulting psychologist attended the entire hearing and testified as the final witnesses so as to have the benefit of hearing the testimony of the other witnesses. In addition to the aspects of the individual's treatment discussed above, the DOE

⁴ 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.

psychologist noted the individual's strong support network of family, colleagues, friends and AA, his deepened religious experience and his altruistic behavior as support for the individual's continued abstinence from alcohol. *Id.* at 199. Based on the information presented at the hearing, the DOE psychologist concluded that, as of the date of the hearing, the individual had adequately evidenced reformation and rehabilitation of his alcohol dependence. *Id.* at 200, 202.

With regard to security concerns raised under Criterion J and Criterion H, Administrative Judges traditionally accord deference to the opinions of mental health professionals. Noting the individual's treatment program and abstinence, both experts opined that, as of the hearing, the individual had evidenced adequate rehabilitation and reformation with respect to his use of alcohol and that his prognosis is good. *Cf.* Adjudicate Guidelines at Guideline G, ¶23(d) (mitigation of security concerns relating to alcohol is possible when an individual has completed outpatient counseling along with any required aftercare and has demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations). Having evidenced adequate rehabilitation and reformation of his alcohol dependence, the individual has sufficiently mitigated the security concerns regarding his judgment or reliability which arose as a result of that psychological diagnosis. *Cf.* Adjudicative Guidelines at Guideline I ¶29(e) (mitigation of security concerns relating to psychological issue is possible when there is no current psychological problem). I find that the individual has resolved the Criterion H and Criterion J security concerns.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion H and Criterion J. 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 have found that the individual has brought forth sufficient evidence to resolve the security concerns associated with Criterion H and Criterion J. Accordingly, I have determined 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.

Wade M. Boswell
Administrative Judge
Office of Hearings and Appeals

Date: January 30, 2015