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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: October 31, 2013) Case No.: PSH-13-0117
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Issued: February 24, 2014

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an 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 DOE should not restore the Individual’s access authorization.

I. BACKGROUND

The Individual is a contractor employee at a DOE facility and possessed a security clearance. Exhibit (Ex.) 3 at 1. In May 2013, the Individual’s employer administered two breath-alcohol tests to the Individual. These tests revealed that the Individual had breath-alcohol levels higher than the level permitted for an employee to work at the facility. Ex. 7 at 5; Ex. 6 at 4. The DOE facility’s Local Security Office (LSO) subsequently conducted a personnel security interview (PSI) with the Individual in May 2013 (May 2013 PSI). Ex. 8. The Individual was also referred for a forensic psychological examination with a DOE-contractor psychologist (DOE Psychologist). Because neither the May 2013 PSI nor the examination resolved the concerns arising from the Individual’s alcohol use, the Individual’s security clearance was suspended in September 2013. Ex. 2. In September 2013, the Individual received a detailed notification letter (Notification Letter) from the LSO outlining the specific derogatory information, described under 10 C.F.R. § 710.8 (h) and (j) (Criterion H and J, respectively), upon which it relied upon in making the decision to suspend the Individual’s security clearance. Ex. 1.

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 be referred to in this Decision as an access authorization or a security clearance.

The Notification Letter also informed the Individual that he was entitled to a hearing before an Administrative Judge² to present evidence to resolve these doubts. Ex. 3. The Individual requested a hearing in this matter. The LSO forwarded this request to OHA and the OHA Director assigned me as the Administrative Judge in this matter. The DOE introduced nine exhibits (Exs. 1-9) into the record of this proceeding and presented one witness, the DOE Psychologist. The Individual introduced one exhibit (Ex. A) and presented the testimony of five witnesses in addition to testifying on his own behalf.

II. FACTUAL FINDINGS AND THE ASSOCIATED SECURITY CONCERNS

The Part 710 regulations require that I “make specific findings based upon the record as to the validity of each of the allegations” in the Notification Letter. 10 C.F.R. § 710.27(c). In this case, the Notification Letter cites Criteria 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. Ex. 1.³ The Individual does not dispute the factual accuracy of the Criteria H and J derogatory information described in the Notification Letter. I set forth my factual findings below.

In May 2013, the Individual’s employer performed a routine breath-alcohol test on the Individual. Ex. 7 at 5; Ex. 8 at 17. The results of the tests indicated that the Individual had breath alcohol levels of 0.036g/210L and 0.033g/210L.⁴ Ex. 7 at 5.

During the May 2013 PSI, the Individual revealed the following information regarding his alcohol consumption. Since the year 2000, he usually consumed approximately 375 milliliters (mls.) of rum on most Friday and Saturday nights Ex. 8 at 84-85, 87-88, 119-20. In 2003, a physician advised the Individual to reduce his alcohol consumption because a test had indicated that his liver enzymes were elevated. Ex. 8 at 116-17. The Individual would often consume alcohol to avoid doing household jobs or errands. Ex. 8 at 93-94. His failure to perform these tasks would result in his wife being angry with him. Ex. 8 at 24-25. For a number of years, the Individual’s spouse (Spouse) would, several times a month, ask the Individual to reduce his alcohol consumption. Ex. 8 at 50-55. Nonetheless, the Individual continued to consume alcohol. Ex. 8 at 84-85, 87, 119-20. On the night before his failed breath-alcohol test, the Individual estimated that he had consumed approximately 350 mls. of rum. Ex. 8 at 44.

² Effective October 1, 2013, the titles of attorneys in the Office of Hearings and Appeals (OHA) changed from Hearing Officer to Administrative Judge. See 78 Fed. Reg. 52389 (August 23, 2013). The title change was undertaken to bring OHA Hearing Officers in line with the title used at other federal agencies for officials performing identical or similar adjudicatory work. See *Personnel Security Hearing*, Case No. PSH-13-0114 at 1 n.1 (2014).

³ Criterion H describes derogatory information suggesting that an individual may have “[a]n 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). Criterion J describes information indicating that a clearance holder 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).

⁴ The DOE facility does not permit employees to work if they have a breath-alcohol concentration of greater than 0.02 g/210L. Ex. 8 at 22.

In August 2013, after examining the Individual, the DOE Psychologist issued a report (Report). The DOE Psychologist, in the Report, diagnosed the Individual as suffering from “Alcohol Dependence, not in remission.” Ex. 6 at 8. Further, the DOE Psychologist opined that the Individual’s Alcohol Dependence was an illness that could cause a significant defect in judgment or reliability. Ex. 8 at 8. The Report also contained the DOE Psychologist’s recommendation that the Individual should remain abstinent for a 12-month period and become involved with an intensive outpatient treatment program for a period to be determined by the program’s counselors. Further, the DOE Psychologist recommended active involvement with Alcoholics Anonymous (AA) during his initial 12-month period of abstinence. Ex. 8 at 8.

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 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*), Guideline G. Further, certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. *Adjudicative Guidelines*, Guideline I. Given the DOE Psychologist’s opinion indicating that the Individual suffers from Alcohol Dependence, a mental disorder that could cause a significant defect in judgment or reliability, the LSO had sufficient grounds to invoke Criteria H and J.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictates 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 and unfavorable, that has a bearing on the question of whether granting the Individual 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). In considering these factors, the Administrative Judge also consults the *Adjudicative Guidelines* that set forth a more comprehensive listing of relevant factors.

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). 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. ANALYSIS

The Individual does not dispute that he has an alcohol problem. Transcript of Hearing (Tr.) at 80. However, the Individual believes that he has undergone sufficient treatment that, as of the date of the hearing, his risk of becoming intoxicated is low. Thus, he argues that the security concerns arising from his alcohol dependence should be considered resolved.

The Individual testified that, after testing positive for alcohol at work, he began to reduce his alcohol consumption. Tr. at 83-84. When the Individual received the Notification Letter in October 2013, he made the decision to abstain from consuming alcohol. Tr. at 92-93. He last consumed alcohol in early October 2013. Tr. at 99. The DOE Psychologist's Report convinced the Individual that he had a problem and needed to seek help. Tr. at 94-96. In late October 2013, the Individual entered an intensive outpatient treatment program (IOP) at a local treatment facility (Treatment Facility) for his alcohol dependence and completed the program in early December 2013. Tr. at 96-97; Ex. A. The IOP program featured education on aspects of human relations, alcohol use, and group therapy four nights a week. Tr. at 97, 116-17. Since completing the IOP, the Individual's relationship with his wife is significantly better. Tr. at 98. The Individual now believes that he is leading a spiritually mature life as opposed to the self-centered lifestyle he had while he was consuming alcohol. Tr. at 98-99. The Individual now attends an aftercare program that the Treatment Facility offers to those who have completed the IOP. Tr. at 100. In addition, the Individual also attends AA approximately three times a week and is seeing a therapist (Individual's Therapist). Tr. at 103. Studying the "AA Big Book" with his Alcoholics Anonymous (AA) sponsor (Sponsor), the Individual is now working through the fourth step of the 12-step AA program. Tr. at 104-05. He intends never to consume alcohol again. In making this decision, the Individual realized that he received no benefit from consuming alcohol. Tr. at 106-07. Since abstaining from alcohol, the Individual feels better, is happier, and believes that his wife is happier with him. Tr. at 109-10.

The Individual's Sponsor testified that he meets one-on-one with the Individual and that the Individual has not missed or been late for a meeting. Tr. at 49. He confirmed that the Individual has completed the first three steps of the 12-step AA program. Tr. at 44-45. The Sponsor believes that the Individual has been honest in their relationship and is self-motivated to attend AA meetings. Tr. at 46, 48, 52, 57. In her testimony, the Spouse confirmed the Individual's prior pattern of alcohol consumption Tr. at 13-15, 17. The Individual's attitude toward alcohol changed when he received a copy of the DOE Psychologist's Report and he immediately stopped consuming alcohol. Tr. at 19. Since beginning his abstinence, the Individual's relationship with the Spouse has greatly improved. The Spouse also confirmed the Individual's participation in the IOP, AA, and in individual counseling. Tr. at 20-22. The Individual and his Spouse no longer have alcohol inside their house. Tr. at 24. The Spouse testified that the Individual has informed her that he no longer intends to consume alcohol. Tr. at 24.

The Individual's Therapist is employed at the Treatment Facility and testified as to the Individual's active participation in the IOP. Tr. at 126-27. The Individual's Therapist reviewed the Report and agreed with the DOE Psychologist's diagnosis. Tr. at 128. In her initial assessment of the Individual during the IOP, she noted that the Individual would benefit from AA and individual counseling. Tr. at 130-31. The Individual's Therapist has conducted three counseling sessions with the Individual. Tr. at 131. Their focus in the sessions is to help develop the Individual's communication skills and to help him become more engaged with others. Tr. at 131. However, the Individual's Therapist testified that she could not opine that the Individual's risk of relapse was low. Tr. at 134. In order for her to make that finding, the Individual would need to demonstrate a period of nine months of sobriety as opposed to his current three months of sobriety as of the date of the hearing. Tr. at 134. The Individual's Therapist testified that, given the Individual's commitment to treatment, she believes

that nine months of sobriety would be a sufficient indicator that the Individual's risk of relapse would be low. Tr. at 134-35.

After to listening to all of the testimony, the DOE Psychologist testified that he believes that the Individual is now more responsive to the concerns raised by his past pattern of alcohol consumption. Tr. at 146. However, the DOE Psychologist believes that the Individual's period of abstinence, as of the date of the hearing, is too short for him to have confidence that his risk of relapse is low. Tr. at 147. The DOE Psychologist believes that the Individual's current risk of relapse is moderate. Tr. at 148. Because the Individual, in his opinion, is a relatively solitary person, alcohol provides a trustworthy "companion." Tr. at 148. Consequently, he believes that the counseling provided by the Individual's Therapist will be helpful. Tr. at 148. While the DOE Psychologist cannot find that the Individual is rehabilitated, he believes that the Individual could be considered rehabilitated if he continues with treatment and remains abstinent for nine months. Tr. at 148-49.

Based upon the evidence before me, I find that the Individual has not resolved the Criteria H and J concerns raised by his alcohol dependence. Both mental health experts concur that the Individual still has a significant chance of relapse as of the date of the hearing and I am convinced by the experts' testimony on this issue. The testimony of the witnesses in this case convince me that the Individual has been diligently following a treatment program and has been abstinent for approximately three months. Nonetheless, I agree with the experts that the Individual is still in a relatively early stage of his treatment program and needs an additional period of abstinence to demonstrate sufficient evidence that the Individual presents an acceptable risk of relapse into alcohol misuse. Consequently, I find that the Individual, as of the date of the hearing, has not resolved the concerns raised by the Criteria H and J derogatory information contained in the Notification Letter.

V. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not resolved the DOE's security concerns under Criteria H and J. Therefore, the Individual has not demonstrated 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 access authorization. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals

Date: February 24, 2014