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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: November 20, 2014) Case No.: PSH-14-0100
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Issued: February 18, 2015

Decision and Order

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXX (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 not be restored at this time.²

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor and was granted a security clearance in connection with that employment. In May 2014, the

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>.

individual was arrested for Aggravated Driving While Intoxicated (DWI). Because this information raised security concerns, the local security office (LSO) summoned the individual for an interview with a personnel security specialist in June 2014. After this Personnel Security Interview (PSI) failed to resolve these concerns, the LSO referred the individual to a local licensed clinical psychologist (hereinafter referred to as “the DOE psychologist”) for an agency-sponsored evaluation. The DOE psychologist prepared a written report based on that evaluation, and submitted it 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 eight exhibits into the record of this proceeding and presented the testimony of the DOE psychologist at the hearing. The individual introduced five exhibits and presented the testimony of three 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 paragraphs (h), (j) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Under criterion (h), information is derogatory if it indicates that an individual has an illness or mental condition which, in the opinion of a psychiatrist causes, or may cause, a significant defect in the individual’s judgment or reliability.¹⁰ C.F.R. § 710.8(h). Criterion (j) concerns information indicating that the individual “has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependant or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j). As support for these criteria, the Letter cites the diagnosis of the DOE psychologist that the individual suffers from Alcohol Abuse, and her conclusion that this condition causes, or may cause, a significant defect in the individual’s judgment or reliability. As further support for its invocation of criterion (j), the Letter refers to the individual’s DWI arrests in August 1991 and May 2014, and the individual’s arrest in January 2012 for Aggravated Assault Against a Household Member, Aggravated Battery Against a Household Member, and False Imprisonment, which occurred after the individual consumed one or two beers and a shot of liquor at a local bar. The Letter also cites the individual’s statement during the June 2014 PSI that during the preceding 12 months, he consumed a 12 pack of beer with occasional shots of liquor over the course of one day, every two to three weeks.

Criterion (l) refers to information indicating that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of national security. Such conduct includes, but is not limited to, illegal behavior. As support for its invocation of this criterion, the Letter cites the arrests referred to in the preceding paragraph, and a 1988 arrest for Possession of a Stolen Vehicle and Tampering with a Motor Vehicle.

These circumstances adequately justify the DOE's invocation of criteria (h), (j) and (l), and raise significant security concerns. As an initial matter, a duly qualified mental health professional retained by the U.S. Government has determined that the individual has an emotional, mental or personality condition that can impair his judgment or reliability. Moreover, the excessive consumption of alcohol often leads to the exercise of questionable judgment or the failure to control impulses, and can therefore raise questions about an individual's reliability and trustworthiness. Finally, illegal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines I, G and J.*

III. REGULATORY STANDARDS

The criteria 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. ANALYSIS

A. Mitigating Evidence

At the hearing, the individual attempted to show, through his own testimony and that of two of his supervisors and his Licensed Alcohol and Drug Abuse Counselor (hereinafter referred to as "the Counselor"), that he no longer abuses alcohol, and that he is a reliable, law-abiding and trustworthy person.

The individual testified that on the morning of his May 2014 DWI arrest, he decided to take leave from his job to do some work on his house. After a while, he got thirsty and started drinking beer. When he ran out of roofing supplies, he drove to the store to purchase more. He observed that, while he might have had "seven or eight" beers, he did not feel that he was drunk. Hearing Transcript (Tr.) at 21. Nevertheless, he was stopped by the police and arrested for Aggravated DWI and Careless Driving.

After his arrest, the individual was referred through his employer to the Counselor. The individual testified that he has become a different person because of his meetings with the Counselor, one that knows that he does not have to drink and that drinking is not worth the loss of his job. Tr. at 23-24. His last consumption of alcohol occurred on the day of his DWI arrest in May 2014, and he has not felt the urge to drink since then. *Id.* The individual said that he "guessed" that he was abusing alcohol, but that he was never the kind of person who would attempt to address his problems by drinking. Tr. at 24-25. The individual also testified that he is a law-abiding citizen who can be trusted to follow all applicable security rules and regulations. Tr. at 25-26. When asked about his plans for the future regarding alcohol, he replied that "if I can stay away [from drinking], I will stay away, and if I have to . . . go to counseling . . . , I will go . . . to stay sober" Tr. at 32.

The Counselor then testified. He said that he began seeing the individual in June 2014, and that he would continue to see him until June 2015. Tr. at 43, 49. He further stated that he agreed with the DOE psychologist's findings, including her diagnosis of Alcohol Abuse. Tr. at 43, 47. Regarding the DOE psychologist's recommendation in her report of 12 months of abstinence and counseling as constituting adequate evidence of reformation or rehabilitation, the Counselor said that "[t]he 12 month requirement is always a problem, mainly" because sometimes he doesn't begin seeing a clearance holder until months after the event that initiated an Administrative Review, and there is insufficient time before a hearing to establish a 12 month period of sobriety and counseling. Tr. at 43-44. Regarding the individual's insight into the nature of his problem, the Counselor observed that while the individual may not totally understand the more technical aspects,

such as the length of time required for a person to metabolize one ounce of alcohol, “he gets that he had too much to drink [on the day of his May 2014 DWI arrest] and should not have driven and will, I would imagine, not do it again.” Tr. at 45.

When asked about the individual’s prognosis, the Counselor replied that although the individual had abused alcohol, he did not think that the individual needed to enroll in an inpatient treatment program or to attend Alcoholics Anonymous or other self-help meetings in order to remain abstinent. Tr. at 48. He declined to offer an opinion as to the individual’s chances of relapsing into alcohol use. Tr. at 48-49. The individual’s supervisors both stated that they had not seen any indications at work that the individual suffered from an alcohol use disorder. Tr. at 11, 15.

The individual also submitted five exhibits. Most significant among these are test results showing that the individual tested negative for alcohol and illegal drugs on numerous occasions between June 2014 and January 2015, Individual’s Exhibits (Ind. Ex.) B and C, and a treatment Progress Report filled out by the Counselor in December 2014, indicating that the individual’s attendance was excellent and that his attitude and participation were good. The Report further noted that the individual “continues to participate in Alcohol and substance abuse treatment and is making good progress. . . . He is being consistent remaining abstinent. [The individual] has made efforts to refrain from re-engaging with friends, neighbors and activities that led to his alcohol related arrest. . . . His prognosis is good but guarded.” Ind. Ex. D.

B. Administrative Judge’s Findings

After reviewing this evidence and the record as a whole, I find that the individual suffers from Alcohol Abuse, a condition that causes, or could cause, a significant defect in his judgment or reliability. I base this finding on the diagnoses of both the DOE psychologist and the Counselor, and on the individual’s history of exercising poor judgment after consuming alcohol, as evidenced by his three alcohol-related arrests.

During the hearing, the individual appeared to question whether his 2012 arrest for Aggravated Assault was related to his consumption of alcohol. He testified that he consumed “maybe a couple of beers and a shot” of alcohol at a local bar approximately three hours before the altercation with his then-girlfriend that led to his 2012 arrest, and that he did not believe that his drinking affected his behavior in any way. Tr. at 38-39.

However, the individual has not always been a reliable source of information regarding his own consumption of alcohol. As mentioned above, he testified that, prior to his May 2014 DWI arrest, he drank seven or eight beers, and did not feel that he was intoxicated. However, the individual told the arresting officers that he had had two beers, and his blood alcohol content was measured at .25 and .22, indicating that he had consumed approximately 12 or 13 beers prior to his arrest. DOE Exhibit (DOE Ex.) 8 at 18; DOE Ex. 4 at 3. The DOE psychologist quoted the police report generated as a result of that 2012 arrest as stating that as the officer spoke with the individual, he “could smell a moderate odor of intoxicating liquor coming from his breath and at this time he began to

get loud and aggressive so I handcuffed him.”” DOE Ex. 4 at 4. I find that the individual’s 2012 arrest was alcohol-related.

I further conclude that the individual has not demonstrated adequate evidence of reformation or rehabilitation. As referred to earlier, in her report, the DOE psychologist recommended that to make such a showing, the individual would have to, for a period of one year, refrain from drinking and engage in a suitable counseling program. DOE Ex. 4 at 9. As of the date of the hearing, the individual had approximately eight months of abstinence and seven months of counseling. After hearing all of the testimony, the DOE psychologist testified that she continued to believe that 12 months of sobriety and counseling would be needed to demonstrate adequate evidence of reformation or rehabilitation. She explained that although she believed the Counselor’s treatment program to be “very good,” there was “room for growth in terms of how solidly [the individual] has an understanding of . . . what might cause him to drink in the future [and of] relapse prevention techniques.” Tr. at 62. She also opined that the individual had exhibited a degree of minimization, or even denial of the seriousness of his problem, during the hearing. Tr. at 61. She therefore concluded that the individual had not demonstrated adequate evidence of reformation or rehabilitation.

Although the Counselor indicated that the 12 month recommendation was “a problem,” that “problem” seems to stem from what the Counselor characterized as a lack of time for a clearance holder to establish a sufficient period of abstention and counseling, and not from any belief that the 12 month recommendation was unreasonable from a clinical standpoint. I agree with the DOE psychologist that the individual has not demonstrated adequate evidence of reformation or rehabilitation. The DOE’s security concerns under criteria (h) and (j) remain unresolved.

I also find that the individual has failed to adequately address the DOE’s concerns under criterion (l). Three of the individual’s four arrests have been related to the individual’s consumption of alcohol. I am concerned that if the individual were to return to an abusive pattern of drinking, he might also engage in similar illegal behavior in the future. For the reasons set forth above, I conclude that the individual’s chances of returning to such a pattern of alcohol consumption remain unacceptably high at this stage of his recovery.

V. CONCLUSION

For the reasons set forth above, I find that the individual has not adequately addressed the DOE’s concerns under criteria (h), (j) and (l). Consequently, he has failed to convince 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 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: February 18, 2015