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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:	January 24, 2013)	Case No.: PSH-13-0008
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Issued: June 6, 2013

Hearing Officer Decision

Kimberly Jenkins-Chapman, Hearing Officer:

This Decision concerns the eligibility of xxxxxxxxxxxxxxxx (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 October 2012, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address concerns about his alcohol use. In addition to the PSI, the LSO requested the individual’s medical records and recommended a psychiatric evaluation of the individual by a DOE consultant psychiatrist (DOE psychiatrist). The DOE psychiatrist examined the individual in November 2012 and memorialized his findings in a report (Psychiatric Report). According to the DOE psychiatrist, the individual suffers from Alcohol Abuse, in Partial Remission. The

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.

DOE psychiatrist further concluded that the individual's Alcohol Abuse is a mental illness that causes or may cause a significant defect in his judgment and reliability.

In January 2013, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created substantial doubt regarding his eligibility to hold an access authorization. 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 Criteria H and J, respectively).²

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the individual presented his own testimony and that of six witnesses. The DOE Counsel called one witness, the DOE psychiatrist. Both the DOE and the individual presented a number of written exhibits prior to the hearing.

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 denial"); *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 at the hearing with evidence to convince the DOE that restoring his 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 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 may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

² Criterion H relates to information that a person has "[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 relates to information that a person 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).

B. Basis for Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer 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 in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites two criteria as bases for suspending the individual's security clearance: Criteria H and J. To support Criterion H, the LSO relies on the diagnosis of the DOE psychiatrist that the individual suffers from Alcohol Abuse. As for Criterion J, the LSO cites the DOE psychiatrist's opinion, as well as the individual's admission to excessive drinking, including his excessive drinking before he tested positive on a random alcohol screening conducted at this employment. DOE Exh. 1.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under both Criteria H and J. First, a mental condition such as Alcohol Abuse can impair a person's judgment and reliability and trustworthiness. *See* Guideline I 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). Second, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G.

IV. Findings of Fact

On September 27, 2012, the individual tested positive for alcohol during a random alcohol screening performed by his employer. DOE Exh. 3. His Blood Alcohol Content registered .06 around 9:30 am, and he was therefore placed on administrative leave. *Id.* During an October 2012 PSI, the individual admitted that he became intoxicated the evening prior to the test after consuming eight 10 ounce drinks of vodka and Gatorade, containing two ounces of vodka per drink, between 8:00 pm and 12:00 am. *Id.* According to the individual, his son was experiencing distress in engineering school. *Id.* While having a conversation with his son to reassure him, he "lost track" of how much he drank. *Id.* The individual admitted that he consumed alcohol seven hours prior to his scheduled arrival at work despite being aware of his employer's prohibition from consuming alcohol eight hours prior to reporting for duty. *Id.* In addition, during his PSI, the individual admitted that from the mid-1980s to the present, he consumed three or four 16-ounce beers or three or four 10-ounce mixed drinks three to four

nights a week. *Id.* Despite his wife complaining about his alcohol consumption and her suggesting that he seek counseling four years ago, the individual did not change his consumption of alcohol, or seek treatment. *Id.*

On November 27, 2012, the DOE psychiatrist evaluated the individual. In his report, he concluded that the individual met the criteria for Alcohol Abuse, in Partial Remission. The DOE psychiatrist further concluded that the individual's Alcohol Abuse is an illness or mental condition, which causes, or may cause, a significant defect in judgment or reliability. DOE Exh. 4.

V. Analysis

I have thoroughly considered the record in 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)³ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. I find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. The Diagnosis of Alcohol Abuse

The DOE psychiatrist explained in detail in the Psychiatric Report how the individual met the diagnostic criteria set forth in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, Text Revision (DSM-IV-TR) for Alcohol Abuse. DOE Exh. 4. The individual does not dispute the DOE psychiatrist's diagnosis of Alcohol Abuse, in Partial Remission. Therefore, the focus of the analysis will be on whether the individual has demonstrated adequate evidence of rehabilitation or reformation from Alcohol Abuse.

B. Evidence of Rehabilitation and Reformation from Alcohol Abuse

During the hearing, the individual explained that prior to failing a random alcohol screening in September 2012, he was trying to console his son who was having difficulties in one of his classes. Transcript of Hearing (Tr.) at 128. According to the individual, he had a lengthy discussion with his son who was very "panicky" at the time. *Id.* at 129. He testified that he had a mixed drink of Vodka and Gatorade. *Id.* The individual further testified when he failed the alcohol screening, he called his employer's Employee Assistance Program (EAP). *Id.* at 133. The EAP psychologist recommended that the individual attend an Intensive Outpatient

³ 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.

Treatment program (IOP). *Id.* The individual admitted that prior to this point, he believed that he had difficulty controlling the amount of alcohol he drank. *Id.* at 143.

The individual testified that he entered an IOP on October 26, 2012, which met four days a week. He stated that the IOP required that he engage in “schema” therapy, a therapy that focuses on behavioral characteristics, and read daily meditations. *Id.* at 139 and 140. As a result of this therapy, the individual now has the ability to listen and cope better. *Id.* at 144. The IOP also required the individual to attend Alcoholics Anonymous (AA) meetings. *Id.* at 140. He completed the IOP on December 31, 2012, and subsequently began attending aftercare meetings and continues to attend AA meetings. According to the individual, he has abstained from alcohol for five months. *Id.* at 146. He testified that his future intention is to not allow alcohol to be a part of his life. *Id.* at 152 and 154. The individual further testified that his wife, children and friends have been a network of support for him. *Id.* at 154. This support also includes meeting with a licensed alcohol counselor, also a clinical psychologist. *Id.*

During the hearing, the individual offered the testimony of his alcohol counselor. She testified that when she first met with the individual on February 15, 2013, she was impressed that the individual was dedicated to work on his sobriety. *Id.* at 14 and 15. The psychologist, who has met with the individual seven times and with his wife on one occasion, opined that the individual has been very engaged and committed to therapy and stated that as long as the individual utilizes his sobriety tools, his prognosis is favorable. *Id.* at 16, 18 and 19. According to the psychologist, she believes the individual is in early recovery and full remission from Alcohol Abuse. *Id.* She highlighted several factors that weigh in the individual’s favor, including his successful completion of an IOP, his good relationship with his AA sponsor and his weekly therapy sessions. *Id.* The psychologist further stated that the individual has shown no indication that he is struggling with cravings, clearly understands that he is an alcoholic and has good impulse control. She believes the individual’s risk of relapse is low because there is an absence of a co-existing disorder. *Id.* at 19 and 24. Finally, she testified that the individual’s judgment and reliability are not impaired. *Id.* at 24.

The individual also offered the testimony of his AA sponsor, his wife, two supervisors and a co-worker. The individual’s AA sponsor testified that the individual attends weekly AA meetings and has already taken on a leadership role by facilitating meetings. He stated that the individual is working on step 5 of the 12 step program in AA. *Id.* at 49. The sponsor testified that he speaks to the individual on almost a daily basis and believes the individual has no desire to return to drinking. *Id.* at 50. The individual’s wife testified that she has not observed the individual drinking since October 26, 2012. She stated that since her husband has entered treatment and therapy and has stopped drinking, their home life has improved. *Id.* at 82. Both of the individual’s supervisors as well as his co-worker testified that the individual is reliable and exercises good judgment. *Id.* at 96, 107 and 117.

The DOE psychiatrist listened to all the testimony at the hearing before testifying himself. He testified that he considers the individual to have fulfilled reformation and rehabilitation. *Id.* at 179. He noted that he was greatly impressed by the individual’s progress and stated that when weighing the relative severity of the individual’s drinking versus the accomplishments in his recovery efforts, the individual’s prognosis is very favorable. *Id.* The DOE psychiatrist further

opined that the individual's pattern of recovery and commitment demonstrate that he has a new life and a new perspective. *Id.* He stated that he was struck by the individual's sincere relationships with his AA sponsor and noted a major shift in the individual's familial relationships, particularly his relationship with his wife. *Id.* at 180. He believes the individual appreciates his sobriety. *Id.* at 181. The DOE psychiatrist reiterated that his major concerns have been addressed and that individual is on good path. *Id.* He opined that the individual no longer has a significant defect in his judgment and reliability. *Id.* at 182. Finally, the DOE psychiatrist noted again that when weighing the severity of the individual's illness against his success at recovery, the individual's recovery efforts are impressive, noting that the individual has not had any other major alcohol-related events such as alcohol arrests. *Id.* at 184.

C. Hearing Officer's Evaluation of the Evidence

In the administrative process, Hearing Officers accord deference to the expert opinion of psychiatrists, psychologists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing, Case No. TSO-0728 (2009).*⁴ At the outset, I note that I am persuaded by the favorable testimony of the DOE psychiatrist that the individual has achieved adequate evidence of rehabilitation and reformation. Moreover, the Adjudicative Guidelines describe factors that could mitigate security concerns involving both psychological conditions and alcohol consumption. *See Adjudicative Guideline, Guidelines G and I, ¶ 23 and ¶ 29, respectively.* In this case, the individual has satisfied the following mitigating factors: (1) the individual has acknowledged his alcohol abuse, provided evidence of actions taken to overcome his problem and has established a pattern of responsible use; (2) the individual has successfully completed an IOP with required aftercare, has demonstrated a clear and established pattern of abstinence in accordance with his treatment recommendations, i.e., his participation in AA meetings, and has received a favorable prognosis by a duly qualified medical professional; and (3) the DOE psychiatrist has opined that the individual is in remission, and has a low probability of recurrence or exacerbation. *Adjudicative Guidelines G and I, ¶ 23 (b) and (d) and ¶ 29 (c), respectively.* For these reasons, I find that the individual has mitigated the DOE's security concerns under Criteria H and J.

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 Criteria H and 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 find that the individual has brought forth convincing evidence to mitigate the security concerns associated with Criteria H and J. I therefore find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should

⁴ Decisions issued by 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>.

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.

Kimberly Jenkins-Chapman
Hearing Officer
Officer of Hearings and Appeals

Date: June 6, 2013