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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:	February 7, 2013)	Case No.: PSH-13-0013
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Issued : May 30, 2013

Hearing Officer Decision

Janet R. H. Fishman, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization^{1/} 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 not be restored at this time.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. In August 2012, the Individual was charged with Aggravated Driving While Intoxicated (ADWI), which resulted in the Local Security Office (LSO) conducting a personnel security interview with him.

On January 10, 2013, the LSO sent a letter (Notification Letter) to the Individual advising him that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, 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.

LSO explained that the derogatory information fell within the purview of three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (j), and (l) (hereinafter referred to as Criterion H, Criterion J, and Criterion L).^{2/}

Upon his receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in the case and I subsequently conducted an administrative hearing in the matter. At the hearing, the LSO presented the testimony of a DOE psychologist; the Individual presented his own testimony and the testimony of his wife. The LSO submitted 11 exhibits into the record.

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 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 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.

^{2/} Criterion H concerns information that a person has “[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or a licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Criterion J applies where an individual has been, or is, a user of alcohol habitually to excess or has been diagnosed by a psychologist as alcohol dependent or suffering from alcohol abuse. *Id.* § 710.8(j). Criterion L relates to information that a person has “[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the Individual to act contrary to the best interests of the national security . . .” 10 C.F.R. § 710.8(l).

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

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites three criteria as the bases for suspending the Individual's security clearance, Criteria H, J, and L. To support its Criteria H and J allegations, the LSO relies on the Individual's alcohol abuse diagnosis made by the DOE psychologist and the Individual's two alcohol-related arrests. The Individual's alcohol abuse diagnosis and alcohol-related arrests raise a security concern under Criteria H and J because his actions may lead "to the exercise of questionable judgment or the failure to control impulses" and "can impair judgment, reliability, or trustworthiness." See Guidelines G and 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). The Individual's two alcohol-related arrests raise a security concern under Criterion L, because his actions "create[] doubt about a person's judgment, reliability and trustworthiness," all of which can raise questions about the Individual's ability or willingness to comply with laws, rules, and regulations. See Guideline J of the Adjudicative Guidelines.

IV. Findings of Fact

The Individual was charged with ADWI in August 2012, at which time his breath-alcohol tests (BAT) resulted in readings of .19 percent, .16 percent, and .17 percent. DOE Ex. 7 at 5; DOE Ex. 11 at 9-21 & 62. At the PSI conducted in October 2012, the Individual stated that he began counseling after the ADWI at his Employee Assistance Program (EAP). DOE Ex. 11 at 23-27. The EAP counselor asked the Individual to refrain from consuming alcohol during counseling. DOE Ex. 11 at 25. The Individual admitted during the psychological interview and at the hearing that he did not follow that stricture and consumed alcohol up until November 28, 2012. Tr. at 36; DOE Ex. 4 at 4. In addition to the ADWI charge in August 2012, the Individual was detained in December 2000 after consuming six beers. DOE Ex. 11 at 28-31, 39. Finally, the Individual admitted and his wife confirmed that she had expressed concern about his alcohol consumption. DOE Ex. 11 at 55-56; Tr. at 12. The Individual submitted a written response to the Notification Letter in which he admitted to all the charges listed therein. DOE Ex. 2.

At the hearing, the DOE psychologist testified that it was positive that the tension in the Individual's home had decreased. Tr. at 43. He was also pleased that the Individual's

wife is monitoring his alcohol consumption. Tr. at 43. The DOE psychologist said that the Individual is a “man of substance, of good character.” Tr. at 43. However, he could not state that the Individual is rehabilitated or reformed. Tr. at 44. The DOE psychologist concluded that he would revise his recommendation that the Individual be abstinent for a year and only require an abstinence of nine months. Tr. at 44.

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)^{3/} and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual’s access authorization should not be restored. I cannot 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. Criteria H and J

At the hearing, the Individual testified that he has been attending an outpatient treatment program since January 2013. Tr. at 32. His wife confirmed his attendance and said she has been participating with him in the family program. Tr. at 11. The Individual testified that he is learning how to deal with stress at his outpatient program. Tr. at 23. His wife testified that he is more open. Tr. at 19. They both also testified that their family stress has decreased significantly since their youngest daughter has gotten treatment for her addiction and their other daughter and her children are moving out of the family home. Tr. at 16, 23.

In considering the evidence before me, I first looked to the Adjudicative Guidelines. As an initial matter, I find that the Individual has been diagnosed, in December 2012, by a qualified medical profession as suffering from alcohol abuse. Therefore, I cannot find mitigation of the security concerns at issue here under Guideline F at ¶ 23(a), which addresses behavior that occurred long ago or very infrequently. While the Individual is no longer consuming alcohol, he has been abstinent for only five months, and I cannot find, based on the evidence before me, that his alcohol use will not occur again.

Second, the Individual admitted that he knew he had been consuming too much alcohol for approximately two to three years prior to his arrest. In addition, the DOE

^{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.

psychologist diagnosed the Individual as suffering from alcohol abuse. However, as stated above, the Individual has only been abstinent for five months. Based on these findings, I find no mitigation of the Individual's alcohol issues under Guideline F at ¶ 23(b), *i.e.* the individual acknowledges his issues of alcohol abuse, provides evidence of actions taken to overcome the problem and has established a pattern of abstinence. I do not find that five months is a sufficient pattern of abstinence. Indeed, the DOE psychologist opined that the he would like the Individual to be abstinent for at least four additional months. Tr. at 50.

Third, I cannot find for purposes of Guideline F at ¶ 20(d) that there are clear indications that the Individual's alcohol problem is under control. As of the time of the hearing, the Individual had not completed his outpatient treatment program. Tr. at 22. In fact, the DOE psychologist contacted the outpatient treatment program after the hearing. See E-mail dated April 10, 2013, from DOE psychologist to DOE counsel. The DOE psychologist spoke with a counselor at the program who stated that he was going to suggest that the Individual attend individual counseling. *Id.* In addition, the counselor was going to require aftercare. *Id.* The DOE psychologist had a follow-up conversation with the counselor, who stated that the Individual had attended two individual counseling sessions, was attending Alcoholics Anonymous (AA), and would be in aftercare until September. See E-mail dated April 24, 2013, from DOE psychologist to DOE counsel.

The testimony of DOE psychologist has convinced me that the Individual is still in the earliest stage of his recovery and has not developed the insight and understanding necessary for reformation or rehabilitation from his alcohol abuse diagnosis. Based on the foregoing, I find that the Individual has not mitigated the security concerns associated with Criteria H or J.

B. Criterion L

The Individual's two arrests constitute criminal conduct that raises security concerns under Criterion L. "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." Adjudicative Guidelines at ¶ 15. "Criminal 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." *Id.* at ¶ 30.

The criminal conduct cited in the Notification Letter is clearly a symptom of his alcohol disorder. Given the role that alcohol has played in the Individual's past conduct, I find that until the concerns raised by his alcohol disorder are sufficiently resolved, those concerns about the Individual's judgment, reliability and trustworthiness raised by his criminal conduct will also remain unresolved. *See Personnel Security Hearing, Case No. PSH-12-0129 (2013)* (security concerns arising from two alcohol-related arrests are not resolved until the underlying alcohol issues are sufficiently addressed). Accordingly, I find that the security concerns raised under Criterion L by the Individual's two arrests have not been resolved.

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, J, and L. 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 not brought forth sufficient evidence to mitigate these security concerns associated with Criteria H, J, and L. I therefore cannot find that restoring the Individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the Individual's access authorization should not 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.

Janet R. H. Fishman
Hearing Officer
Office of Hearings and Appeals

Date: May 30, 2013