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

In the Matter of: Personnel Security Hearing)	
)	
Filing Date: July 11, 2013)	
)	Case No.: PSH-13-0086
_____)	

Issued: October 30, 2013

Hearing Officer Decision

Steven L. Fine, Hearing Officer:

This Decision concerns the eligibility of XXX X. XXX (hereinafter referred to as “the Individual”) to hold a security clearance 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 discussed below, after carefully considering the record before me in light of the relevant regulations, I conclude that the Individual’s security clearance should be restored.

I. BACKGROUND

The administrative review proceeding began when a Local Security Office (LSO) issued a Notification Letter to the Individual. *See* 10 C.F.R. § 710.21. The letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. Specifically, the LSO stated that the Individual had been diagnosed by a psychiatrist with Alcohol Abuse, and engaged in a pattern of criminal behavior which brought into question his honesty, reliability, and trustworthiness.¹

¹ 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 a 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). Criterion L defines as derogatory information that an individual 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. § 708.8(l).

The Notification Letter further informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for a security clearance. The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on July 11, 2013.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his spouse, a co-worker, his mother, his supervisor, his Alcoholics Anonymous (AA) sponsor, and a DOE consultant psychiatrist (the DOE Psychiatrist). *See* Transcript of Hearing, Case No. PSH-13-0086 (hereinafter cited as "Tr."). The LSO submitted 14 exhibits, marked as Exhibits 1 through 14, while the Individual submitted eight exhibits, marked as Exhibits A through H.

II. FINDINGS OF FACT

On November 13, 2009, and again on March 7, 2013, police arrested and charged the Individual with Driving Under the Influence of Alcohol (DUI).

After the Individual's first DUI, the LSO conducted a Personnel Security Interview (PSI) of the Individual and referred him to the DOE Psychiatrist. The Individual was evaluated by the DOE Psychiatrist on May 7, 2010. Exhibit 9 at 2. After completing his evaluation of the Individual, the DOE Psychiatrist issued a report on May 7, 2010, in which he found that the Individual met the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revised (DSM-IV-TR) for "Generalized Anxiety Disorder." Exhibit 9 at 8. However, the DOE Psychiatrist opined that the Individual's Generalized Anxiety Disorder was **not** an illness or condition that causes, or may cause, a significant defect in the Individual's judgment and reliability. *Id.* The DOE Psychiatrist also found that the Individual was not, and had not been, a user of alcohol habitually to excess, or alcohol dependent or suffering from alcohol abuse. *Id.* at 10.

After the Individual's second DUI, the LSO conducted an additional PSI of the Individual on March 27, 2013. *See* Exhibit 12. Because the March 27, 2013, PSI did not resolve the security concerns raised by the Individual's second DUI, the DOE Psychiatrist conducted a second evaluation of the Individual on April 27, 2013, at the request of the LSO. Exhibit 8 at 1. After completing this evaluation of the Individual, the DOE Psychiatrist issued a report on May 2, 2013, in which he found that the Individual met the criteria set forth in the DSM-IV-TR for Alcohol Abuse. Exhibit 8 at 10. The DOE Psychiatrist further found the Individual's Alcohol Abuse to be an illness or condition that causes, or may cause, a significant defect in the Individual's judgment and reliability. Exhibit 8 at 11. Noting that the Individual was not yet rehabilitated or reformed, the DOE Psychiatrist opined that in order to be reformed or rehabilitated from his Alcohol Abuse, the Individual needed to attend "either a structured inpatient or outpatient treatment program, with documented participation in 12-step recovery meetings and familiarity with a recovery model," and that "at least a year of complete sobriety would be necessary for fulfillment of adequate rehabilitation." Exhibit 8 at 10-11.

III. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). In rendering this opinion, I have considered the following factors: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's 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. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

The Individual has been arrested for two DUIs. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. *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 at ¶ 21. In the present case, an association exists between the Individual's consumption of alcohol and his subsequent failure to exercise good judgment and to control his impulses, as evidenced by his repeated operation of a motor vehicle on public roads while in a state of intoxication.

On May 2, 2013, the DOE Psychiatrist diagnosed the Individual with Alcohol Abuse. This information raises security concerns about the Individual under Criterion H, since the DOE Psychiatrist opined that Individual's Alcohol Abuse constitutes an illness or condition that cause, or may cause, a significant defect in the Individual's judgment and reliability. Exhibit 8 at 11; Adjudicative Guidelines I at ¶ 27 and G at ¶21, 22(e).

The Individual's two arrests for DUI 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 Guideline E 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.” Adjudicative Guideline G at ¶ 30.

V. ANALYSIS

I find that the Individual has adequately mitigated the security concerns raised under Criteria H and J by his Alcohol Abuse diagnosis, and two alcohol-related arrests.

The Individual has presented particularly evidence that he is reformed and rehabilitated from his Alcohol Abuse. The Individual, who self-identifies as an “alcoholic,” testified that he understands that alcoholism is a life-long disease and therefore he must permanently abstain from alcohol use. Tr. at 130, 161, 168, 174, 184, 187-188 Exhibit A at 1. The Individual testified that his last use of alcohol had occurred on March 7, 2013, over six months prior to the hearing. Tr. at 130. The Individual testified that, on the day after his second DUI, he began contacting treatment programs.² Tr. at 133, 177. On March 17, 2013, he began an eight-week Intensive Outpatient Treatment Program (IOP). Exhibit C at 1. The IOP included participation in the AA Twelve-Step Program,³ individual counseling, and marital counseling. Exhibit 8 at 10; Exhibit H at 1. While he was attending the IOP, he came to the realization that he is an alcoholic. Tr. at 142. He successfully completed the IOP on May 10, 2013. Exhibit A at 1; Exhibit C at 1. He attends a weekly aftercare meeting at the IOP, and attends an average of three AA meetings a week. Tr. at 157, 181; Exhibit A at 1. He meets with his individual counselor on a bi-weekly basis. Tr. at 158; Exhibit A at 1; Exhibit H at 1. The Individual has been working with an AA sponsor since April 2013. Tr. at 157. The Individual testified that hearing the testimonies of other alcoholics at AA meetings helped him to realize how important it was to address his alcoholism before it progressed further. Tr. at 179. The Individual testified that he enjoys participating in AA and aftercare and plans to continue participating in AA for the rest of his life. Tr. at 179-181, 184.

The Individual testified that he had received exceptionally strong emotional support from his spouse and her family and that his faith community and clergy provide him with support for his sobriety and alcohol-free social activities. Tr. at 132-133, 148, 168-169. He testified that he believed that his marriage was strengthened as a result of his treatment and sobriety. Tr. at 149. He testified that he has been a foster parent for two children with special needs (whose adoption was pending) and that he needed to be sober in order to be a good father for those children. Tr. at 149-150. He testified that fatherhood has reduced his anxiety. Tr. at 150-151. He has changed his activities and social affiliations in order to avoid situations in which he used to drink and the people who he used to drink with. Tr. at 152-157, 173, 193. The Individual testified that his previous attempt to stop drinking (after his 2009 DUI arrest) did not succeed because he did not recognize his problem and therefore did not receive the proper treatment for his alcoholism and failed to develop the support system he needed to remain sober. Tr. at 171-172, 174-176. He testified that since he now has a supportive spouse and two children, he has a greater incentive to remain sober. Tr. at 176. He testified that sobriety has been a positive experience for him. Tr. at 196-197. He described the present as “the high point in his life.” Tr. at 200.

The Individual’s mother testified on his behalf at the hearing. She testified that she and the Individual have always been very close and that they have daily contact at work. Tr. at 91. She testified that the Individual had informed her that he was an alcoholic while he was attending the IOP. Tr. at 95. Most importantly she testified that, as a result of his sobriety, “his spirit is at

² The Individual’s spouse’s testimony corroborated this testimony. Tr. at 56-57.

³ He is currently working on Step Three of the AA Twelve-Step Program. Tr. at 183.

peace for the first time.” Tr. at 97.

The Individual’s spouse, a licensed social worker, testified on his behalf at the hearing. Tr. at 44. The Individual’s spouse’s testimony showed that she is a particularly strong, intelligent, insightful, devoted, and emotionally-supportive person. She testified that the Individual is a very open and honest Individual. Tr. at 45. She testified that she has stopped drinking and that alcohol is not kept in the family home. Tr. at 47, 54, 71. She testified that they no longer socialize with anyone who uses alcohol. Tr. at 65, 74-75, 86. They also generally avoid venues where alcohol is being used by others. Tr. at 65. She testified that she and the Individual have been becoming increasingly involved in their faith. Tr. at 47. She testified that the Individual has a “really big support system.” Tr. at 49, 67-68. She testified that the Individual has not used alcohol since the March 7, 2013, DUI arrest. Tr. at 52. The Individual’s spouse explained that the Individual’s March 7, 2013, DUI resulted in extra scrutiny from the state agency overseeing their foster care of two children. Tr. at 53-56. She testified that during the second week of the IOP, the Individual began referring to himself as an “alcoholic,” and has told her that he plans to never drink again. Tr. at 58-59. She testified that they had six weeks of family therapy through the IOP. Tr. at 58. She also indicated that a local university had evaluated their relationship and teamwork as part of a research study. Tr. at 58. She has attended several AA and Al-Anon meetings in support of the Individual. Tr. at 59, 77. The Individual’s spouse testified that, as a result of his sobriety, the Individual is: “Much happier now. Much more at peace with his life. Much more excited about life in general I think.” Tr. at 66. She believes that the Individual “loves” his therapy. Tr. at 69.

At the hearing, the DOE Psychiatrist observed the testimony of each of the other witnesses before he testified. The DOE Psychiatrist testified that while he had originally found that the Individual needed to abstain from using alcohol for at least twelve months to establish reformation or rehabilitation from his Alcohol Abuse, he now was willing to adjust that recommendation downward to six months. Tr. at 203. The DOE Psychiatrist testified that the Individual was “doing an incredibly good job with his recovery.” Tr. at 203. He noted that the Individual was the beneficiary of an exceedingly unusual set of circumstances: an insightful, supportive, strong and capable spouse, the oversight and accountability of the foster care program, the IOP and the oversight and accountability of the DOE security program and the Individual’s “unique willingness and compliance” with all of the above. Tr. at 203. The DOE Psychiatrist further noted that the Individual has: obtained a sponsor, participated in aftercare, received family therapy, was a subject of the family study, was working out, was journaling, and has an extraordinary support system, including a spouse that attends Al-Anon, and changed his living situation. Tr. at 204. The DOE Psychiatrist concluded by stating: “The bottom line is I do feel like he has had adequate amount of reformation and rehabilitation.” Tr. at 204-205.

The evidence in the record therefore shows that the Individual has successfully addressed his Alcohol Abuse. Accordingly, I am convinced that the Individual has received sufficient treatment, and abstained from using alcohol for a sufficient period of time to establish reformation or rehabilitation from his Alcohol Abuse. Based upon the foregoing, I find that the Individual has sufficiently mitigated the security concerns raised by his Alcohol Abuse under Criteria H or J.

The Individual's two DUI arrests constitute criminal conduct that raises security concerns under Criterion L. The DUIs were clearly symptoms of his Alcohol Abuse. Given the role that alcohol played in the Individual's misconduct and having found that the concerns raised by his Alcohol Abuse are resolved, I find that the concerns raised under Criterion L about the Individual's judgment, reliability and trustworthiness by his two DUIs are also resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H, J, and L. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has mitigated the Criteria H, J, and L security concerns. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be restored. The DOE may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: October 30, 2013