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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 17, 2013	)	Case No.: PSH-13-0111
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Issued : February 20, 2014

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**Administrative Judge's Decision**

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Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization<sup>1/</sup> 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 the DOE in a position that requires her to hold a security clearance. In April 2013, the Individual was arrested for Driving Under the Influence (DUI). The LSO conducted a Personnel Security Interview (PSI) with the Individual in May 2013 (May 2013 PSI). After the PSI, the LSO referred her for a psychological evaluation by a DOE psychologist, which also occurred in May 2013. Noting that this was the Individual’s second arrest for DUI, the DOE psychologist diagnosed the Individual with alcohol abuse.

In September 2013, the LSO sent a letter (Notification Letter) to the Individual advising her that it possessed reliable information that created a substantial doubt regarding her eligibility to hold

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<sup>1/</sup> 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.

a security clearance. In an attachment to the Notification Letter, the 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).<sup>2/</sup>

Upon her receipt of the Notification Letter, the Individual exercised her 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 Administrative Judge<sup>3/</sup> in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the LSO presented one witness; the Individual presented her own testimony and the testimony of six witnesses. The LSO submitted 14 exhibits into the record; the Individual tendered 33 exhibits.

## 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 (9<sup>th</sup> 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).

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<sup>2/</sup> 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).

<sup>3/</sup> 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 staff in line with the title used at other federal agencies for officials performing identical or similar adjudicatory work.

Thus, an Individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

## **B. Basis for the Administrative Judge's Decision**

In personnel security cases arising under Part 710, it is my role as the Administrative Judge 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 her 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 her 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 DUI in April 2013. DOE Ex. 1 at 1; DOE Ex. 9 at 2. After the PSI conducted in May 2013, the Individual was referred to a DOE psychologist for an evaluation. The DOE psychologist diagnosed the Individual as suffering from alcohol abuse under the *Diagnostic and Statistical Manual for the American Psychiatric Association IVth Edition TF (DSM-IV-TR)* and as having met all the criteria for Alcohol Use Disorder, Mild, under the *Diagnostic and Statistical Manual for the American Psychiatric Association Vth Edition (DSM-V)*. DOE Ex. 4 at 11-13. In addition to the April 2013 DUI, the Individual had previously been charged with DUI in October 2010. DOE Ex. 1 at 1.

## **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)<sup>4/</sup> 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. Criteria H and J**

At the hearing, the Individual testified that she began an intensive outpatient treatment program (IOP) in April 2013, five days after her DUI. Tr. at 111. In addition, she has been attending Alcoholics Anonymous (AA) since her discharge from the IOP. Her psychologist suggested that she attempt to attend 90 AA meetings in 90 days. To her credit, she attended 110 meetings in 96 days. Ind. Ex. C. The Individual testified that her sobriety date is April 20, 2013. Tr. at 107. She has been transparent with her children and her ex-husband about what occurred in April 2013. Tr. at 123, 169. When she first attended the IOP and AA, she did not identify herself as an alcoholic. Tr. at 115. After asking her psychologist for a definition of what being an alcoholic is, she realized that she was an alcoholic and proceeded to introduce herself as one. Tr. at 114. The Individual's future intention is to maintain her sobriety. Tr. at 129. She testified that the April 2013 DUI was "one of the best things that happened to me." Tr. at 141. She stated that she has no craving or desire to consume alcohol. Tr. at 143, 167. She testified that she has loved AA since the beginning because of the honesty. Tr. at 127. The Individual stated that her sponsor shared her own story at an AA meeting shortly after the Individual began attending. Tr. at 117. The Individual said that she identified with her sponsor and "wanted what [the sponsor] had." Tr. at 117-18. The Individual testified that her support system is her friends at AA, her friend who testified and her friend's husband, her co-worker who testified, her supervisor, and her father. Tr. at 144. She concluded that she

can't imagine life without AA. I really can't. AA has been the . . . cornerstone of my treatment because that is the place that I know I can go anytime and be with people who will be honest with me and honest with themselves and who will understand and offer their strength and their hope and their experiences back to me.

Tr. at 183-84.

The Individual's sponsor testified that she is a substance abuse counselor as well as being the Individual's sponsor. Tr. at 44-45. She has 26 years of sobriety and has sponsored many people. Tr. at 46. The sponsor asked the Individual to repeat the first four steps of the program when she became her sponsor, even though she had completed them at IOP. Tr. at 47. The sponsor, her counselor, and her psychologist all testified that the Individual has completed all 12 steps. Tr. at

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<sup>4/</sup> 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.

22, 57, 195. By the sponsor's standards, the Individual is "working a good AA program." Tr. at 52. The sponsor opined that the Individual has an excellent prognosis for recovery. Tr. at 53. The friend and the Individual's co-worker testified that the Individual is committed to her abstinence. Tr. at 70, 100. The friend testified that the Individual enjoys AA and wants to give back to the program. Tr. at 74. The Individual's co-worker, whom she considers her second mother, testified that the Individual is happier and healthier since the April 2013 DUI. Tr. at 100, 102.

The Individual's counselor testified that the Individual has manifested more change than most of her patients. Tr. at 20. The Individual has a great sponsor. Tr. at 20. The counselor opined that the Individual has an excellent prognosis because she is involved in AA. She chairs meetings and attends an appropriate number of meetings. Tr. at 27. The Individual's risk of relapse is also low because of how seriously the Individual has embraced recovery and the severity of her problem with alcohol was not as severe. Tr. at 26. Her risk of relapse is low. Tr. at 28. Although she is in early recovery, the Individual is accomplishing tasks that are usually seen in late recovery. Tr. at 33.

The Individual's psychologist testified that the Individual completed her IOP. Tr. at 192. The psychologist sees the Individual once or twice a month. Tr. at 194. She has increased her level of insight since they began meeting. Tr. at 193. The Individual's psychologist opined that the Individual has a strong relationship with her sponsor and that her counselor is very good. Tr. at 198-99. The Individual's psychologist testified that the Individual's program is one of the best she has reviewed. Tr. at 200. She concluded that the Individual's prognosis is excellent and her risk of relapse is low. Tr. at 210, 212. She stated that she has shown adequate rehabilitation or reformation. Tr. at 221. The Individual's psychologist concluded that she is unconcerned about the fact that the Individual has only eight months of recovery for two reasons. Tr. at 211-12. First, in addition to attending meetings, the Individual has gotten involved in AA, by chairing meetings. Tr. at 211. Second, the Individual has accepted that her alcohol consumption has affected her past relationships. Tr. at 212. The Individual's psychologist stated "[t]hus she has embraced the goal of lifelong abstinence wholeheartedly." Ind. Ex. N.

The DOE psychologist testified that the Individual's recovery program is robust. Tr. at 225. In his report, he required a year of sobriety because it allows a person to confront all landmarks, such as birthdays and holidays. Tr. at 225. However, after hearing the testimony, he has a moderate degree of confidence that the Individual is rehabilitated and reformed because of her strong program. Tr. at 226. He noted three things that swayed him. First, the Individual stated that she wanted what her sponsor had. Tr. at 227. Second, the Individual testified that she was thankful for the DUI because it allowed her to confront her drinking problem. Tr. at 227. And third, the Individual declared that she liked the honesty of AA. Tr. at 227.

The testimony of DOE psychologist, the Individual's counselor, and the Individual's psychologist, along with that of her friend and co-worker, has convinced me that the Individual has shown adequate rehabilitation or reformation. They testified that her risk of relapse is low. Based on the foregoing, I find that the Individual has adequately mitigated the security concerns associated with Criteria H or J.

## **B. Criterion L**

As of the date of the hearing, the Individual had two alcohol-related incidents. Because the Individual's alcohol use led to the concerns raised under Criterion L, and because I conclude that the risk is low that she will return to alcohol use, I find it unlikely that she will have any more alcohol-related incidents. For this reason, I have determined that the Individual has correspondingly mitigated the concerns raised under Criterion L. *Personnel Security Hearing*, Case No. PSH-12-0088 (2012).

## **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 brought forth sufficient evidence to mitigate the security concerns associated with Criteria H, J, and L. I, therefore, 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 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  
Administrative Judge  
Office of Hearings and Appeals

Date: February 20, 2014