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

In the Matter of: Personnel Security Hearing)

Filing Date: December 16, 2013)

Case No.: PSH-13-0137

_____)

Issued: March 13, 2014

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

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 not be restored.

I. BACKGROUND

This 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 psychologist with Alcohol Use Disorder, Not Otherwise Specified (NOS), and had engaged in behavior (including a pattern of criminal behavior) which brought into question his honesty, reliability, and trustworthiness.

The Notification Letter further informed the Individual that he was entitled to a hearing before an Administrative Judge¹ 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 OHA. The Director of OHA appointed me as the Administrative Judge in this matter on January 28, 2014.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his girlfriend, a DOE Personnel Security Specialist, and a DOE consultant psychologist (the Psychologist). *See* Transcript of Hearing, Case No. PSH-13-0137 (hereinafter cited as "Tr."). The LSO submitted 18 exhibits, marked as Exhibits 1 through 18, while the Individual submitted one exhibit, which is marked as Exhibit A.

II. FINDINGS OF FACT

On November 3, 1985, the Individual was arrested and charged with Driving While Intoxicated (DWI) and Imprudent Driving. At the time of this arrest, the Individual's Blood Alcohol Content (BAC) was .199. On June 27, 1999, the Individual was arrested and charged with DWI. At the time of his second DWI arrest, the Individual's BAC was .239.

The LSO conducted a Personnel Security Interview (PSI) of the Individual on October 17, 2000. Exhibit 18 at 1. During this PSI, the Individual was asked about the June 27, 1999, DWI arrest. The Individual stated that he had met his brother and sister-in-law for dinner at a Mexican restaurant and had shared a pitcher of margaritas. Exhibit 18 at 42. The Individual initially stated that he could not remember how many margaritas he had consumed, but he subsequently estimated that he had consumed four or five margaritas. Exhibit 18 at 42- 43. The Individual claimed he was not aware of the results of the Breathalyzer test administered to him after the June 27, 1999, DWI arrest. Exhibit 18 at 49. As a result of this arrest, the Individual was required to attend alcohol education classes. Exhibit 18 at 61. The Individual claimed that his use of alcohol at that time was limited to "a beer every now and then" and that he does not "go near a vehicle after having alcohol." Exhibit 18 at 65.

On June 28, 2013, the Individual was arrested for suspicion of DWI, after police administered a field sobriety test to him. At the time of this arrest, the police asked the Individual to take a breathalyzer test, which the Individual refused. Exhibit 17 at 10-11.

On July 24, 2013, the LSO conducted a PSI of the Individual. During this PSI, the Individual was questioned about his June 28, 2013, arrest. He stated that after consuming "a couple of beers," police stopped him for failing to maintain his lane. Exhibit 17 at 12- 13. Upon further questioning, the Individual indicated that he had a total of three beers at two establishments before his arrest. Exhibit 17 at 16-19, 154-155. The Individual claimed that he had refused to take the breathalyzer test because the arresting officer told him that he was "a multiple offender"

¹ 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.

and therefore subject to felony DWI charges. Exhibit 17 at 25-26. The Individual admitted that he was “impaired or feeling the effects of alcohol” at the time of this arrest. Exhibit 17 at 131. During this PSI, the LSO also questioned him about his June 27, 1999, DWI arrest. The Individual stated that prior to this arrest, he had been playing golf (and specifically naming the golf course) and they had a meal at a local restaurant (which he specifically named). Exhibit 17 at 38. He stated that his alcohol use on the day of this arrest was limited to “a couple of beers at the golf course” and then “a couple of beers” at the restaurant. Exhibit 17 at 39, 44. The Individual claimed he was not aware of his BAC at the time of this arrest. Exhibit 17 at 43. During the July 24, 2013, PSI, the Individual was asked if he had any other criminal history. He indicated that he had been charged with careless and imprudent driving about 28 years before. Exhibit 17 at 45. Initially, when the Personnel Security Specialist asked him if there were any alcohol-related charges resulting from this incident, the Individual answered “no.” Exhibit 17 at 45. Then, when the Personnel Security Specialist asked the Individual if alcohol was involved in this arrest he admitted that it was, and later admitted that he had been charged with DWI. Exhibit 17 at 45, 52, 54. He indicated that at the time of this arrest he was returning home from a wedding reception where he had consumed “three beers.” Exhibit 17 at 47. He could not recall his BAC at the time of this arrest (it was .199). Exhibit 17 at 48. During this PSI, the Personnel Security Specialist asked the Individual to provide a history of his alcohol use. Exhibit 17 at 62-128. The Individual indicated that, fairly consistently through his adult life, he would consume a six pack of beer on a weekend, usually two or three beers on a weekend evening. Exhibit 17 at 62-128. He denied that he had ever been “falling down, stumbling drunk.” Exhibit 17 at 99-100. The Individual stated that he had not used any alcohol in the prior month. Exhibit 17 at 128. Then the Individual stated that he had consumed four ounces of beer on one occasion (on July 22, 2013) during the past month. Exhibit 17 at 129. The Individual admitted that as a result of the June 28, 2013, DWI arrest, he had become concerned about his use of alcohol. Exhibit 17 at 139. The Individual indicated that he was abstaining from alcohol use. Exhibit 17 at 142, 145-146.

At the request of the LSO, the Psychologist evaluated the Individual on August 26, 2013. Exhibit 4 at 1. After completing her evaluation of the Individual, the Psychologist issued a report on September 9, 2013, in which she found that the Individual “has a mental condition, manifested in his demonstrated minimization of alcohol consumption, lack of candor, and avoidant/evasive responses during interviews, which causes, or may cause, a significant defect in judgment or reliability.” Exhibit 4 at 9.

On September 18, 2013, the Psychologist issued an addendum to her September 9, 2013, report. This addendum indicates that, after issuing her original report, the Psychologist received additional information, specifically the police reports from the Individual’s June 27, 1999, and November 3, 1985, DWI arrests. Exhibit 5 at 1-3. These police reports indicated that the Individual’s BAC at the time of the November 3, 1985, DWI arrest was .199, and that his BAC at the time of the June 27, 1999, DWI arrest was .239. Exhibit 5 at 2. The Psychologist opined that this information indicated that the Individual had not been truthful about his past alcohol consumption during his PSIs and her interview of him. Exhibit 5 at 2. Moreover, the Psychologist opined that the exceptionally high BAC levels reported at the time of the Individual’s DWI arrests are evidence that he had developed a tolerance to alcohol. Exhibit 5 at 2. Based upon the new information, the Psychologist revised her conclusions set forth in her

September 9, 2013, report, opining that the Individual had been a user of alcohol habitually to excess, and diagnosing the Individual with Alcohol Use Disorder, Not Other Specified (NOS) under the criteria set forth in the American Psychiatric Association's Diagnostic and Statistical Manual-Fourth Edition, Text-Revision (DSM-IV-TR). Exhibit 5 at 2-3.

The Psychologist further found the Individual's Alcohol Use Disorder, NOS to be an illness or condition that causes, or may cause, a significant defect in the Individual's judgment and reliability. Exhibit 5 at 3. The Psychologist opined that in order to be reformed or rehabilitated from his Alcohol Use Disorder, NOS, the Individual needs to:

[P]articipate in [Alcoholics Anonymous (AA)] meetings twice per week, document his attendance, and obtain a sponsor with whom he meets regularly and frequently. An alternative to AA would be his participation in an evidenced-based treatment program There should be maintenance of sobriety (abstinence from alcohol) and the duration of such treatment should be for twelve months. Random testing would help support [the Individual's] sobriety in any of these rehabilitation treatments.

If he chose not to use AA or formal treatment, he could demonstrate reformation by abstaining from alcohol consumption for two (2) years while providing evidence of successful participation in a random alcohol monitoring program. The random testing should be unpredictable and conducted not less than six times throughout the first six months, and at least quarterly thereafter.

Exhibit 5 at 3.

III. STANDARD OF REVIEW

The Administrative Judge'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 and 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 a history of three alcohol-related arrests. 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 excessive 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, and his provision of misleading information during DOE security interviews.

On July 9, 2013, the Psychologist diagnosed the Individual with Alcohol Use Disorder, NOS. This information raises security concerns about the Individual under Criterion H, since the Individual's Alcohol Use Disorder (NOS) constitutes an illness or condition that cause, or may cause, a significant defect in the Individual's judgment and reliability. Exhibit 4 at 3; Adjudicative Guidelines I at ¶ 27 and G at ¶ 21, 22(e).

The Individual's three arrests for alcohol-related offenses, constitute criminal conduct that raises security concerns under Criterion L. Moreover, it is obvious that the Individual has deliberately provided inaccurate information about his alcohol consumption to DOE security officials. "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

A. Alcohol Use Disorder, NOS (Criteria H and J)

I find that the Individual has not adequately mitigated the security concerns raised under Criteria H and J by his Alcohol Use Disorder, NOS and three alcohol-related arrests.

At the hearing, the Individual testified on his own behalf. Tr. at 29-46. He testified that his last use of alcohol occurred two weeks after his June 28, 2013, arrest.² Tr. at 29. He stated that he has undergone an "assessment" for alcohol disorders at a local substance abuse treatment facility (the Treatment Facility). Tr. at 30. The Individual testified that he did not "qualify" for that facility's inpatient or 12-week outpatient programs. Tr. at 30. The Individual testified that the Treatment Facility initially recommended that he undergo an "eight-hour assessment" but then recommended that he undergo a "three-week assessment."³ Tr. at 30-31. The Individual

² This testimony was corroborated by the testimony of the Individual's live-in girlfriend. Tr. at 48.

³ The Individual subsequently claimed that the Treatment Facility "recommended an eight-hour class, and then they recommended a three-week class that was three hours -- two or three hours per week." Tr. at 31.

testified that he intends to follow any treatment recommendations that are made by the Treatment Facility. Tr. at 37. When the Individual was asked if he believed he had a drinking problem, he answered: "I believe I have been in trouble for drinking. Yes, sir." Tr. at 32. He denied that he had been evasive or that he had intentionally tried to hide the truth during his interview with the Psychologist. Tr. at 32, 40. The Individual testified that, since his June 27, 1999, DWI arrest, he had greatly reduced his drinking. Tr. at 34. The Individual testified that at the time of his June 28, 2013, arrest, he had only consumed two beers.⁴ Tr. at 34. The Individual testified that he decided to refuse the BAC test because the arresting officer had warned him that he was facing felony DWI charges. Tr. at 35.

At the hearing, the Psychologist listened to the testimony of each of the other witnesses before she testified. The Psychologist testified that she had prepared the addendum to her Psychological Report after receiving information indicating that the Individual's BAC for his November 3, 1985, and June 27, 1999, DWI arrests had been .199 and .239, respectively. Tr. at 61. The significance of these BAC levels was two-fold: they showed that the Individual had developed a tolerance to alcohol, and that he was not being honest about his alcohol use. Tr. at 61, 82-83. The Psychologist testified that three alcohol arrests over a period of thirty years is "a lot." Tr. at 68.

The Psychologist testified that nothing she had heard at the hearing had changed her mind about the Individual's diagnosis or her treatment recommendations. Tr. at 77, 82. The Psychologist reiterated her opinion that the Individual needs to remain sober for at least a year in order to show that he is rehabilitated or reformed. Tr. at 62-63, 77-78. She noted that the Individual has not completed a year of sobriety, or a treatment program. Tr. at 77. The Psychologist testified that she does not believe that the Individual is reformed or rehabilitated from his alcohol use disorder. Tr. at 77. The Psychologist testified that the Individual's prognosis is currently poor, because he has not started treatment and has not remained sober for a year. Tr. at 84. She further testified that the Individual presently has a moderate likelihood of relapse. Tr. at 84-85.

The Psychologist noted that the Individual's provision of conflicting accounts of his alcohol consumption prior to his June 27, 1999, DWI arrest was an example of the Individual's attempts to be evasive. Tr. at 65. The Psychologist testified that the Individual's deceit and evasiveness were symptoms of his Alcohol Use Disorder (NOS). Tr. at 80-82.

After carefully considering all the evidence, I am not 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 Use Disorder (NOS). The Individual has offered no expert testimony to the contrary. Moreover, I note that throughout this proceeding, the Individual has provided inconsistent accounts of his alcohol consumption. If I am unable to rely upon an Individual's testimony about his alcohol use, then I am unable to conclude that the concerns raised by his past alcohol consumption have been resolved. Based upon the foregoing,

⁴ During the July 24, 2013, PSI, the Individual stated that he had a total of three beers before his arrest. Exhibit 17 at 16-19, 154-155.

I find that the Individual has not sufficiently mitigated the security concerns raised by his Alcohol Use Disorder under Criteria H or J.⁵

B. Criterion L

The Individual's three alcohol-related arrests demonstrate a pattern of criminal conduct that raises security concerns under Criterion L. This conduct is clearly symptomatic of his Alcohol Use Disorder (NOS). Given the role that alcohol has played in the Individual's conduct, I find that until the concerns raised by his Alcohol Use Disorder (NOS) are sufficiently resolved, the concerns about the Individual's judgment, reliability and trustworthiness raised by his criminal conduct will also remain unresolved.

Accordingly, I find that the security concerns raised under Criterion L by the Individual's criminal conduct have not been 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 not mitigated the Criteria H, J, and L security concerns. Accordingly, the Individual has not 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 not be restored at this time. The Individual 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
Administrative Judge
Office of Hearings and Appeals

Date: March 13, 2014

⁵ The Notification Letter cites the Psychologist's conclusions that the Individual "has a mental condition, manifested in his demonstrated minimization of alcohol consumption, lack of candor, and avoidant/evasive responses during interviews, which causes, or may cause, a significant defect in judgment or reliability." Exhibit 4 at 9. However, the Psychologist's hearing testimony indicated that these traits are symptoms of his Alcohol Use Disorder (NOS), rather than separate and distinct mental conditions. *See*, Tr. at 80-82.