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

In the Matter of Personnel Security Hearing)
)
Filing Date: December 11, 2013) Case No.: PSH-13-0132
_____)

Issued: March 6, 2014

Administrative Judge Decision

Shiwali G. Patel, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the DOE should not restore the individual’s access authorization at this time.²

I. BACKGROUND

The individual is an employee of a DOE contractor and holds a suspended access authorization. After the individual tested positive on two random Breath Alcohol Tests (BAT) at work on June 19, 2013 and June 6, 2013, and was involved in domestic violence incident and admitted consuming four to five, eight-ounce, glasses of wine prior to that incident, a Local Security Office (LSO) summoned the individual for a Personnel Security Interview (PSI) with a personnel security specialist on July 9, 2013. Exhibit 3 (DOE Case Evaluation); Exhibit 10 (PSI Transcript, Jul. 9, 2013). After the PSI, the LSO referred the individual to a psychologist (hereinafter referred to as “the DOE psychologist”) for an agency-sponsored evaluation. The DOE psychologist prepared a written Report, setting forth the

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.energy.gov/oha>.

results of that evaluation, and sent it to the LSO. Exhibit 4. Based on this Report and the rest of the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. Exhibit 3. The LSO informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. Exhibit 1 (Notification Letter). The Notification Letter also informed the individual that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning his eligibility for an access authorization.

The individual requested a hearing in this matter. The LSO forwarded this request to OHA, and the OHA Director appointed me the Administrative Judge³ in this case. The DOE introduced 10 exhibits into the record of this proceeding, and called the DOE psychologist as a witness. The individual introduced seven exhibits, and presented the testimony of three witnesses, in addition to his own testimony.

II. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, an Administrative Judge must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable and unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring 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 regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

III. NOTIFICATION LETTER AND ASSOCIATED SECURITY CONCERNS

The Notification Letter cited derogatory information 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)

³ 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 (Aug. 23, 2013). The title change was undertaken to bring OHA Hearing Officers in line with the title used at other federal agencies for officials performing identical or similar adjudicatory work. See *Personnel Security Hearing*, Case No. PSH-13-0114 at 1, n.1.

(hereinafter referred to as Criteria H and J, respectively). Exhibit 1.⁴ Under both criteria, the LSO cited the individual's (1) diagnosis by the DOE psychologist of Alcohol Dependence with physiological dependence, without adequate evidence of rehabilitation or reformation; (2) positive Blood Alcohol Content (BAC) of .06 at 11:43 a.m. on June 19, 2013, while he was at work and his admission that he violated the employer's agreement that he signed on June 12, 2013, acknowledging that he would remain abstinent from consuming alcohol; (3) positive BAC of .206 at 9:30 a.m. on June 6, 2013; (4) admission that he consumed four or five eight-ounce glasses of wine prior to a domestic violence incident for which the police appeared at his home; (5) admission that from January 2013 to June 2013, he was intoxicated on 28 to 30 occasions; (6) admission that after his wife left him in May 2013, he could not quit drinking because he was experiencing withdrawal symptoms that made him physically ill; (7) admission at his PSI that from 2010 to June 2013, he consumed a box of wine, approximately four and half liters, weekly; and (8) admission at his PSI that in 2009, he realized that he had a problem with alcohol and is alcohol dependent.

The individual does not dispute any of the allegations in the Notification Letter, and I find that each of these allegations is valid and well supported by the record in this case. *See* Exhibit 2 (Response to Notification Letter); 10 C.F.R. § 710.27(c) (requiring Administrative Judge to "make specific findings based upon the record as to the validity of each of the allegations contained in the notification letter"). I further find that this information adequately justifies the DOE's invocation of Criteria J and H, as it raises significant security concerns related to excessive alcohol consumption, which often leads to the exercise of questionable judgment or the failure to control impulses, and calls into question the individual's future reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, The White House (December 19, 2005) (Adjudicative Guidelines) at ¶ 21 (Guideline G).

IV. FINDINGS OF FACT

The individual is 60 years old and has worked for a DOE contractor for approximately 30 years before the DOE suspended his access authorization due to concerns regarding his alcohol consumption and a related psychological condition. Tr. at 62. Alcohol became a problem in the individual's life while he was married to his third wife from 1989 to 2004. Exhibit 4 at 2. He began to consume three to four glasses of wine during the day at that time. By 2003, the individual was drinking up to two bottles of wine in a six-hour period. *Id.* at 3. The individual stated that consequently, "he needed increasing amounts of wine in order to, 'get buzzed'" and that during this period, he sometimes went to work with a hangover. *Id.*

In 2004, the individual married his fourth wife, and during that marriage, his alcohol consumption increased. *Id.*; Exhibit 10 at 9. He reported being intoxicated 20 to 30 times in 2013, driving while intoxicated ten times, being hungover at work ten times, and being absent from work once because of his alcohol consumption. Exhibit 4 at 3. He lost friends during this period, estimating that he went

⁴ Criterion H relates to information indicating that the individual has an "illness or mental condition of a nature which, in the opinion of a psychologist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Under Criterion J, information is derogatory if it indicates that the individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychologist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

from 60 to zero friends, and he sent out caustic political electronic mail messages when he was intoxicated. *Id.* In early 2013, the individual was “out of control” and would regularly drink two liters of wine over a six-hour period. *Id.* He would drink heavily, although his wife wanted him to quit drinking. *Id.* Moreover, the individual acknowledged that he “dodged the bullet because I could have had a bunch of DUI’s and could have killed someone.” *Id.*

While the individual was never arrested or charged with any crimes, he got into physical altercations with his fourth wife twice, while they were both intoxicated. Exhibit 4 at 3. The most recent incident occurred on May 12, 2013, when the police arrived at his home after a domestic violence incident was reported. *Id.* The individual explained that on that day, he started drinking at around 3:00 p.m. and had about four eight-ounce glasses of wine. Exhibit 10 at 29. After that incident, he went through a self-imposed “cold turkey” detoxification from May 14, 2013, to May 25, 2013, which “resulted in tremors, loss of appetite, and loss of motor control so severe that he had to ‘crawl to the bathroom.’” Exhibit 4 at 3. He stated that when he tried to give up alcohol, “[i]t was physically harder than mental, um, I just, it was just, uh, I was just weak and shaky and sweaty and things. I didn’t really have a craving for it, it was more physical.” Exhibit 10 at 82.

Less than month later, on the evening of June 5, 2013, the individual watched games at his friend’s house where he brought wine with him. *Id.* at 43. There, he drank 20 ounces of wine during a three and half hour time span. *Id.* at 45. He inadvertently left the remaining bottle with wine in his backpack, which he took to work the next morning on June 6, 2013. *Id.* at 46. When he realized at work that he had wine in his bag, he poured some wine into a cup and proceeded to drink it in his office when his supervisor walked in on him. Exhibit 4 at 1. The individual stated that he probably consumed eight ounces of wine before his supervisor caught him, and that he “was probably gulping it, trying to get rid of it.” Exhibit 10 at 46. He was subsequently escorted by his supervisor to medical services where his BAC was reported as .21g/21L. *Id.*

On June 12, 2013, the individual met with the Employee Assistance Program (EAP) at his employer and he signed a Mandatory Recovery Agreement stating that he would remain abstinent from alcohol. Exhibit 4 at 1; Exhibit 7. However, just a week after he signed that Agreement, on June 19, 2013 at 11:45 a.m., the individual was tested for alcohol at work and his BAC was .06g/21L. Exhibit 4 at 1. He stated that the night before, he consumed alcohol while he was watching the game with his friend, drinking at least three cosmopolitans. Exhibit 10 at 66. After this incident, the individual stopped drinking, stating that his date of sobriety was June 19, 2013. Tr. at 66.

V. ANALYSIS

The individual does not dispute the DOE psychologist’s opinion that he has historically been a user of alcohol to excess and that he meets the criteria for Alcohol Dependence with physiological dependence pursuant to the *Diagnostic and Statistical Manual for the American Psychiatric Association IVth Edition TF (DSM-IV-TR)*. Exhibit 4 at 3-4. The focus of my analysis, therefore, is on whether the individual has achieved rehabilitation or reformation.

A. Lay Testimony

The individual stated that he currently sees a doctor with the EAP every two weeks who monitors his prognosis, and he also receives random drug testing, urine testing and breathalyzer tests through EAP. Tr. at 69. In this regard, he submitted 20 negative alcohol testing results from June 20, 2013, to January 6, 2014.⁵ Exhibit C. He further submitted a form documenting the Alcoholics Anonymous (AA) support group meetings that he attended, indicating that from August 20, 2013, through December 20, 2013, he attended 38 meetings. Exhibit G. The individual also acknowledged that while he first had misconceptions and hesitations about the treatment programs, after beginning treatment, he realized the effectiveness of the programs and has accepted that he has a problem with alcohol. Tr. at 69-70. He attends meetings about two or three times a week, including the aftercare program, and sometimes he attends additional meetings on the weekends. Tr. at 95. Moreover, the individual testified that he has a sponsor for AA and that he is participating in a twelve-step program; as of the hearing, he was at step four. Tr. at 74-76. However, he stated that he is going back to step one concerning his admission that he is not in control. Tr. at 76.

The individual further testified that none of his friends consume alcohol and that his best friend manages a restaurant that does not serve alcohol, where the individual spends a lot of time. Tr. at 77-78. The individual also testified that throughout his life, he has been very dependent on female relationships, which affected his behavior and alcohol consumption. Tr. at 80. During the winter holidays – Thanksgiving, Christmas and New Years – the individual claims that he did not have any problems with alcohol. Tr. at 84-85. However, if any incidents would have triggered him, he would have called his sponsor, therapist or a friend for support, instead of resorting to alcohol. Tr. at 93. The individual explained that since he stopped drinking alcohol, he gained weight as he substituted alcohol for food. Tr. at 87. He does not crave alcohol, and indeed, even though he was prescribed an anti-craving drug, he has not filled the prescription because he claims that he does not need it. Tr. at 72. In all, the individual stated that he is very focused on his recovery, and that he does not plan on consuming alcohol in the future because he feels physically better without it. Tr. at 86, 91.

The individual called two character witnesses. Both of them have worked with him and have known him for over 20 years. Tr. at 36, 52. The first witness stated that she noticed the individual became negative and started having problems with alcohol while he was married to his fourth wife, who was extremely jealous. Tr. at 37. The witness had seen the individual appear to work hungover and smelled alcohol on his breath, and that on those instances, he told her that he consumed alcohol because his wife wanted to drink. Tr. at 47. However, she noticed that the individual became more positive after he stopped drinking and began participating in the treatment program. Tr. at 43. The second witness testified that the individual appears better now that he has stopped drinking alcohol. Tr. at 60. Both witnesses claim that the individual exercises good judgment. Tr. at 61.

B. Expert Testimony

At the hearing, the individual's therapist testified about his treatment program, which the individual began on August 12, 2013. Exhibit B. The individual completed the outpatient program on October 21, 2013, which included three-hour group sessions three times a week, for 30 sessions total,

⁵The dates of his alcohol tests, starting June 20, 2013, are the following: June 20, June 21, June 25, July 12, August 15, August 21, August 23, August 28, August 29, September 5, September 23, October 2, October 9, October 22, November 14, November 19, December 4, December 9, December 16, and January 6, 2014.

and he attended a minimum of three AA meetings a week and maintains a sober support network. Exhibit B. He also participated in discussions concerning the effect of alcoholism on him and his relationships. *Id.* Currently, the individual is participating in AA, an aftercare program and individual therapy. Tr. at 18-19. The therapist agreed with the DOE psychologist's assessment, evaluation of the sustained period of drinking and diagnosis of the individual as alcohol dependent. Tr. at 15, 17. However, he did not agree that the individual's date of sobriety is when he started treatment in August 2013, rather than after he had his last drink on June 18, 2013. Tr. at 15.

As to the individual's prognosis, his therapist stated: "there will be a good chance that he will remain on the path to recovery if he continues to do the work." Tr. at 20. He also stated that as of the date of the hearing, the individual's risk of relapse was low to medium. Tr. at 25. As to his risk of relapse,⁶ the therapist stated: "I believe that he has demonstrated to me that he is sincere and genuine about wanting to make a change in his life and not return back to the person that he was when he was drinking and dodging bullets and things like that." Tr. at 26. Moreover, the individual's random drug tests during the outpatient program all came out negative and he continues to go through drug testing. Tr. at 30. In regard to his triggers, his therapist explained that particular behaviors that might cause the individual to relapse are his anger and romantic relationships. Tr. at 28.

After hearing the testimony from the witnesses, the DOE psychologist testified about the individual's prognosis and stated that he stood by his Report. Tr. at 97. He explained that in order for the individual to demonstrate adequate evidence of rehabilitation or reformation, he would need to be abstinent for one year starting when he began treatment in August 2013, rather than when he had his last drink in June 2013. Exhibit 4 at 4. The DOE psychologist explained that many triggers could arise during the year after he began his treatment, such as holidays and anniversaries of his previous marriages, divorces, and "when his life became so deteriorated that he was drinking at work." Tr. at 98-99. As the individual's grief and sadness caused him to consume alcohol excessively, the anniversaries of his four failed marriages and divorces may bring up additional grief and sadness that could trigger his desire to drink. Tr. at 99. The DOE psychologist was also concerned with the individual's passivity regarding his alcohol consumption and relationships, stating that he "let[']s others or circumstances determine when he drinks," and that with alcoholism, the "greater the passivity, the greater the threat." Tr. at 99. He described the individual's history with drinking during his marriages, and stated that "when he drank or did not drink, when he was using alcohol or not using alcohol, had a great deal to do with the external circumstances."⁷ Tr. at 99. He was also concerned by the individual's assertions that he consumed alcohol because of the difficulties in dealing with his fourth wife, thereby focusing on his ex-wife's behaviors, rather than his own. Tr. at

⁶ However, he could not state with certainty a time period that the individual would need to maintain sobriety in order to establish a pattern of abstinence, stating: "From a person who is a recovering alcoholic, who has been clean and sober 23 years, time is almost a moot point from that standpoint, because Alcoholics Anonymous teaches us one day at a time. . . . Seven months is better than one month. A year is better than seven months. Five years is better than one year. I believe that, once again, to me there is somewhat – it's somewhat subjective." Tr. at 22.

⁷ For example, he explained that during the individual's first marriage, his abstinence only had to do with his wife not drinking, not his own desires not to drink. Tr. at 100. Regarding the individual's second marriage, observing his wife's addiction made him not want to drink, and the DOE psychologist pointed out how the individual's passivity resulted in him staying in a relationship that had a lot of difficulties and even resulted in bankruptcy. Tr. at 100. During his third marriage, he started drinking again because he went on outings with his father-in-law, and then in his last marriage, he stayed in it even though it was very difficult and stopped his relationship with his son because his wife wanted him to. Tr. at 100.

101. Furthermore, he explained that the individual's explanation for the June 6, 2013, incident, where he consumed wine in his office, was passive as he implied that "it's the fault of the wine" that he drank it by forgetting that he had it in his backpack. Tr. at 101. He also explained that the individual's dependency on food as a substitute for alcohol suggests that "he passively gives in to the temptation to eat, knowing that it's bad for his health." Tr. at 102.

In regard to rehabilitation, the DOE psychologist marks the date from when the individual began to address his alcoholism through his treatment program in August 2013, not when he stopped drinking in June 2013. Considering the individual's relapse when he attempted to stop drinking previously, I find the DOE psychologist's conclusion on the individual's date of sobriety appropriate. Regarding his prognosis, the DOE psychologist stated that if the individual continues with his abstinence and his rehabilitative efforts, that "he had a moderate prognosis for staying off alcohol." Tr. at 104.

C. Evaluation of Evidence

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)⁸ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored. The specific findings that I make in support of this decision are discussed below.

As noted above, both experts who have evaluated the individual conclude that he suffers from alcohol dependence. Thus, application of the Adjudicative Guideline would require the individual to establish a pattern of abstinence. Adjudicative Guidelines at ¶ 23(b). I cannot find that given the facts of his case, the individual's five months of sobriety – from when he began treatment in August 2013 – would constitute a sufficient pattern of abstinence to mitigate the concerns in this case. *See Personnel Security Hearing*, Case No. PSH 12-0100 (2012) (concluding that seven months of sobriety of an individual who was diagnosed as alcohol dependent was insufficient for resolving concerns under Criterion J); *Personnel Security Hearing*, Case No. PSH-12-0077 (2012) (eight months insufficient to resolve concerns raised by alcohol dependence); *Personnel Security Hearing*, Case No. PSH-11-0013 (2012) (seven months insufficient to resolve concerns raised by alcohol dependence). Even assuming that the individual's date of sobriety was when he last consumed alcohol on June 18, 2013, only a little over seven months passed by the time of the hearing, which is still insufficient for establishing a pattern of abstinence.

Further, I cannot find that the individual's excessive use of alcohol was "infrequent" or happened under "unusual circumstances," or that he does not have a history of previous relapse. Adjudicative Guidelines at ¶ 23(a), 23(c) (Guideline G). Notably, the individual acknowledged that in 2013, he was intoxicated approximately 20-30 times and drove after consuming alcohol ten times. Exhibit 4 at 2. In addition, a week after the individual signed the Mandatory Recovery Agreement on June 12, 2013, he consumed alcohol, and had a BAC of .06g/21L the next morning. *Id.* at 1. Thus, as recently

⁸ 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.

as last year, the individual consumption was frequent as he was intoxicated 28 to 30 times in a six-month time span from January 2013 to June 2013, and he never suggested that it was under unusual circumstances. Moreover, I question the individual's judgment. He has driven while after consuming alcohol on several occasions, acknowledging that he not only violated the law, but endangered the lives of others, consumed wine in his office, and then violated the Mandatory Recovery Agreement by consuming multiple cocktails just a week after signing that Agreement. These incidents, including the other alcohol-related incidents described above, make me question the individual's ability to exercise good judgment.

While I commend the individual for acknowledging his alcoholism and making progress in his treatment programs, there is insufficient evidence to mitigate the security concerns raised above. In the end, OHA Administrative Judges accord deference to mental health professional regarding issues of rehabilitation, reformation and risk assessment. In this case, the DOE psychologist presented compelling evidence why the individual's rehabilitative efforts need to continue until August 2014. Considering all of the evidence in the record, I find that as of the time of the hearing in this matter, the individual has not mitigated the concerns with regard to his alcohol dependency. Under these circumstances, given that I am to resolve "any doubts concerning the individual's eligibility for access authorization in favor of the national security," I cannot find that the individual has resolved the concerns related to his use of alcohol under Criteria H and J.

V. CONCLUSION

For the reasons set forth above, I conclude that the individual has not resolved the DOE's security concerns raised in the Summary of Security Concerns. Therefore, the individual has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not restore the individual's security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Shiwali G. Patel
Administrative Judge
Office of Hearings and Appeals

Date: March 6, 2014