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United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing)
)
Filing Date: February 3, 2014)
) Case No.: PSH-14-0007
_____)

Issued: April 10, 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 granted.

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 her 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)-Binge Drinking.

The Notification Letter further informed the Individual that she was entitled to a hearing before an Administrative Judge¹ in order to resolve the substantial doubt regarding her eligibility for a

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

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 February 4, 2014.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, her friend, her sister, and a DOE consultant psychologist (the Psychologist). *See* Transcript of Hearing, Case No. PSH-13-0137 (hereinafter cited as "Tr."). The LSO submitted seven exhibits, marked as Exhibits 1 through 7, while the Individual submitted three exhibits, which are marked as Exhibits A through C.

II. FINDINGS OF FACT

In August 2013, the Individual was arrested and charged with Driving While Intoxicated (DWI).² The Psychologist estimated that at the time of this arrest, the Individual's Blood Alcohol Content (BAC) was between .20 and .26 percent. Exhibit 4 at 6. During her October 2, 2013, Personnel Security Interview (PSI), she admitted drinking to excess in order to help her cope with breaking up with her significant other. Exhibit 7 at 50-51. She further reported a history of five or six occasions in which she blacked out. Exhibit 7 at 75.

At the request of the LSO, the Psychologist evaluated the Individual on November 18, 2013. Exhibit 4 at 2. During the Individual's interview with the Psychologist, she reported a history of black outs, a significant family alcohol history, and using excessive alcohol consumption in order to cope with loneliness and depression. Exhibit 4 at 2-8. The Individual's description of her alcohol use during the psychological examination indicated that she has developed a tolerance to alcohol. Exhibit 4 at 7. After completing his evaluation of the Individual, the Psychologist issued a report on November 19, 2013, in which he opined that the Individual had been a user of alcohol habitually to excess, and diagnosed the Individual with Alcohol Use Disorder, NOS – Binge Drinking (AUD) under the criteria set forth in the American Psychiatric Association's Diagnostic and Statistical Manual-Fourth Edition, Text-Revision (DSM-IV-TR). Exhibit 4 at 8. The Psychologist further found the Individual's AUD to be an illness or condition that causes, or may cause, a significant defect in the Individual's judgment and reliability. Exhibit 4 at 8.

The Psychologist opined that in order to be reformed or rehabilitated from her AUD, the Individual needs to abstain from all use of alcohol for 12-months, participate in an intensive outpatient program for a minimum of four weeks, and then participate in either an aftercare program or Alcoholics Anonymous (AA).³ Exhibit 4 at 8-9. While the Psychologist noted that the Individual appeared to answer his questions with "unstinting honesty," he cited five factors

undertaken to bring OHA staff in line with the title used at other federal agencies for officials performing identical or similar adjudicatory work.

² The record contains conflicting accounts of when this arrest occurred. During her October 7, 2013, PSI, the Individual indicated that her arrest occurred on August 29, 2013. Exhibit 7 at 7. At the hearing, the Individual testified that the arrest occurred "on the 25th or 24th" of August 2013. Tr. at 71.

³ The Psychologist opined that her AA program should include attendance at three meetings per week for 12 months, while actively working in the AA's 12-Step Program and obtaining a sponsor. Exhibit 4 at 8-9.

which significantly raise the risk that the Individual will relapse: specifically the Individual's acquired alcohol tolerance, family history of alcoholism, unsupportive significant other, lack of insight into her alcohol problem, and history of turning to excessive alcohol use in periods of crisis. Exhibit 4 at 8-9.

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

On November 19, 2013, the Psychologist diagnosed the Individual with AUD. This information raises security concerns about the Individual under Criterion H, since the Individual's AUD constitutes an illness or condition that cause, or may cause, a significant defect in the Individual's judgment and reliability. Exhibit 4 at 8; 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) Guidelines I at ¶ 27 and G at ¶ 21, 22(e). 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. Guideline G at ¶ 21. In the present case, an association exists between the Individual's excessive consumption of alcohol and her subsequent failure to exercise good judgment and to control her impulses, as evidenced by her operation of a motor vehicle on public roads while intoxicated.

V. ANALYSIS

I find that the Individual has not adequately mitigated the security concerns raised under Criterion H by her AUD.

At the hearing, the Individual testified on her own behalf. Tr. at 49-87. She testified that her last use of alcohol occurred on the night of her August 2013 arrest. Tr. at 29. She admitted that she was initially skeptical of the Psychologist's diagnosis. Tr. at 50-51. However, upon further

reflection, she became concerned that she might have a problem with alcohol. Tr. at 51. She then met with an Employee Assistance Program (EAP) Counselor and enrolled in an Intensive Outpatient Program (IOP) starting on February 3, 2014. Tr. at 51-54. Her IOP requires her to attend three three-and-one-half hour meetings per week, and to attend at least three AA meetings each week. Tr. at 53. The IOP includes a weekly one-hour meeting with her individual counselor. Tr. at 82-83. She is also subject to one urinalysis test each week, at her IOP. Tr. at 53. At the time of the hearing, the Individual had completed five weeks of the ten-week IOP. Tr. at 54-55. She testified that she is working AA's Twelve-Steps Program, and has obtained a sponsor, although she believes she needs to obtain a more assertive sponsor. Tr. at 79-80. She is currently working on Step Two. Tr. at 80. Her initial participation in the IOP helped her to realize that she had the "potential . . . to become an alcoholic." Tr. at 53. As a result of her work in the IOP, she came to realize that she is "an alcoholic" and that her problem could get worse over time if she does not address it now. Tr. at 55-58. She testified that she is still learning about her disorder as well as herself through the IOP and AA programs. Tr. at 59. She further testified that most of her family has been very supportive of her sobriety, and that some of her family members had attended her IOP meetings. Tr. at 59. However, she testified that her significant other has not been as supportive as she felt he needed to be. Tr. at 60-65. The Individual testified that, in the past, she had turned to alcohol to cope with the loneliness and depression that had resulted from breaking up with her significant other. Tr. at 64-65. She testified that she has learned better ways to cope with her loneliness and depression. Tr. at 64, 67, 68. She testified that one positive result of her participation in the IOP and AA is that she has developed an expanded and improved support system, including family, friends, IOP group members, and AA members, that she needs to remain sober. Tr. at 65-66. She testified that being sober has allowed her to see the issues in her life more clearly, and to address them more confidently and effectively. Tr. at 65, 69. The Individual also meets with EAP counselors twice each month. Tr. at 84. Her EAP also performs two random urinalysis tests on her each month, in addition to those administered by her IOP. Tr. at 84. She has not tested positive on any of her urinalysis tests. Tr. at 84.

At the hearing, the Psychologist listened to the testimony of each of the other witnesses before he testified. The Psychologist testified that he was very impressed with the Individual's testimony and the steps she has taken towards recovery.⁴ Tr. at 88-89. The Psychologist agreed that the Individual had developed a high level of insight into her condition and had made extraordinary progress in addressing her alcohol disorder in a short period of time. Tr. at 92. He testified that he found her testimony to be completely credible and that the Individual now clearly understands and accepts that she has a problem with alcohol that she needs to address. Tr. at 88, 91. He testified that the Individual does not qualify as an alcoholic "in a formal diagnostic sense," but has "a significant drinking problem that could get worse" and result in her becoming an alcoholic. Tr. at 88-89.

Despite, being highly impressed by the Individual's sincerity, insight, and determination to address her alcohol problem, the Psychologist testified that he was concerned that it was too early in the Individual's recovery to have sufficient confidence that she has been rehabilitated or

⁴ For example, the Psychologist testified "I don't think she could have said anything more convincing to me than what [the Individual has] said." Tr. at 89.

reformed. Tr. at 89-90. The Psychologist noted that it has only been one and a half months since the Individual has acknowledged that she has an alcohol problem and only six and a half months since she stopped using alcohol. Tr. at 90. The Psychologist opined that, while the Individual has shown that she understands her alcohol problem and is determined to remain sober, she has not had enough time to complete her IOP and to demonstrate that she is actually able to remain sober.⁵ Tr. at 90-94, 96. He opined that while the Individual has a good prognosis, she still has a moderate chance of relapse. Tr. at 91. He testified that if the Individual continues on her present course for another three or four months, her prognosis would improve and the risk of relapse would improve to quite low. Tr. at 91.

After carefully considering all the evidence, I am not convinced that the Individual has received sufficient treatment, and has been sober for a sufficient period of time to establish reformation or rehabilitation from her Alcohol Use Disorder NOS-Binge Drinking. The Individual impressed me with her insight, sincerity, and resolve to address her alcohol problem. She has made extraordinary progress in a relatively short period of time towards that goal. However, the Individual has not yet completed her IOP, and as of the date of the hearing, had only fully realized and accepted that she a problem with alcohol for a period of less than two months. Based upon the foregoing, I find that the Individual has not yet sufficiently mitigated the security concerns raised by her Alcohol Use Disorder NOS-Binge Drinking under Criterion H.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criterion H. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has not mitigated the Criterion H security concerns. Accordingly, the Individual has not demonstrated that granting her 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 granted 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: April 10, 2014

⁵ The Psychologist testified that he was “heartened” that the Individual recognizes that having a significant other who continues to drink and bring alcohol into their home is inconsistent with her wish to remain sober and that the Individual recognizes that she will have to address this issue. Tr. at 93.