

***The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.**

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

In the Matter of Personnel Security Hearing)
)
Filing Date: January 26, 2015) Case No.: PSH-15-0005
)

)

Issued: May 20, 2015

Administrative Judge Decision

This Decision concerns the eligibility of XXXXXXXXXXXX (“the individual”) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set for 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 and the Adjudicative Guidelines, I have determined that the DOE should not restore the individual’s access authorization at this time.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. In 2014, while processing the individual for an upgraded clearance, the Local Security Office (LSO) learned that the individual had voluntarily participated in an alcohol treatment program from approximately April 2013 to May 2013. Exhibit 1. The LSO requested that the individual participate in an April 2014 Personnel Security Interview (April 2014 PSI) to discuss security related concerns. Exhibit 8. In June 2014, a DOE consultant-psychiatrist (DOE psychiatrist) evaluated the individual and issued a report. Exhibit 6. In November 2014, the LSO sent a letter (Notification Letter) to the individual informing him that there existed derogatory information that raised security concerns under 10 C.F.R. § 710.8 (h), (j), and (l) (Criteria H, J, and L respectively) and that his security clearance was suspended.² See Exhibit 1.

¹ Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

² Criterion H concerns information that a person has “an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician 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 conduct indicating that the individual “has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a

On January 14, 2015, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing on this matter. Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge. At the hearing, the individual presented his own testimony and that of two co-workers. The DOE presented the testimony of one witness, the DOE psychiatrist. In addition to the testimony, the LSO submitted nine numbered exhibits into the record, and the individual submitted none.

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 the national security interest. 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, 521 (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 c. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing 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). 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 national security. *Id.*

licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j). Criterion L concerns information that a person has “engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interest of the national security.” 10 C.F.R. § 710.8(l).

III. Derogatory Information and Associated Security Concerns

On January 20, 2014, the individual signed a Questionnaire for National Security Positions (January 2014 QNSP) disclosing that he sought inpatient treatment for alcohol abuse from approximately April 2013 to May 2013. Exhibit 1. In the January 2014 QNSP, the individual certified that he had attended the treatment program and had abstained from alcohol since then.³ Exhibit 7 at 12. The individual denied consulting with any other healthcare professional, in the prior seven years, regarding an emotional or mental health condition.⁴ *Id.* at 12.

During the April 2014 PSI, the individual stated that he sought treatment at the urging of his wife, who, along with his sister, was concerned about his drinking. Exhibit 8 at 17. Prior to seeking treatment, the individual was drinking vodka basically every night to help him sleep. *Id.* at 34-35. The individual stated that he typically drank by himself, starting usually from around 7:00 p.m. until he went to bed around 10:00 p.m. *Id.* at 37, 41. Despite using alcohol to help him fall asleep, the individual claimed that he had never been intoxicated, which he defined as “acting in an irresponsible manner, not responsible for one’s actions.” *Id.* at 35-36. The individual also stated that he sought treatment because his drinking caused some issues with his family. Transcript (Tr.) at 57. The individual stated that he also had issues with anxiety that were probably caused by stress related to family issues. Exhibit 8 at 22. The individual stated that he no longer consumed alcohol at all. *Id.* at 34.

In June 2014, the DOE psychiatrist evaluated the individual and diagnosed him with Alcohol Use Disorder, Severe and Unspecified Anxiety Disorder. Exhibit 6 at 8. The DOE psychiatrist also found that the individual has been a user of alcohol habitually to excess. *Id.* In her report, the DOE psychiatrist noted that the individual admitted that he had sought treatment in two outpatient alcohol treatment facilities. He also later attended a week-long intensive outpatient treatment program operated by one of the treatment facilities. Exhibit 6 at 3-4. Additionally, the individual reported that two private psychologists and one psychiatrist had treated him for his alcohol problem and personal/anxiety issues.⁵ *Id.* at 6-7. Despite this, the DOE psychiatrist noted that the individual had relapsed on several occasions and continued to minimize the effect alcohol had on his life. *Id.* The DOE psychiatrist also found the individual to be an unreliable source based on the conflicting information he presented about his use of alcohol and his treatment for his alcohol problem. *Id.* The DOE psychiatrist stated that the individual should abstain from alcohol consumption for at least twelve months, documented by random testing for Blood Alcohol Content. *Id.* Furthermore, the DOE psychiatrist stated that the individual should engage in counseling, at first weekly, then at a reduced frequency at his therapist’s discretion. *Id.*

³ Section 24 of the January 2014 QNSP asks “Have you EVER voluntarily sought counseling or treatment as a result of your use of alcohol?” Exhibit 7 at 13.

⁴ Section 21 of the January 2014 QNSP asks “In the last seven (7) years, have you consulted with a health care professional regarding an emotional or mental health condition or were you hospitalized for such a condition?” Exhibit 7 at 12.

⁵ As recorded in the DOE psychiatrist’s report, the individual stated that he sought treatment from the two psychologists during a period of four to five months. Exhibit 6 at 4.

As support for its security concerns under Criteria H, J, and L, the LSO relies on the opinion of the DOE psychiatrist, who determined that the individual meets the criteria for Alcohol Use Disorder, Severe as set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association Fifth Edition (DSM-5), and that the individual was a “user of alcohol habitually to excess and alcohol dependent.” Exhibit 6. Given the DOE psychiatrist’s diagnosis, I find that there is ample information in the Notification Letter to support the LSO’s reliance on Criteria H, J, and L. The excessive consumption of alcohol is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person’s reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, issued December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (*Adjudicative Guidelines*) at Guideline G.

V. Findings of Fact and 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) and the *Adjudicative Guidelines*. After due deliberation, I have determined that the individual’s access authorization should not be restored at this time. I am unable to find that restoring the individual’s DOE 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). The specific findings I make in support of this decision are discussed below.

At the hearing, two colleagues testified on the behalf of the individual. Both colleagues testified that the individual was a good worker and colleague and was very focused on doing his job. Tr. at 15, 22, 30. Neither colleague ever witnessed any signs of the individual being inebriated while at work. *Id.* at 13-16, 26. Even though these colleagues interacted with the individual on a frequent basis at work, neither sustained a relationship with the individual outside of the work environment more than an occasional lunch. *Id.* at 14, 15-16, 21. One of the individual’s colleagues testified that the individual voluntarily informed him about seeking treatment. *Id.* at 12, 14-15.

During the hearing, the individual testified as to his drinking habits and the different treatment he has received for this issue. The individual stated that his last drink was more than two years ago⁶ about a month after he finished a three-week inpatient treatment program. Tr. at 34, 36. According to the individual, he did not want to live his life in fear of relapsing, so he had one drink of vodka to test himself. *Id.* at 34. Because this one drink did not make him want to drink more, the individual believes that he is completely over his problem with alcohol. *Id.* The individual testified that though he sometimes has urges to drink, he does not see a situation in

⁶ At the beginning of his testimony, the individual states for the record that he has a poor memory when it comes to dates and that he was answering to the best of his recollection. Tr. at 33.

which he would go back to drinking.⁷ *Id.* at 43, 46-47. The individual stated that he no longer had the same stressors in his life that once led him to drink, like having his extended family living in his house. *Id.* at 44. Even though his support system is mostly internal, the individual stated that his wife and sister are also extremely supportive and understanding. *Id.* at 46.

During the hearing, the individual was questioned about the discrepancies concerning his alcohol use and treatment found between his January 2014 QNSP, April 2014 PSI, the DOE psychiatrist's report, and his earlier testimony at the hearing. Though the individual acknowledges the discrepancies between these different sources, he stated that he was never intentionally dishonest. Tr. at 49. On his January 2014 QNSP, the individual indicated that he had abstained from alcohol since completing an April/May 2013 treatment program. *Id.* at 48. However, by the individual's only admission, he had at least one drink since completing this treatment. *Id.* at 34. The individual asserted that this inaccurate indication was an oversight on his part because he thought the question was asking whether he had relapsed since receiving treatment, which he does not believe he has. *Id.* at 48. Although the individual listed his inpatient treatment from spring 2013, his January 2014 QNSP failed to indicate that he also attended a week-long intensive outpatient treatment in July 2013. *Id.* at 50. Even though the DOE psychiatrist's interview of the treating psychologist at the facility established that the week-long program was a treatment program, the individual disputes this description of the program. *Id.*; see Exhibit 6 at 6. The individual asserts that the program he attended was a "family week" program aimed at helping families of alcoholics understand their alcoholism. Tr. at 50, 52.

The individual testified during the hearing as to treatment he sought for several emotional issues related to his anxiety and his problems with alcohol. *Id.* at 61. The individual however did not list this treatment on his January 2014 QNSP where it specifically asked whether he had consulted with a health care professional in the last seven years regarding an emotional or mental health condition. *Id.* at 53-54. According to the individual, he thought this question pertained to treatment related to alcohol. *Id.* The individual further goes on to state that he was unsure if he was seeing any health care professional at the time he signed the January 2014 QNSP and thought the question implied he had seen a professional for the duration of the seven year period. *Id.* Later on in his testimony, the individual does admit that he probably should have listed at least one of the psychologists he sought help from on the January 2014 QNSP.⁸ *Id.* at 56. On his January 2014 QNSP, the individual indicated that he had successfully completed his treatment with one of his psychologists, and during his April 2014 PSI, the individual stated that the psychologist told him there was no need for him to continue treatment. *Id.* at 58. However, the DOE psychiatrist's report indicated that it was the individual, not the psychologist, who ended treatment. *Id.* During the hearing, the individual testified that he did not believe he was benefiting from this treatment and that is why he stopped seeing this health care professional and continued, for a time but not currently, with another health care professional. *Id.* at 59.

⁷ The individual described his urge to drink as follows: "It's like being thirsty and there's no water available but you go on with your life, you know. It's not as critical as it could have been before." *Id.* at 43-44.

⁸ The individual maintained that the second psychologist he saw was after he signed the January 2014 QNSP. Tr. at 56.

The DOE psychiatrist testified last at the hearing after listening to the testimony of the other witnesses. She testified that, at the time she evaluated him, the individual met the criteria for an Alcohol Use Disorder that may cause a significant defect in his judgment or reliability. Tr. at 74. The DOE psychiatrist admitted that she had not reevaluated the individual since meeting him in June 2014, but stated that she knows of no information that would indicate that this diagnosis has changed. *Id.* at 74-75. In support this statement, the DOE psychiatrist points to the fact that the individual has received no further treatment since her evaluation of him. *Id.* at 75-76. The DOE psychiatrist questions the reliability of the information provided by the individual surrounding his alcohol use, and accordingly cannot make any conjecture as to whether the individual still uses alcohol or the probability that the individual will relapse. *Id.* at 75-77. The DOE psychiatrist stated that the individual's recovery is negatively impacted by his "continued inability to accept the significance of his alcohol use, his continuation of denying use when it was presented...to me by other professionals..., ...and the fact that he hasn't gotten treatment even after this report was made." *Id.* at 77.

After reviewing the record and considering the testimony of the witnesses, I conclude that the individual's access authorization should not be restored. I found the DOE psychiatrist's report and testimony to be very compelling in illustrating the individual's unreliability regarding his alcohol use history. In the January 2014 QNSP, the individual stated that his last drink occurred in May 2013. However, the DOE psychiatrist, in her interview of one of the psychologists who treated the individual received information from the psychologist that the individual had been consuming alcohol through August 2013. Exhibit 6 at 7; *see* Tr. at 49. At the hearing, the individual stated that his last alcoholic drink was in April 2013. Tr. at 42. In any event, there is no evidence in the record that would refute the DOE psychiatrist's opinion regarding the individual's Alcohol Use Disorder. I also find that the individual has shown no proof of further rehabilitation or reformation.

Additionally, the individual's testimony regarding his misleading answers in the January 2014 QNSP is not credible. Given the explicit wording of the questions to which he made misleading answers, I am unconvinced that simple oversight, his poor memory concerning dates, or his implausible interpretation as to the meaning of the questions, were the sole reasons for the incorrect answers concerning his attendance at alcohol treatment programs (section 24) or his use of mental health providers (section 21) on his January 2014 QNSP. Such defects in memory and a lack of attention seem inconsistent with the individual's work performance as attested to by his witnesses. I note that the two witnesses presented by the individual did not seem to have relevant knowledge of the individual's alcohol use to be helpful in determining whether the concerns raised by the LSO were justified. Though I appreciate their statements as to the individual's work performance, I did not find anything in their testimony to mitigate what was already in the record. Consequently, I find that the individual has not resolved the Criteria H, J, and L concerns raised in the Notification Letter.

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. I also find that the individual has not presented sufficient information to fully resolve those concerns.

Therefore, I cannot conclude that restoring the individual's suspended DOE 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). Accordingly, I find that the DOE should not restore the individual's DOE access authorization.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals

Date: May 20, 2015