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

In the Matter of Personnel Security Hearing)
)
Filing Date: May 28, 2015) Case No.: PSH-15-0040
_____)

Issued: August 13, 2015

Administrative Judge Decision

Shiwali G. Patel, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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.²

I. BACKGROUND

The individual is an employee of a DOE contractor and holds a suspended access authorization. After the individual tested positive for alcohol at work in November 2014, a Local Security Office (LSO) summoned the individual for a Personnel Security Interview (PSI) with a personnel security specialist in January 2015. DOE Exhibit (Ex.) 11. 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 results of that evaluation, and sent it to the LSO. Ex. 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. 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. Ex.1. The Notification Letter

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>.

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 Judge in this case. The DOE introduced 12 exhibits into the record of this proceeding (Exs. 1-12), and called the DOE psychologist as a witness. The individual introduced four exhibits (Exs. A-D), and presented the testimony of six witnesses, including his own. *See* Transcript of Hearing, Case No. PSH-15-0040 [hereinafter cited as “Tr.”].

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 review 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) (hereinafter referred to as Criteria H and J, respectively). Exhibit 1.³ In support of its Notification Letter, the LSO cited the following: 1) a DOE psychologist concluded that the individual is alcohol dependent without adequate evidence of rehabilitation or reformation and that his condition causes or may cause a significant defect in his judgment or reliability; 2) during his PSI in January 2015, the

³ 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).

individual admitted that he tested positive for alcohol at work in November 2014, with a breath alcohol content (BAC) of .048 at 11:30 AM and that he consumed six, 12-ounce India Pale Ale beers the night before; 3) the individual admitted during his 2015 PSI that in 2012, his physician told him that his liver enzymes were elevated due to his alcohol consumption and that despite this, he continued to consume two or four beers on a daily basis and he admitted to being intoxicated at least once a week between 2012 and November 2014, by consuming eight or more beers in a nine-hour period; and 4) in 2002, he was arrested and charged with driving while intoxicated (DWI) and he admitted that he consumed three beers and a margarita prior to the arrest. Ex. 1.

I find that each of these allegations is valid and well supported by the record in this case. See 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”); Tr. at 39. 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 does not dispute the DOE psychologist’s Report. Tr. at 48. Thus, based on the Report, the exhibits and the testimony at the hearing, I make the following findings.

The individual began consuming alcohol during his junior or senior year of high school, when he drank beer at weekend parties. Ex. 4 at 4. During that time, he consumed alcohol on approximately six occasions. *Id.* His alcohol consumption increased while he was in college from 1996-2003, where he would have at least 12 beers a night on the weekends and engaged in dangerous, or what he called – “dumb” – activities. *Id.* He recalls that during this time period he may have operated a vehicle while intoxicated about once a year. *Id.* Eventually, he consumed fewer beers on the weekends, yet he still became intoxicated each time he drank. *Id.*

In 2002, the individual was arrested for a DWI after he consumed three beers and a margarita over a two-hour time period while he was at a bar. *Id.* He felt intoxicated as he began driving home and was eventually stopped by the police for speeding. *Id.* The individual failed the sobriety tests and then was taken to the police station where he took a breathalyzer test, which he also failed. *Id.* The case was dismissed because the officer did not appear to court. *Id.* The individual reported to the DOE psychologist that he has not operated a vehicle while intoxicated since that incident. *Id.*

After he got married in 2005, he consumed approximately two drinks a day, three to four times a week. *Id.* About once a month, the individual became intoxicated at social gatherings by drinking at least six alcoholic beverages, which usually consisted of wine, beer or tequila. *Id.* at 5. By 2012, he consumed an average of two drinks a day. *Id.* From 2012 to November 2014, the individual’s alcohol consumption increased again and he became intoxicated at least once during the weekend. *Id.* Sometime in 2012 or 2013, the individual’s liver enzymes were elevated; yet, he still did not reduce his alcohol consumption. *Id.* Since this time, his wife expressed concern to him every six

months about his drinking. *Id.* At times, he tried to reduce his alcohol consumption, but when he encountered a stressful situation, he would resume drinking the same amount as he did before. *Id.*

The individual testified that when he previously tried to stop drinking alcohol, which he tried many times and failed, he would become “miserable” and was always thinking about alcohol. Tr. at 133. At times, he concealed his consumption from his wife and did not attend social engagements with her when he drank alcohol. Ex. 4 at 6. He stated that in late 2013, he stopped consuming alcohol for about six to eight months and saw a therapist; however, he experienced withdrawal symptoms such as weakness, sweating, slight nausea, irritableness and cravings for alcohol. *Id.* His therapist diagnosed him with having anxiety and prescribed medication for him that he took only four times in 2014. *Id.* By the time he interviewed with the DOE psychologist, he was not taking the anxiety medication. *Id.*

In November 2014, the individual tested positive for alcohol at work. *Id.* at 2. That morning at work, he took a breath test, which registered a Blood Alcohol Content (BAC) of .04g/210L. *Id.* The individual had consumed six 12-ounce beers in a seven and a half hour time span the night before he registered a high BAC at work. *Id.* He had India Pale Ale beers that have an alcohol content of 7% to 8% and he stated that did not feel the effects of alcohol that night. *Id.*

The individual consumed alcohol twice since the incident in November 2014. Ex. 4 at 4. On New Year’s Eve, he drank two small glasses of champagne and on the evening before he started a recovery program in February 2015, he had two beers. *Id.* While he stated during his PSI in January 2014, that he “quit” alcohol since the incident in November 2014, he explained that at the time of this PSI, “sobriety meant I did not get drunk, period.... [I]f I was a normal drinker, had a beer after work, that’s living sober. Not drinking to intoxication was [not] drinking to me.” Ex. 11 at 36; Tr. at 134. However, after undergoing treatment, he understands that having an alcoholic drink means he is not being sober. Tr. at 134. As for the drink that he had the night before joining the recovery center, he characterized it as “100 percent of me saying good-bye to my old friend. It was planned that way.” Tr. a 140. He purchased two six-pack beers, and only drank two beers, saying that he was not proud of himself and that he “didn’t even want any more.” *Id.* Similar to when he consumed two glasses of champagne at a New Year’s Eve party, he believed that drinking two beers did not affect his sobriety because he thought that “sobriety is how long you’ve gone without getting drunk.” *Id.*

After the individual had a positive BAC at work in November 2014, he met with a psychologist at the Employee Assistance Program (EAP) and had to undergo two random drug and alcohol screenings. Tr. at 126. The psychologist did not specialize in alcohol treatment and so he recommended that the individual join an alcohol recovery center. Tr. at 127. The individual’s initial evaluation with the recovery center was in February 2015. Tr. at 128. During his first ten weeks at the recovery center, the individual participated in the Intensive Outpatient Program (IOP). Tr. at 129. Through the IOP, the individual had group therapy sessions three times a week for three hours, totaling 90 hours of treatment. Tr. at 16; Ex. B. He was also required to attend at least three Alcoholics Anonymous (AA) meetings a week, keep a sober support network and undergo random alcohol and drug screening. Ex. B. The individual’s wife and father both attended the group sessions where family members were invited, which was once a week. Tr. at 16. The individual also met with his counselor once a week. Tr. at 17.

As a participant in the IOP, the individual had to make five contacts a week to people in his group or alumni of the group, and it had to be made outside of the facility grounds. Tr. at 130. It took a few weeks for him to “be able to settle things out and formulate some critical thought on it.” Tr. at 144. At the hearing, he spoke very credibly about how he became comfortable as a participant in the program and what he learned from it. *Id.* He also has been screened ten times for alcohol and drugs after starting at the IOP, from February to early May 2015, and had negative results for each of those screenings. Ex. C. At the same time, he was tested for alcohol by his employer from mid-January to mid-May 2015, and he submitted the results indicating that he tested negative for all of those tests.⁴ Ex. D.

Since he completed the 10-week IOP in April 2015, he has been attending aftercare meetings once a week for an hour and half, meeting individually with the clinical director of the IOP once a month and attending AA meetings two to four times a week. Tr. at 131. He attends the AA meetings with a fellow IOP member and their AA meetings are often followed by a group dinner and playing video games together. Tr. at 132. He explained that he is able to maintain his commitment to sobriety this time because he now has the the tools, therapy and support to help him. Tr. at 133. He also has an AA sponsor, with whom he meets once a week for an hour. Tr. at 129. Initially, he called his AA sponsor every day; however, since he relies on him less, he only calls him about three to four times a week. Tr. at 129-130.

In the end of May 2015, the individual was required to take a leave of absence from work, which he stated did not impact his sobriety. Tr. at 120-121. He testified that his leave of absence allows him to focus on sobriety, he knows that he will eventually find a new job and that “everything will work out.” Tr. at 126. The individual explained that whenever he has a craving for alcohol, he now analyzes his feelings to understand where his craving comes from and sometimes he will go to an AA meeting or call a sponsor or someone from his support group; since he began at the recovery center, his cravings for alcohol have decreased. Tr. at 137-183. He has been open and honest with his family and friends throughout his recovery, and believes that he has changed positively, feeling like his “old self” again. Tr. at 145-146. He testified that he is committed to a lifetime of sobriety. Tr. at 148.

A friend of the individual, who met him through the IOP, testified at the hearing. Tr. at 14. He described the qualitative aspects of the recovery center, saying that it “addresses alcoholism or addiction, but it also teaches you tools on changing of a mind-set. So it’s changing your way of life, changing your way of thinking of sessions that would trigger wrong thinking, distorted thinking, things that would, you know, create stress, things like this.” Tr. at 19. He testified that their support group provides a place for accountability, that he has never observed the individual consume any alcohol and that he believes the individual will maintain his commitment to sobriety. Tr. at 20, 22. When he and individual attend aftercare or AA meetings or have other encounters with each other, they discuss anxiety and stress, and the tools for dealing with those emotions. Tr. at 25-26.

⁴ The individual did not provide his test results from his employer indicating that he tested positive for alcohol the night before he started the recovery program, but he did provide a test result from the recovery program indicating that a high amount of Ethyl Glucuronide was detected the day that he started the program. Exs. C & D. This is consistent with the individual’s testimony that he consumed two beers the night before he started the program.

The individual's mother-in-law testified that when he used to consume alcohol, he stayed in his room and played videogames by himself, did not go out with his wife and was rude to his mother-in-law when she visited their home. Tr. at 31-32. Since he started his recovery program, she noticed a change in his behavior, saying, "[h]e's out there now. He's out there going beyond his comfort zone to talk to people, to hang out with friends, some new friends. Every time I come over to visit, he comes down and talks with us. He's fun to talk to and fun to have a discussion with now." Tr. at 34. She believes that the individual will maintain his sobriety because he is motivated and involved in a recovery program. Tr. at 34-35. His mother-in-law sees him about once or twice a week and has not observed him consume alcohol. Tr. at 39.

The individual's father testified that he attended four family sessions at the IOP with the individual, and that his wife joined for one of those sessions. Tr. at 48. Similar to his mother-in-law's testimony, the individual's father testified that when the individual drank alcohol, he "withdrew socially, he was always antsy, did not stay around at family gatherings." *Id.* His father noticed that he has changed since starting treatment as he is now upfront about his condition and no longer withdrawn. Tr. at 50. His father does not feel uncomfortable consuming alcohol in front of him, stating that the individual asserted that he is okay with it and understands that he cannot have alcohol. Tr. at 58.

The individual's wife testified that she was relieved when the individual had a positive BAC in November 2014, because it prompted him seek treatment. Tr. at 97. While the individual was in the IOP, his wife joined family night once a week for the full three hours, attended two of the individual's one-on-one sessions and had a few sessions herself with the family counselor at the recovery center. Tr. at 98. She believes that the program has benefited the individual because he built a support system and developed tools to deal with his disease. Tr. at 99. Before he started treatment, he played video games by himself on Friday nights; now he attends a meeting, goes to dinner and then invites a friend from the program over. Tr. at 99. When asked about a change that she has seen in him, she said, very movingly, "I have my husband back, first of all." Tr. at 100. She has not observed him consume alcohol since he started recovery. Tr. at 103. His wife believes that he is committed to treatment and that his recent job loss has not disturbed his plans with regard to his treatment and sobriety. Tr. at 106. About a month and a half before the hearing, the individual expressed a craving for alcohol to the wife and to deal with it, he attended a meeting at the recovery center to reach out for support. Tr. at 118. She also testified that his friends are strictly from IOP and he stopped associating with his friends with whom he used to consume alcohol. Tr. at 119-120.

The substance abuse therapist from the recovery center testified as to the individual's treatment program and development. He is the clinical director of the recovery center and manages the IOP. Tr. at 64. The therapist explained that in group therapy, he discussed many topics with the individual, including different aspects of the disease, such as "disease concepts, family aspects of the disease, communication, denial, relapse prevention," and they talk about "communication, distorted thinking, a number of different aspects that are therapeutic in nature." Tr. at 66. He also testified as to the individual's compliance with the program's requirements, stating that he was compliant from the beginning. Tr. at 66-67. Although the individual was initially apprehensive, he was very engaged and eager to learn about the disease and involving his family in his recovery. Tr. at 66-67.

While he agrees with the DOE psychologist's Report, the therapist believes that the individual has had adequate time for rehabilitation. Tr. at 69.

The therapist also expounded on why the individual thought that the two glasses of champagne he consumed on New Year's Eve and the beer he consumed the night before entering the recovery program did not affect his sobriety. He stated that "for an alcoholic to be able to drink two drinks and walk away, they're not – they would not consider that to be drinking, prior to entering treatment and understanding what alcoholism is." Tr. at 71. However, since entering the program, the individual's "thought process has changed completely with regards to how he views drinking and alcoholism." *Id.* His therapist believes that his alcohol dependence is under control, in remission or has a low probability of recurrence or exacerbation, stating that the individual "has demonstrated both in group, individual sessions, his relationship with his wife, the testimony from his father and stepmother, his interactions with other clients that he is committed to a –living a life of recovery." Tr. at 74. For example, the therapist pointed out that the individual is connecting with others in recovery, is more outgoing at family functions, active in AA, meets with his sponsor once a week, goes to aftercare once a week, has improved his relationship with his wife and is more engaged in other projects in the house so he is not focused on being isolated or playing video games. Tr. at 79-80. While he is not required to participate in aftercare after completing the IOP in April 2015, the individual has decided to participate in it. Tr. at 81. He does not believe that the individual will relapse because in his experience, people who relapse have stopped participating in their treatment program, going to meetings or working with their sponsor. Tr. at 93.

When he interviewed the individual, the DOE psychologist had diagnosed him as alcohol dependent with physiological dependence, in early full remission. Ex. 4 at 8. At the hearing, the DOE psychologist testified that he believes that the individual "is fully committed to being abstinent, completely abstinent." Tr. at 152. However, he noted, while someone may be fully committed to abstinence at one point, it does not necessarily mean that the person will be able to maintain their commitment. *Id.* Thus, he is 70% confident that the individual will maintain his abstinence for a year. Tr. at 153. His lack of 100% confidence is because the individual has only been sober for five months. Tr. at 156. He also stated that in his experience, a person's desire to get treatment is a stronger indicator of success over someone who gets treatment because they are required to, for example, by a court order. Tr. at 159-160.

V. ANALYSIS

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.

The steps that the individual has taken for his recovery is commendable and I have no doubt that he is committed to sobriety. I also find that the testimony of his wife, his father, his mother-in-law, his friend from the IOP and his therapist as to his treatment and dedication to sobriety was very compelling and I credited it all. However, the issue that I must consider is whether his risk of relapse is sufficiently low at the time of the hearing. In the end, OHA Administrative Judges accord deference to mental health professionals regarding issues of rehabilitation, reformation and risk assessment. In this matter, the DOE psychologist initially recommended that the individual maintain

sobriety for a full year while also participating in a treatment program. Ex. 4 at 8. At the hearing, he testified that he is 70% confident that the individual will maintain sobriety for a full year; he did not state that the individual is currently at a low risk of relapse, and accordingly, his prognosis is not sufficiently favorable to resolve the concern. See Adjudicative Guidelines G, ¶ 23(d) & I, ¶ 29(c).

While the individual's therapist opined that he is at a low risk of relapse, in consideration of OHA precedent and the DOE psychologist's opinion, it is too soon to conclude that five months of sobriety is sufficient. See *Personnel Security Hearing*, Case No. PSH 15-0001 (2015) (seven months of sobriety of an individual who was diagnosed as alcohol dependent was too short of a period of rehabilitation); *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). Duration of abstinence is always an important factor in determining risk of relapse, especially considering the individual's lengthy history of consumption and intoxication. See Adjudicative Guideline G, ¶ 23(a). As the DOE psychologist stated at the hearing, "research again and again shows that if a person can last a year and go through all the seasons, all the stresses that one typically does, all the anniversaries, divorces, problems that occur, that is our best measure. And even that we do not have – that's not a guarantee." Tr. at 151-152. The individual has certainly acknowledged his alcoholism and has taken action to overcome his problem, but he has not yet established a sufficient pattern of abstinence. *Id.* at ¶ 23(b).

Hence, after 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 sufficiently mitigated the concerns with regard to his alcohol consumption. 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.

VI. CONCLUSION

As stated above, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H and J. 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 not brought forth sufficient evidence to resolve the security concerns associated with these criteria. I therefore cannot 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 not be restored at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Shiwali G. Patel
Administrative Judge
Office of Hearings and Appeals

Date: August 13, 2015