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

In the Matter of: Personnel Security Hearing)

Filing Date: June 2, 2015)

Case No.: PSH-15-0041

Issued: September 2, 2015

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXX X. XXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, 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 Individual’s security clearance should be restored.²

I. BACKGROUND

On the morning of August 7, 2014, the Individual’s employer administered a random breath alcohol test to the Individual. That test indicated that the Individual’s blood alcohol level was .034 percent. This incident led the Local Security Office (LSO) to conduct a Personnel Security Interview (PSI) of the Individual on August 26, 2014, and to sponsor a forensic psychological evaluation of the Individual, which occurred on February 27, 2015. Because the PSI and forensic psychological evaluation raised concerns about the extent and frequency of the Individual’s alcohol consumption, the LSO issued a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility for a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing and the LSO forwarded the Individual’s request to OHA. The Director of OHA appointed me as the Administrative Judge in this matter on June 2, 2015.

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 also be referred to in this Decision as a security clearance.

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

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I heard testimony from the Individual, his Counselor, his friend, his coworker, his supervisor, and a DOE consultant psychologist (the Psychologist). *See* Transcript of Hearing, Case No. PSH-15-0041 (hereinafter cited as “Tr.”). The LSO submitted ten exhibits, marked as Exhibits 1 through 10, while the Individual submitted two exhibits, which are marked as Exhibits A and B.

II. THE NOTIFICATION LETTER AND THE DOE’S SECURITY CONCERNS

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to paragraphs (h) and (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion H refers to information indicating that the Individual has: “An illness or mental condition of a nature which, in the opinion of a . . . licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Specifically, the Notification Letter alleges that a psychologist “concluded that [the Individual] is a user of alcohol habitually to excess, without adequate evidence of rehabilitation or reformation” which, in the opinion of the Psychologist, “is an illness or mental condition, which causes, or may cause a significant defect in his judgment or reliability.”³ Exhibit 1 at 1. These circumstances adequately justify the DOE’s invocation of Criterion H, and raise significant security concerns. The 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) state that an opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, reliability, or trustworthiness, raises a security concern under Adjudicative Guideline I at ¶¶ 27 and 28(b).

Criterion J refers to information indicating that the Individual has: “Been, or is, a user of alcohol habitually to excess...” 10 C.F.R. § 710.8(j). Specifically, the Notification Letter alleges that (1) the Psychologist “concluded that [the Individual] is a user of alcohol habitually to excess,” (2) the Individual tested positive on a random alcohol test administered to him by his employer, after he had consumed six 16-ounce beers the previous evening, (3) the Individual admitted that he drinks to intoxication on a monthly basis, and (4) the Individual had been arrested for Driving While Intoxicated in May 1984. Exhibit 1 at 1. These circumstances adequately justify the DOE’s invocation of Criterion J, and raise significant security concerns. The Adjudicative Guidelines provide that “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.” Adjudicative Guideline G at ¶ 21.

Adjudicative Guideline G sets forth a series of conditions that could raise a security concern and may be disqualifying, including: (a) alcohol-related incidents away from work, . . . or other

³ The Notification Letter erroneously asserts that the Psychologist concluded that the Individual “met the *Diagnostic and Statistical Manual of the American Psychiatric Association, IV Edition (DSM-IV)* criteria for consuming alcohol habitually to excess.” Statement of Security Concerns ¶ A. Neither the DSM-IV, nor the DSM-V recognizes “consuming alcohol habitually to excess” as a valid diagnosis. Tr. at 79. Moreover, the Psychologist did not cite the DSM-IV (or the DSM-V) in support of his conclusion that the Individual habitually consumes alcohol to excess. Exhibit 7.

incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; . . . [and] (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.” Adjudicative Guideline G at ¶ 22(a), and (c).

III. REGULATORY STANDARDS

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. FINDINGS OF FACT AND ANALYSIS

After testing positive for alcohol at work on August 7, 2014, the Individual recognized that he had a problem with alcohol. He had his first appointment with the Counselor, on August 13, 2014, who recommended that the Individual attend an intensive outpatient program (IOP) for substance abuse. Tr. at 23. The Counselor further recommended that the Individual abstain from the use of alcohol, meet with her on a monthly basis, and attend aftercare on a weekly basis upon completion of the IOP. Tr. at 25. The Individual testified that he last used alcohol on August 20, 2014, and intends to remain alcohol-free. Tr. at 54-55, 66, 69. The Individual successfully completed the IOP and then began attending aftercare. Tr. at 25-26, 55. The Counselor testified that the Individual was an active participant in his IOP, and that he did very well under the program. Tr. at 25. She testified that the Individual “appears to be quite honest and forthcoming” and had fully complied with her treatment recommendations. Tr. at 25-27, 29. The Counselor testified that the Individual had also complied with the treatment recommendations set forth in the Psychologist’s report. Tr. at 29. She further testified that the Individual’s prognosis was “very good,” and that the Individual had a low probability of resuming alcohol consumption. Tr. at 30-31. Since he originally tested positive, the Individual has also undergone six random alcohol breath tests, each of which has been negative. Tr. at 57.

The Psychologist evaluated the Individual on February 20, 2015, at the request of the LSO. Exhibit 7 at 1. In addition to conducting a forensic psychological interview of the Individual, the Psychologist reviewed the Individual’s personnel security file. Exhibit 7 at 1. After completing his evaluation of the Individual, the Psychologist issued a report on February 27, 2015, in which he found that the Individual had “abused alcohol habitually to excess” which, he opined, causes,

or may cause, a significant defect in judgment or reliability. Exhibit 7 at 5-6. The Psychologist further opined that the Individual was neither reformed nor rehabilitated because the Individual had not had sufficient time to demonstrate rehabilitation or reformation. Exhibit 7 at 6. The Psychologist found that, in order to demonstrate “adequate evidence of rehabilitation or reformation,” the Individual needed to: (1) abstain from alcohol use for 12 months, (2) continue to participate in the IOP and then aftercare, in accordance with the instructions of the Counselor, and (3) be randomly tested for alcohol use.⁴ Exhibit 7 at 6.

Before he testified at the hearing, the Psychologist observed each of the other witnesses’ testimony. During his testimony, the Psychologist opined the Individual’s alcohol use did not constitute “the kind of an intensive pattern that would lead me to believe that he had an intractable issue with alcohol.” Tr. at 74. He testified that the Individual has learned that alcohol can be a problem for him. Tr. at 76. The Psychologist testified that the Individual had complied with his treatment recommendations. Tr. at 76-77. The Psychologist testified that the Individual has “a high prognosis for abstinence and responsibility and reliability.” Tr. at 77. The Psychologist further testified that the Individual has shown adequate evidence of reformation or rehabilitation. Tr. at 78.

After carefully considering the evidence in the record, I find that the Individual has sufficiently mitigated the security concerns raised by his use of alcohol habitually to excess, by establishing that he has fully complied with his Counselor’s (as well as the Psychologist’s) treatment recommendations, abstained from using alcohol for a year, and that he intends to permanently abstain from using alcohol. Both of the expert witnesses who testified at the hearing have agreed that the Individual has shown that he is reformed or rehabilitated from his habitual use of alcohol to excess. I am therefore convinced that the Individual has modified his behavior so that, going forward, his alcohol consumption is unlikely to present an unacceptable risk to national security.

V. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H and J. However, after considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has sufficiently mitigated the Criteria H and J security concerns. Accordingly, the Individual has demonstrated that restoring security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be restored. The LSO 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: September 2, 2015

⁴ The Counselor testified that she agreed with the conclusions and recommendations set forth in the Psychologist’s report. Tr. at 28-29.

