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

In the Matter of: Personnel Security Hearing)
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 Filing Date: June 9, 2015) Case No.: PSH-15-0048
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Issued: October 27, 2015

Administrative Judge Decision

Wade M. Boswell, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization¹ 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 and the Adjudicative Guidelines, I have determined that the Individual’s access authorization should not be restored at this time.

I. Background

The Individual is employed by a DOE contractor in a position that requires that she hold a DOE security clearance. In September 2014, the Individual was arrested and charged with Driving Under the Influence (DUI). On November 6, 2014, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI), during which the Individual acknowledged consuming alcohol and prescription muscle relaxers and painkillers prior to her arrest. The LSO referred the Individual to a DOE-consultant psychologist (DOE Psychologist) for an evaluation. On April 28, 2015, the LSO sent a letter (Notification Letter) to the Individual advising her that it had reliable information that created a substantial doubt regarding her eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

fell within the purview of two potential 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).²

Upon her receipt of the Notification Letter, the Individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. *See* Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the Individual, represented by counsel, presented her own testimony and that of four other witnesses, including her treating psychologist; the LSO presented the testimony of one witness, the DOE Psychologist. In addition to the testimonial evidence, the LSO submitted 33 numbered exhibits into the record, and the Individual submitted 18 lettered exhibits (Exhibits A – R). The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.³

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 national security interests. 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 Dep’t of Navy v. Egan*, 484 U.S. 518, 531 (1998) (“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”); *Dormont v. 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).

An individual must come forward at the hearing with evidence to convince the DOE that granting or restoring his or her 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 or her 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). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

² See Section III below.

³ OHA decisions are available on the OHA website at www.energy.gov/oha. A decision may be accessed by entering the case number in the search engine at www.energy.gov/oha.

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 the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cited two criteria as the bases for denying the Individual's security clearance: Criterion H and Criterion J. Criterion H concerns information that person has "an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes, or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). It is well established that "certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness." *See* Guideline I of 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). Conduct influenced by such psychological conditions can raise questions about an individual's ability to protect classified information. Criterion J refers to information indicating that an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). Excessive alcohol consumption raises a security concern because it can lead to questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See* Adjudicative Guidelines at Guideline G; *Personnel Security Hearing*, Case No. PSH-11-0035 (April 19, 2012).

With respect to Criteria H and J, the LSO relied upon the February 2015 report of the DOE Psychologist who concluded that the Individual met the diagnostic criteria set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association IVth Edition TR (DSM-IV-TR)* for Alcohol Abuse (as well as the equivalent diagnosis as set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association 5th Edition TR (DSM-5)* for Alcohol Use Disorder, Mild),⁴ without adequate evidence of rehabilitation or reformation. The DOE Psychologist opined that these are illnesses or mental conditions, which cause, or may cause, a significant defect in her judgment or reliability. Ex. 1 at 1. Additionally, the LSO cited the Individual's 2014 DUI; her 1992 arrest (noting that, during a 1993 PSI, the Individual admitted to having consumed alcohol prior to the arrest); and her acknowledgements during a 2014 PSI that she combined alcohol with her pain medication and had continued to consume alcohol in combination with prescription medication subsequent to her DUI arrest.

⁴ Since the DOE Psychologist opined that her diagnoses under the *DSM-IV-TR* and the *DSM-5* were equivalent diagnoses of the same disorder, the balance of this Decision shall refer to the underlying illness as Alcohol Abuse, which is the terminology used in the *DSM-IV-TR* and the Part 710 Regulation.

In light of the information available to the LSO, the LSO properly invoked Criterion H and Criterion J.

IV. Findings of Fact

The Individual agreed that most of the factual matters set forth by the LSO in the Notification Letter are correct; however, in those instances of disagreement, I have carefully considered the testimony and the record as a whole, including the arguments presented by both the Individual and the LSO, in reaching the findings of fact set forth below.

On April 3, 1992, the Individual was arrested and charged with Resisting Arrest, Obstructing a Peace Officer, Disorderly Conduct and Obstructing Highway or Other Passageway. Ex. 17. Prior to her arrest, the Individual consumed alcohol; her consumption of alcohol affected her behavior and contributed to her arrest. Ex. 32 at 6.

On September 21, 2014, the Individual was arrested and charged with a DUI. Ex. 14. Personnel at a convenience store called the police in reference to an intoxicated driver. A police officer found the Individual sitting in the driver's seat with the car running. She smelled heavily of alcohol, had slurred speech, and performed poorly on several field sobriety tests. Ex. 13.

After her arrest, the Individual self-reported to the LSO, and the LSO subsequently suspended her access authorization. Ex. 14. The Individual acknowledged that on the night of her DUI she consumed two or three beers (Ex. 31 at 40), two 10 milligram (mg) Cyclobenzaprine (muscle relaxer) (*Id.* at 36), one .5 mg Lorazepam (*Id.* at 31), and one 5 mg Hydrocodone (*Id.* at 31).

The DOE Psychologist met with the Individual on January 29 and 30, 2015. In her report, dated February 9, 2015, the DOE Psychologist determined that the Individual met the criteria for a diagnosis of Alcohol Abuse under *DSM-IV-TR* (and the equivalent diagnosis for Alcohol Use Disorder, Mild, under the *DSM-5*), without adequate evidence of rehabilitation or reformation. The DOE Psychologist opined that this is an illness which causes, or may cause, a significant defect in the Individual's judgement or reliability. Ex. 11 at 14-15.

The Individual's last consumed alcohol on July 11, 2015. Tr. at 77. Since her DUI, she has participated in counseling through her employer's Employee Assistance Program, attended Alcoholics Anonymous (AA) meetings, and commenced counseling with a private psychologist (Individual's psychologist). *Id.* at 95, 98, and 132. The Individual's psychologist diagnosed her with a Generalized Anxiety Disorder. *Id.* at 178. As of the date of the hearing, he had had four treatment sessions with the Individual, which focused on easing her anxiety without the use alcohol or medication. *Id.*

At the hearing, the DOE Psychologist testified as the final witness, after having heard the testimony of all of the prior witnesses, that the Individual continues to warrant the diagnosis of Alcohol Abuse, without adequate evidence of rehabilitation or reformation, and that that is an illness which causes, or may cause, a significant defect in her judgement or reliability. *Id.* at 207-29, 240.

V. 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 cannot find that restoring the Individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Mitigating Evidence

The Individual testified that she last consumed alcohol on July 11, 2015, stating that her husband has also joined her in abstaining. Tr. at 77. The Individual also testified that she is presently committed to abstaining from alcohol and she avowed that she will never again consume alcohol while taking prescription medication. *Id.* at 78.

In describing the night of her DUI, the Individual testified that she did not intend to drive home that night, once she felt the effects of the alcohol. *Id.* at 83. Because she left her cellphone at home, she just sat in her car, which is where the police found her. *Id.* at 81. After her arrest, the Individual described feeling embarrassed, humiliated, and upset. *Id.* at 84. Attributing her hindered state to the mixing of alcohol with the muscle relaxers, the Individual recognized that her judgment was not sound when she decided to drive under the influence, and stated that it would never happen again. *Id.* at 64-85.

During the hearing, the Individual also described the steps she has taken since her DUI to address her issues. As required, she reported her DUI to work on September 23, 2014. *Id.* at 95; Ex. 14. She complied with her work psychologist's suggestion that an outside psychologist evaluate her. Tr. at 95. She completed five sessions with a counselor through the Employee Assistance Program, during which she learned how to deal with her day-to-day stressors in a non-pharmaceutical way. *Id.* at 96-97. She also recently began counseling sessions with a psychologist, and at the time of the hearing, had met with him two or three times. *Id.* at 98.

Although she does not believe she has a problem with alcohol, the Individual admitted that alcohol has caused problems in her life. *Id.* at 103. The Individual began attending AA meetings in July 2015, and had attended 18 meetings as of the date of the hearing. *Id.* at 132; Ex. D; Ex. F. The Individual's psychologist testified that his diagnosis of the Individual is that she suffers from Generalized Anxiety Disorder, not an alcohol disorder, but that at times she may have used alcohol in a self-medicating manner. Tr. at 182-83.

B. Administrative Judge Evaluation of Evidence

The Individual does not dispute that she was arrested and charged with a DUI, though she disagrees with the DOE Psychologist's determination that she has an alcohol problem. *Id.* at 103. During the hearing, the Individual testified that the weekend before her DUI, she strained her back and was taking muscle relaxers to alleviate the pain. *Id.* at 79. The night of her DUI, the Individual testified that she took a muscle relaxer before bed and had "about three or four strawberry ales," but was unable to sleep. *Id.* She later took another muscle relaxer and drank "a couple more or two or three" beers. *Id.* at 80. After this, she made the decision not to go to work the next day, and went to the store down the road with the intention to replace the beer she had drunk and to buy cigarettes. *Id.* The Individual's primary argument is that this was the first time that she had taken *two* prescription muscle relaxers, in conjunction with consuming alcohol, and that she had not anticipated the effect of the second muscle relaxer. *Id.* at 85.

The Individual's argument fails mitigate her DUI, or the security concerns arising from it. As a holder of access authorization, the Individual is expected to anticipate the consequences of her behavior. The DOE Psychologist points out that the Individual frequently combined prescription medications and alcohol in an inappropriate manner. Under questioning at the hearing, the Individual acknowledged that she never bothered to read the labels on her medication which warned of the dangers of combining those medications with alcohol; the Individual cannot use her failure to inform herself as a defense for her irresponsible behavior. *Id.* at 161-62.

With regard to security concerns arising under Criterion H and Criterion J, Administrative Judges traditionally accord deference to the opinions of mental health professionals. *Personnel Security Hearing*, Case PSH-14-0095 (October 22, 2014) at 7. In this case, the DOE Psychologist and the Individual's psychologist presented differing opinions with respect to the individual.

The Individual's psychologist testified that he believed the Individual's alcohol problem was more a situational problem brought on by the pain associated with her back rather than a characterological or long-term problem. Tr. at 171-172. Although he believes the Individual is sincere in her efforts, the Individual's psychologist agreed with the DOE Psychologist's recommendation of monitoring the Individual's alcohol intake. *Id.* at 177-178, 180. He does not believe the Individual would make the same type of mistake in the future. *Id.*

When discussing the Criterion H security concerns, the Individual's psychologist testified that he believes the Individual's issue is anxiety, not alcohol abuse, and diagnosed her with Generalized Anxiety Disorder, Mild. Tr. at 170, 182. He reasoned that although she erred when deciding to drive after mixing alcohol and her medications, the fact that she realized she could not make the drive home from the store indicated that her judgment had not been affected. *Id.* at 171. The Individual's psychologist opined that the Individual's prognosis was great and that there was no impairment of her judgment or reliability. *Id.* at 202. Notwithstanding the foregoing, the Individual's psychologist stated that he will probably treat the Individual for at least six months, as recommended by the DOE Psychologist, and believes that it is a good recommendation that the Individual stop drinking for at least six months and be monitored to assure her alcohol abstinence. *Id.* at 177-78, 186, 189. I found his recommendations with respect to abstinence and monitoring difficult to reconcile with his testimony regarding his diagnosis of the Individual.

The DOE Psychologist testified as the final witness at the hearing, having heard the testimony of all the other witnesses. She stated that after her evaluation, she found that the Individual met the criteria for Alcohol Abuse and that she also found a Generalized Anxiety Disorder, agreeing with the Individual's psychologist that the two were intertwined. *Id.* at 207. At the hearing, the DOE Psychologist explained that she reached her diagnosis of the Individual based upon her satisfying two of the four diagnostic criteria set forth in the *DSM-IV-TR* for Alcohol Abuse: substance use in situations in which it is physically hazardous (such as driving an automobile or operation of a machine when impaired by substance use) and recurrent alcohol use resulting in a failure to fulfill major role obligations at work, school or home. *Id.* at 208 and 213. The DOE Psychologist based this finding on the Individual's DUI and this DUI resulting in the suspension of the Individual's security clearance at work, explaining that under the *DSM-IV-TR* even a singular event (i.e., the suspension of the Individual's security clearance which resulted in her inability to perform work requirements) resulting from the Individual's recurrent use of alcohol meets the diagnostic criteria. *Id.* at 208-13. Further, she detailed the manner in which psychologists utilize clinical inference in reaching diagnoses. In the case of the Individual, she explained that although the Individual had only had one DUI in the 12 months preceding the diagnosis, her history of combining medical, alcohol consumption, and driving allowed the DOE Psychologist make the clinical inference that the Individual had used alcohol recurrently in physically hazardous situations. *Id.* at 209-24. I found the testimony of the DOE Psychologist to be comprehensive, consistent and reasonable.

In her February 2015 report, the DOE Psychologist opined that, to evidence adequate rehabilitation and reformation of her Alcohol Abuse, the Individual would need to abstain from alcohol consumption for six months and engage in psychological therapy with a mental health professional who routinely works with substance abuse issues for six months, initially on a weekly basis. Ex. 11 at 14-15. At the hearing, the DOE Psychologist stated that the Individual had "demonstrated a remarkable willingness to embrace" the recommendations that she had made in her report, agreeing with the Individual's psychologist that the Individual is not dependent on alcohol, and has a good prognosis if she completes those recommendations. Tr. at 229-230. She further testified that the Individual's psychologist was providing excellent therapy of the type she had recommended and that the Individual had made a good start on the alcohol education that she needed. However, the DOE Psychologist's opinion as to the length of such abstinence and therapy remained unchanged and she concluded that the Individual's one month of abstinence and therapy were insufficient to evidence adequate reformation or rehabilitation. *Id.* at 225-30, 240-41. Since the Individual had not evidenced adequate reformation and rehabilitation, the DOE Psychologist concluded that she continues to suffer from an illness that causes, or may cause, a significant defect in her judgment or reliability. *Id.* at 240.

As set forth above, I was persuaded by the reasonableness of the opinions presented by the DOE Psychologist. Since the Individual continues to merit a diagnosis of Alcohol Abuse as of the date of the hearing and has not established a pattern of responsible alcohol use as of that date, I find that the Individual has not resolved the security concerns arising under Criterion H and Criterion J. *Cf.* Adjudicative Guidelines at Guideline G, ¶ 23(a) and (b).

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 Criterion H and Criterion 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 mitigate 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 make seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Wade M. Boswell
Administrative Judge
Office of Hearings and Appeals

Date: October 27, 2015