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

In the Matter of: Personnel Security Hearing)

Filing Date: August 13, 2015)

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Case No.: PSH-15-0065

Issued: November 13, 2015

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXX X. XXX (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 at this time.²

I. BACKGROUND

On January 2, 2015, the Individual was involved in a physical altercation at a bar. On January 14, 2015, police charged the Individual with Simple Battery. In order to address the concerns raised by this incident, the Local Security Organization (LSO) conducted a Personnel Security Interview (PSI) of the Individual on March 4, 2015, and sponsored a forensic psychological examination of the Individual which occurred on May 4, 2015. Because the PSI and forensic psychological examination did not resolve these concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding her 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 the OHA. The Director of OHA appointed me as the Administrative Judge in this matter on August 13, 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 took testimony from the Individual, her Employee Assistance Program (EAP) counselor (the Counselor), one of the Individual's supervisors, and a DOE consultant psychologist (the Psychologist). *See* Transcript of Hearing, Case No. PSH-15-0065 (hereinafter cited as "Tr."). The LSO submitted 15 exhibits, marked as Exhibits 1 through 15, 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 her eligibility for a security clearance. That information pertains to paragraphs (h), and (l) 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 psychiatrist or 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 the Individual has been diagnosed by a psychologist with "personality traits that are mental conditions which cause, or may cause, a significant defect in her judgment or reliability." Ex. 1 at ¶ I. 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 L refers to information indicating that the Individual has: "Engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." Specifically, the Notification Letter, alleges that the Individual has exhibited a pattern of criminal conduct." Ex. 1 at ¶ II.A and II.B. It is well settled that "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." Adjudicative Guideline E at ¶ 15. "Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations." Adjudicative Guideline J at ¶ 30.

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

On January 14, 2015, police charged the Individual with Simple Battery, after a physical altercation in a bar. The Individual had previously been involved in a physical altercation with the same individual during the summer of 2014. The Individual also has a history of six arrests during the time period beginning in September 1986, and ending on May 20, 1996:³ In September 1986, police charged her with Driving While Intoxicated DWI; on April 1, 1989, police charged her with Minor Procuring Alcohol and Open Container; on November 5, 1994, police charged her with Accessory to Driving While Intoxicated and Open Container; on May 19, 1995, police charged her with Unlawful Use of a License. She initially failed to pay the citation and as a result, on May 20, 1996, police obtained a Bench Warrant for her arrest; August 20, 1995, police charged her with Battery. The Individual also incurred six speeding tickets during the time period beginning February 20, 2008, and ending in February 2014.

After conducting a PSI of the Individual on March 4, 2015, the LSO requested that the Individual undergo a forensic psychological examination. The Psychologist evaluated the Individual on May 4, 2015. Ex. 4 at 1. In addition to conducting a 1.5 hour clinical interview of the Individual, the Psychologist reviewed portions of the Individual's personnel security file, and administered the Minnesota Multiphasic Personality Inventory-2-Restructured Form (MMPI-2-RF) to the Individual. Ex. 4 at 2. The Psychologist also referred the Individual to a medical laboratory for a serum Gamma-Glutamyltransferase test (Gamma GT). The results of the Gamma GT and those results were interpreted by a consulting psychiatrist. Ex. 4 at 2. After completing her evaluation of the Individual, the Psychologist issued a report (the Psychologist's Report) on May 15, 2015. Ex. 4 at 10.

While recognizing that the Individual did not suffer from any mental or substance abuse disorders under the American Psychiatric Association's Diagnostic and Statistical Manual-Fifth Edition, (DSM-5), the Psychologist cited four aspects of the Individual's mental condition which raise concerns: alcohol consumption, emotional dysregulation, impulse control, and candor. Ex. 4 at 8. Concerning the Individual's alcohol use, the Psychologist questioned whether the Individual had “provided an accurate picture of the extent of her drinking.” Ex. 4 at 8. Regarding the Individual's

³ The Individual would have been approximately 14 years old in 1986, and 24 years old in 1996. She is presently 43 years old.

emotional dysregulation, the Psychologist noted that the Individual's "anger has been insufficiently controlled on a number of occasions over the years, the most recent being her physical assault on another woman" noting further that the Individual "has demonstrated poor judgment repeatedly in situations . . . which it seems could have been avoided." Ex. 4 at 8. Regarding the Individual's lack of impulse control, the Psychologist noted that the Individual's "anger can overwhelm her," and that "over the years, there are a number of examples when [the Individual] has reacted impulsively when she has been emotional." Ex. 4 at 8. The Psychologist further questioned the role of alcohol in these circumstances. Ex. 4 at 8. Regarding her concerns about the Individual's candor, the Psychologist noted that the Individual's "perspective on where responsibility lies in many of the problems she has had illustrates a tendency to place blame on others rather than accept accountability." Ex. 4 at 9.

The Psychologist opined that: "These problems, which have been repeated over time and are generalized to several areas of her life (legal, financial, interpersonal, substance-related), are traits which are found in personality disorders (DSM- 5). Although full criteria for a personality disorder diagnosis are not met by [the Individual], these are mental conditions which can cause significant defects in her judgment and reliability." Ex. 4 at 9. The Psychologist did not opine whether she believed the Individual was rehabilitated or reformed.

V. ANALYSIS

Criterion H

At the hearing, the Individual testified that she understood why her clearance has been suspended and that she has sought counseling to address those concerns. Tr. at 56, 63. Right after receiving the notification letter, she sought counseling from her EAP, to help with the stress resulting from having her clearance suspended. During her counseling, she has been working on coping with the grief resulting from the death of her two children from a congenital disorder. Tr. at 58. The Individual testified that she grew up in a tough community where she needed to stand-up for herself. Tr. at 58. However, she now recognizes that that is the wrong approach. Tr. at 61. As a result of counseling, she now recognizes that she needs to change her approach to confrontation, use constructive coping strategies, and to manage and control her emotions.⁴ Tr. at 58-60. She also acknowledged that she needs to change her alcohol use habits, and that she has reduced her alcohol consumption. Tr. at 61. The Individual testified that she is "feeling good" as a result of her counseling and is "really glad" that she sought the EAP out. Tr. at 62.

The Counselor testified on the Individual's behalf at the hearing. In his nine weekly counseling sessions with her, they worked on anger management, substance abuse, emotional regulation, and grief issues. Tr. at 34, 37. The Counselor testified that the Individual's problems were the result of learned behaviors, as opposed to having an underlying "psychiatric kind of deficiency." Tr. at 35-36. The Individual exhibits "shame, grief, remorse, and guilt," for her behaviors, which allows for successful therapy. Tr. at 36. The Counselor's goal in therapy was to help the Individual unlearn these behaviors and to teach the Individual to direct herself in a more positive direction, and to provide her with better coping skills that will allow her to respond better in the future. Tr.

⁴ Apparently, the assault which led to the present hearing was triggered by the victim's remarks suggesting that the Individual's poor parenting skills led to the death of her two children. Tr. at 59.

at 36. The Individual is learning that she does not have to fight when confronted, and that it is okay to walk away. Tr. at 36, 39. The Individual now avoids those locations in which she might encounter confrontation. Tr. at 39. The Counselor testified that the Individual has been very engaged in her therapy. Tr. at 37. The Individual is very sincere, receptive to therapy, and highly motivated to change. Tr. at 37, 46-47. The Counselor testified that he did not observe any lack of candor on the Individual's part, and that she has been open and honest with him. Tr. at 37-38. The Counselor testified that the Individual has "good support from her husband." Tr. at 39. The Counselor has worked to educate the Individual about alcohol, to heighten her awareness about the appropriate use of alcohol, and the importance of setting limits concerning alcohol use. Tr. at 42-43. The Counselor further testified that the Individual has made "great progress," and that she now has the coping tools and understanding that will allow her to react appropriately, instead of making bad decisions, the next time she finds herself facing confrontation. Tr. at 43-47. Finally, the Counselor testified that the Individual's prognosis is "very good." Tr. at 47.

The Psychologist testified at the hearing, both before the other witnesses, and again after listening to each of the other witnesses' testimony. Before the testimony of the other witnesses, the Psychologist testified that she did not find any alcohol-related diagnosis or issue that applied to the Individual, although she did find that the Individual had several mental conditions which can cause significant defects in her judgment and reliability: alcohol consumption; emotional dysregulation, impulse control and candor. Tr. at 11-12. She testified that the Individual would need psychological counseling to learn problem-solving strategies and coping strategies, to avoid negative situations, and to deal with negative situations in a reasonable manner. Tr. at 15. She testified that the Individual needed to address her anger and learn anger management strategies. Tr. at 17. In the case of her alcohol condition, the Individual also needs to either avoid alcohol or to "make sure that she doesn't drink to excess, for example, have any episodes of binge drinking, anything over four drinks in an episode." Tr. at 14-15. She noted that in order for therapy to succeed, the Individual needed to acknowledge and recognize her problems. Tr. at 16. The Psychologist testified that she would recommend that the Individual attend weekly individual counseling for a year in order to address these issues. Tr. at 18.

After observing the testimony of the other three witnesses, the Psychologist returned to the stand. The Psychologist testified: "I think based on what she has said -- not only what she has said, but how she has said it, and -- and what [the Counselor] said, I think she's in a much better situation in terms of understanding, having plans and having an increased awareness of what she's done and why." Tr. at 74-75. The Psychologist noted that the Individual's age is a factor working in her favor. Tr. at 75. She further noted that the Individual was highly motivated because she found herself in a "frightening situation" and therefore is likely to achieve "real lasting change." Tr. at 76. She testified that the Individual is "trying to do all the right things." Tr. at 76. The Psychologist opined that the Individual's prognosis is "good." Tr. at 76.

Adjudicative Guideline ¶ 29 sets forth five conditions that could mitigate security concerns arising from psychological conditions. All five such conditions are present in the instant case. The Individual's conditions are responding to treatment and the Individual has demonstrated ongoing and consistent compliance with her treatment plan. Adjudicative Guideline ¶29(a). The Individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the Individual is currently receiving counseling or treatment with a favorable

prognosis by a duly qualified mental health professional. Adjudicative Guideline ¶29(b). Recent testimony by two duly qualified mental health professionals employed by, or acceptable to and approved by the U.S. Government indicate that the Individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation. Adjudicative Guideline ¶29(c). The past emotional instability was, in part, a temporary condition (e.g., one caused by the deaths of the Individual's children), the situation has been resolved, and the Individual no longer shows indications of emotional instability. Adjudicative Guideline ¶29(d). There has been no indication of a problem since January 2, 2015. Adjudicative Guideline ¶29(e).

For these reasons, I find that the Individual has resolved the security concerns raised under Criterion H.

Criterion L

The Individual's seven arrests demonstrate a pattern of criminal conduct that raises security concerns under Criterion L. Six of these seven arrests occurred during a ten year period that ended 19 years ago, and have been resolved by the passage of time and by the youth and immaturity of the Individual during that period.⁵ The latest arrest, and the other recent physical altercation, are clearly symptomatic of her mental conditions. Given the role that these mental conditions played in the Individual's conduct, I find that since the concerns raised by her mental conditions have been sufficiently resolved, the concerns about the Individual's judgment, reliability and trustworthiness raised by her criminal conduct under Criterion L are also resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H and L. 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 L security concerns. Accordingly, the Individual has demonstrated that restoring 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 be restored. The NNSA 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: November 13, 2015

⁵ The Individual also has not received a speeding ticket since she started counseling. She testified that she now allows herself more time to get to her destination and uses cruise-control to avoid inadvertent speeding. Tr. at 69.