

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Personnel Security Hearing)
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Filing Date: September 10, 2015)
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Case No.: PSH-15-0072

Issued: November 25, 2015

Decision and Order

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (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 individual should not be granted a security clearance at this time.²

I. BACKGROUND

The individual’s employer, a Department of Energy (DOE) contractor, requested a security clearance on the individual’s behalf. In response to that request, the local security office (LSO) conducted an investigation of the individual. During the course of that investigation, the LSO obtained information about the individual that raised security concerns. The LSO summoned the individual for an interview with a personnel security specialist in October 2014. After this Personnel Security Interview (PSI) failed to resolve the concerns, the LSO referred the individual to a local psychiatrist (hereinafter referred to as “the DOE psychiatrist”) for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report based on that evaluation, and submitted it to the LSO. After reviewing that report and the rest of the individual’s personnel

¹An 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.oha.doe.gov> . The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. It informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter 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 access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. The DOE introduced six exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist at the hearing. The individual presented the testimony of three witnesses, in addition to testifying himself.

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

As indicated above, the Notification Letter includes a statement of derogatory information that the LSO concluded raises a substantial doubt as to the individual's eligibility for a security clearance. This derogatory information pertains to paragraph (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Under criterion (j), information is derogatory if it indicates that an individual "has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). As support for this criterion, the Letter cites:

- The diagnosis of the DOE psychiatrist that the individual suffers from Alcohol Abuse, and his conclusion that the individual has been a user of alcohol habitually to excess;
- The individual's five alcohol-related arrests, consisting of two arrests for Driving Under The Influence and two arrests for Drunk In Public in 2000, and one instance of Driving While Intoxicated and Possession Of Alcohol in 2002;
- The individual's 2003 consumption of alcohol in violation of the terms of his probation, which was detected when, after drinking, he blew into an "interlock" device that was attached to his vehicle; and
- The individual's consumption of alcohol since 2003, which has routinely consisted of becoming intoxicated one to two times a month after drinking eight to ten beers on weekends and drinking three to four beers three to four times during the week.

These circumstances adequately justify the DOE's invocation of criterion (j), and raise significant security concerns. 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. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guideline G.*

III. 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 or unfavorable, that has a bearing on the question of whether granting or restoring 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 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). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. 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).

IV. ANALYSIS

A. Mitigating Evidence

At the hearing, the individual did not dispute the allegations set forth in the Notification Letter. Instead, he attempted to demonstrate, through his own testimony and that of his wife, a former co-worker, and a friend, that he has established a pattern of responsible alcohol use, and no longer represents an unacceptable security risk.

The individual testified that he has reduced his alcohol consumption, and now drinks an average of two to three 12-ounce beers two to three times per week. Hearing Transcript (Tr.) at 38. The last time he drank to intoxication, he added, was “last summer.” Tr. at 39. He has not participated in Alcoholics Anonymous (AA) or any alcohol counseling since meeting with the DOE psychiatrist, but said that he has “thought about” it. Tr. at 40. While he admitted that his alcohol use has been the cause of discord with his spouse and has adversely affected his judgment in the past, that has not been the case since he reduced his level of consumption. Tr. at 41.³ The biggest changes in his drinking pattern have occurred, he continued, in the six months preceding

³ The continued use of alcohol by the individual despite having persistent marital problems caused or exacerbated by that use was the primary basis for the DOE psychiatrist’s diagnosis of Alcohol Abuse. Tr. at 54.

the hearing. Tr. at 43. He does not drink to intoxication any more, does not drink and drive, and no longer drinks to self-medicate, as he admitted to having done in the past. Tr. at 44, 46. His intention is to maintain his current pattern of moderate consumption. Tr. at 44. Regarding his relationship with his wife, he said that it is “great,” and that they are “much happier” than they were before. Tr. at 45. He does not believe that she has a problem with his current level of consumption. *Id.*

The individual’s wife also testified that the individual has changed his behavior significantly over the past year, and no longer spends a lot of his time drinking. Whereas he used to drive after consuming alcohol, he hasn’t done that in the past several years. To his wife’s knowledge, the individual has not had any alcohol-related legal issues since his five arrests in the early 2000s, and she hasn’t seen him become intoxicated in at least a year. Tr. at 14. She estimated his current consumption at “maybe two or three beers” a couple of days a week. Tr. at 16. They used to argue about his drinking, but do not do so anymore. Tr. at 17. Although she would prefer that he not drink at all, she added that “an occasional beer is fine with me.” Tr. at 19. The former co-worker testified that he never saw any indications of an alcohol problem at the workplace, and the individual’s friend said that he has seen a drastic change for the better in the individual’s drinking from the past to the present. Tr. at 25, 29.

B. Administrative Judge’s Determination

I found the testimony of the individual and his witnesses to be credible, and that testimony establishes that he has significantly reduced his alcohol consumption during the last six months. However, for the reasons that follow, I find that serious concerns remain under criterion (j) regarding the individual’s alcohol consumption.

As an initial matter, the individual has not established a pattern of responsible alcohol use that is of sufficient duration to convince me that a return to his previous abusive pattern is unlikely. That pattern of abuse lasted for at least 15 years, and six months is simply not long enough to demonstrate that the individual has permanently altered that well established behavior. The DOE psychiatrist, who heard all of the testimony at the hearing, testified that the individual’s current diagnosis was Alcohol Abuse in partial remission. Tr. at 57. In order to merit a diagnosis of full remission, the DOE psychiatrist explained, the individual would have to be free of the symptoms of his disorder for 12 months. Tr. at 58. He further opined that the individual “would have to demonstrate for a longer period of time his ability to control” his alcohol consumption. Tr. at 57.

The DOE psychiatrist also stated that abstinence from alcohol use was required for a diagnosis of full remission. Tr. at 58. The *Adjudicative Guidelines* provide that an individual may be able to mitigate the concerns presented by Alcohol Abuse without abstaining from alcohol use. *See Adjudicative Guidelines*, ¶ 23(b) (that the individual has acknowledged his disorder, taken actions to address it, “and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)” is a potentially mitigating factor). However, the DOE psychiatrist testified that the individual has exhibited a potential for the development of Alcohol Dependence because of his elevated tolerance of alcohol. Tr. at 54. In view of this potential, I believe that an appropriate period of abstinence is necessary to demonstrate that the individual

truly has his alcohol use under control. The individual admittedly has not abstained from alcohol use.

The individual also has not participated in any alcohol counseling or attended AA meetings since shortly after his arrests in the early 2000s. This is of particular concern because the individual testified that he previously would drink significantly more during periods of stress. When asked what he intended to do during future periods of increased stress to avoid consuming alcohol to excess, he responded that he had borne the stresses of this proceeding and of his job during the last six months without increasing his consumption, saying that he is now “more of a happy person,” and “that’s not the direction I go.” Tr. at 46. Still, I would be more confident of the individual’s ability to adhere to his current pattern of consumption if he obtained counseling on how to deal with stress and other alcohol consumption “triggers” without resorting to increased drinking.

V. CONCLUSION

For these reasons, I find that the individual has not adequately addressed the DOE’s concerns under criterion (j) regarding his alcohol use. Consequently, he has failed to convince me that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not grant the individual a security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Administrative Judge
Office of Hearings and Appeals

Date: November 25, 2015