

\*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

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

**In the Matter of: Personnel Security Hearing** )

)

**Filing Date: November 2, 2015** )

)

**Case No.: PSH-15-0091**

**Issued:** February 3, 2016

**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.”<sup>1</sup> For the reasons set forth below, I conclude that the Individual’s security clearance should not be restored at this time.<sup>2</sup>

**I. BACKGROUND**

On October 22, 2014, the Individual’s employer administered two breath alcohol detection tests to the Individual, in response to complaints by the Individual’s coworkers that they could detect alcohol on his breath. The first test administered to the Individual indicated that his blood alcohol level (BAL) was .074, while the second test indicated his BAL was .068. The Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual on May 27, 2015, and sponsored a forensic psychiatric evaluation of the Individual which occurred on July 28, 2015. Because the PSI and forensic psychiatric evaluation raised concerns about the extent and frequency of the Individual’s alcohol consumption, the LSO began the present administrative review proceeding by issuing 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

<sup>1</sup> 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.

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

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 November 3, 2015.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, and a DOE consultant psychiatrist (the Psychiatrist). *See* Transcript of Hearing, Case No. PSH-15-0091 (hereinafter cited as "Tr."). The LSO submitted nine exhibits, marked as Exhibits 1 through 9, while the Individual submitted one exhibit, which is marked as Exhibit A.

## 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 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 and Adjudicative Guideline G.

Criterion J refers to information indicating that the Individual has: "Been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist . . . as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). Specifically, the Notification Letter alleges that the Psychiatrist diagnosed the Individual as alcohol dependent under the American Psychiatric Association's Diagnostic and Statistical Manual, fourth edition, text revision (DSM-IV-TR).<sup>3</sup> These circumstances adequately justify the DOE's invocation of Criterion J, 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) 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: (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; (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; [and] (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence." Adjudicative Guideline G at ¶ 22(b), (c), and (d).

## 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

---

<sup>3</sup> The Psychiatrist also found that under the DSM-V's nomenclature, the Individual's diagnosis would be Alcohol Use Disorder, Moderate Type. Ex. 3 at 11. The Psychiatrist further opined that the Individual habitually used alcohol to excess. *Id.*

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**

On October 22, 2014, the Individual arrived at his work at approximately 6:15 a.m. Ex. 5 at 9. The Individual's coworkers reported to management that they believed the Individual had alcohol on his breath. Ex. 5 at 13; Ex. 9 at 1. At 8:49 a.m., the Individual's employer administered a breath alcohol test to the Individual which indicated that he had a BAL of .074. Ex. 9 at 1. A second breath alcohol test administered at 9:08 a.m. indicated that the Individual had a BAL of .068. Ex. 9 at 1. The Individual reported to his employer's medical officer that he had consumed six ounces of vodka the previous night. Ex. 9 at 1. The Individual stated that his last drink was consumed between 10 p.m. and 11 p.m. Ex. 9 at 1. The Individual further reported that he had been consuming alcohol almost every night for several months to help deal with insomnia. Ex. 9 at 1. The Individual's employer suspended the Individual.

The Individual was referred to his employer's Employee Assistance Program (EAP), which in turn referred him to an outpatient treatment program.<sup>4</sup> Ex. 5 at 20; Ex 9 at 1. After attending 18 group counseling sessions at a local Veterans Administration (VA) facility, from January 21, 2015 to March 5, 2015, he completed this treatment program. Ex. 3 at 3; Ex. 9 at 1. On April 22, 2015, his employer's Medical Director opined that the Individual was fit to return to duty, although he stated that the Individual need to undergo monthly follow-up by the EAP for a year, and should be subject to random breath testing. Ex. 9 at 1.

On May 27, 2015, the LSO conducted a PSI of the Individual. During this PSI, the Individual admitted that he drove under the influence of alcohol on his way to work on the morning of October 22, 2014. Ex. 5 at 14. The Individual indicated that he had started drinking at approximately 6:30 or 7:00 p.m. on October 21, 2014, and stopped drinking at approximately midnight. Ex. 5 at 15-16. The Individual reported that he had consumed approximately 10 to fifteen ounces of vodka on the night of October 21, 2014. Ex. 5 at 17. The Individual stated that he did not feel intoxicated when he reported to work on October 22, 2014. Ex. 5 at 18-19. The Individual said he had declined a recommendation for inpatient drug and alcohol treatment, because it would have required him to lose contact with his family for a month, including the winter holidays, and to discontinue his anti-anxiety medication. Ex. 5 at 27. The Individual indicated that he does not attend aftercare or Alcoholics Anonymous. Ex. 5 at 34. The Individual does see a psychologist (the Psychologist),

---

<sup>4</sup> After he declined an initial recommendation that he receive inpatient treatment. Ex. 5 at 27.

once every week or two, for his anxiety. Ex. 5 at 34-36. The Individual stated that he began drinking every night about a month after he began working for his present employer, a DOE contractor. Ex. 5 at 47. At that time, he began having a couple of beers or glasses of wine every night to help him sleep. Ex. 5 at 47. The Individual did not recall telling a VA employee that he had “Drank a pint of whiskey or rum three to four times per week for four months following his discharge.” Ex. 5 at 48. The Individual reported that the VA had recommended that he should abstain from alcohol use. Ex. 5 at 50. The Psychologist recommended that he abstain from alcohol use. Ex. 5 at 50. He informed the Psychologist that he stopped drinking, even though he admitted during the PSI, that he continued to use alcohol “occasionally.” Ex. 5 at 50. The Individual admitted that he still drinks twice a month. Ex. 5 at 50. The Individual’s father has expressed concerns about his drinking. Ex. 5 at 52, 54. The Individual admitted feeling guilt about his drinking. Ex. at 53. The Individual stated that he has not stopped using alcohol because he does not “have a problem with it.” Ex. 5 at 52. The Individual subsequently opined that he once had a problem with alcohol. Ex. 5 at 62. The Individual also denied that he has ever used alcohol prior to going to work. Ex. 5 at 54.

At the request of the LSO, the Psychiatrist evaluated the Individual on July 28, 2015. Ex. 3 at 1. In addition to conducting a three-hour forensic psychiatric interview of the Individual, the Psychologist reviewed the Individual’s personnel security file, and the Individual’s outpatient psychiatric records. Ex. 3 at 1. After completing his evaluation of the Individual, the Psychiatrist issued a report (the Psychiatric Report) on August 2, 2015, in which he found that the Individual has an “Alcohol Dependence Disorder, in partial remission.”<sup>5</sup> Ex. 3 at 10, 12. In support of this conclusion, the Psychiatrist noted that the Individual had informed VA employees that he consumed alcohol more or longer than intended, had developed alcohol tolerance, was concerned about potential physical health consequences associated with alcohol use, had been cautioned about his alcohol consumption by his father, had abnormal liver function tests, had been diagnosed with fatty liver in May 2014, and had recently experienced blackouts after drinking. Ex. 3 at 3. The Psychiatrist further noted that the VA employees also diagnosed the Individual with “alcohol use disorder, moderate,” alcohol abuse disorder, alcohol dependence disorder, and “panic disorder.” Ex. 3 at 3-4. The Psychiatrist noted that the Psychologist had treated the Individual for panic disorder, rather than alcohol issues. Ex. 3 at 4. In conclusion, the Psychiatrist stated:

He has reduced but not eliminated his alcohol use and stated that he has no intention of eliminating his alcohol use. He has been attempting to learn to relax and fall asleep without alcohol use in the evening. Risk factors for relapse of his alcohol dependence disorder include the persistence of his excessive alcohol use, duration of his excessive alcohol use in the past, and the coexistence of his anxiety disorder and PTSD symptoms. The absence of a family history of substance use disorder or mental health disorder improves his prognosis relative to those who have such histories.

Ex. 3 at 12.

---

<sup>5</sup> The Psychiatrist further diagnosed the Individual with Panic Disorder and “symptoms of posttraumatic stress disorder.” Ex. 3 at 10. These diagnoses are not cited in the notification letter as potentially disqualifying information.

In support of his contention that he has no ongoing problems with alcohol, the Individual has submitted a letter from the Psychologist, and has provided his own sworn testimony at the hearing.

The letter from his Psychologist, dated January 12, 2016, indicates that she has been treating the Individual from January 26, 2014, to the present. Ex. A at 1. She had met with the Individual on 15 occasions during this period. Ex. A at 1. She has diagnosed the Individual with Adjustment Disorder with mixed mood and Alcohol Use Disorder, in sustained remission. Ex. A at 1. Later in the letter, however, the Psychologist states: "He does not meet criteria for Alcohol Use Disorder." Ex. A at 1. The letter further states "Treatment has focused on discussing effective coping skills to assist the veteran with dealing with his stressors, as opposed to using alcohol. The [Individual] has not reported any alcohol abuse to the undersigned during this treatment period and there is no evidence in his life over the past year to indicate any alcohol abuse." Ex. A at 1. Unfortunately, the Psychologist did not testify at the hearing.

At the hearing, the Individual testified that he does not believe he has an alcohol disorder. Tr. at 11, 23, 29. The Individual believes that any alcohol disorder he may have had has been resolved by his attendance at the outpatient treatment program and his individual therapy with the Psychologist. Tr. at 12. The Individual testified that he has found alternatives to alcohol for his insomnia and anxiety problems. Tr. at 12. He testified that he sees the Psychologist for help with anxiety and alcohol abuse. Tr. at 14. The Individual admitted that he did not share copies of his PSI or Psychiatrist's report with the Psychologist. Tr. at 15-16. The Individual believes he has informed the Psychologist that he continues to use alcohol "recreationally." Tr. at 28. The Individual indicated that he was feeling much better as a result of his therapies. Tr. at 16. He testified that while he still occasionally uses alcohol "recreationally," he has greatly reduced his consumption. Tr. at 16, 29. The Individual now tries to limit his alcohol use to weekends. Tr. at 29-30. The Individual testified that he usually only consumes one or two alcoholic beverages in a sitting. Tr. at 30. His absolute maximum now is three drinks. Tr. at 30. The Individual then testified that he has set a limit of two drinks for himself. Tr. at 31. The Individual also admitted that he was drinking over 14 drinks a week prior to October 22, 2014. Tr. at 16. The Individual testified that he was drinking to medicate his anxiety and insomnia. Tr. at 17. The Individual testified that he now uses other strategies to cope with his anxiety and insomnia, including over-the-counter and prescription medications. Tr. at 17-19. The Individual admitted that he had consumed three beers the previous Saturday night. Tr. at 22, 29. The Individual also testified that his wife had previously expressed concerns about his drinking. Tr. at 22-23. He currently keeps alcohol in his home. Tr. at 23.

Before he testified at the hearing, the Psychiatrist observed the Individual's testimony. The Psychiatrist noted that the Individual had informed him, during their interview, that he had significantly reduced his alcohol consumption, and was no longer using alcohol to medicate his insomnia and anxiety. Tr. at 41. The Psychiatrist noted that various clinicians had given the Individual a number of diagnoses: Alcohol Abuse, Alcohol Dependence, or Alcohol Use Disorder. Tr. at 42. The Psychiatrist testified: "Every single evaluator or therapist has noted the presence of alcohol problems or disorders in [the Individual], over the years." Tr. at 43. The Psychiatrist testified that he diagnosed the Individual with Alcohol Use Disorder, moderate type, using the DSM-V, or Alcohol Dependence Disorder, using DSM-IV, in partial remission, due to reduced use, but not abstention from alcohol. Tr. at 45. He further testified that nothing he had learned at

the hearing would change this diagnosis. Tr. at 46, 50-51. The Psychiatrist testified that the Individual is unlikely to have success with controlled drinking, and that he strongly recommends that the Individual completely abstain from any alcohol use whatsoever. Tr. at 44-46. He noted that there is a significant risk that the Individual will relapse if he continues to use alcohol, especially under stress. Tr. at 45. Moreover, the Individual's medical records show that he has a liver condition that can be affected by alcohol consumption. Tr. at 45. Therefore, the Psychiatrist testified that no future amount of alcohol use would be safe for the Individual. Tr. at 45. The Psychiatrist was apprehensive about the Individual's prognosis, further testifying that: "I would be anticipating that, if he returned to work, going forward, that, he would have to deal with new anxiety, regarding his work performance and attendance. Alcohol use would be at risk there." Tr. at 47, 50. He also noted that the Individual has been engaging in excessive alcohol use for over ten years, which is not a favorable prognostic factor. Tr. at 50. The Individual's co-existing Anxiety Disorder is also a problem complicating the Individual's recovery. Tr. at 50. The Psychiatrist testified that the Individual cannot be considered to be in full remission as long as he continues to use alcohol, even if just recreationally. Tr. at 48. The Psychiatrist described the Individual's insight into his alcohol disorder as "limited." Tr. at 50-51. The Psychiatrist testified that the Individual should be undergoing ongoing weekly maintenance treatment to mitigate the risk of relapse, which he is not. Tr. at 52.

After carefully considering the evidence in the record, I find that the Individual has not sufficiently mitigated the security concerns raised by his Alcohol Dependence Disorder, despite establishing that he has moderated his alcohol intake, and now uses alcohol in a more responsible manner. The Individual continues to use alcohol, and as long as he does so, there is an unacceptable risk that he will relapse. Moreover, I am not convinced that the Individual has modified his behavior so that, going forward, his risk of relapse is sufficiently small to find that he is not an unacceptable risk to national security.

## **V. CONCLUSION**

For the reasons set forth above, I conclude that the LSO properly invoked Criterion J. However, after considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has not resolved the Criterion J security concerns. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be restored at this time. The Individual 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: February 3, 2016