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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: February 18, 2016 ) Case No.: PSH-16-0009  
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Issued: June 2, 2016

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**Administrative Judge Decision**

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Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (“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 access authorization should not be restored at this time.

**I. Background**

The Individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. The Local Security Office (LSO) received potentially derogatory information regarding the Individual’s alcohol use. In order to address those concerns, the LSO summoned the Individual for an interview with a personnel security specialist in August 2015. In October 2015, the LSO sent the Individual to be evaluated by a licensed psychologist (DOE psychologist). The DOE psychologist diagnosed the Individual with alcohol abuse, which is an illness or medical condition that causes or may cause a significant defect in judgment or reliability.

In January 25, 2016, the LSO sent a letter (Notification Letter) to the Individual advising him that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21. In the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in

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<sup>1</sup> Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

the security regulations at 10 C.F.R. § 710.8(h) and (j) (hereinafter referred to as Criteria H and J).<sup>2</sup>

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing. The LSO forwarded this request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Administrative Judge. At a hearing on April 13, 2016, convened pursuant to § 10 C.F.R. § 710.25 (e) and (g), the DOE introduced 14 exhibits (DOE Exs. 1-14) into the record and called the DOE psychologist as a witness. The Individual presented his own testimony and the testimony of six witnesses. *See* Transcript of Hearing, Case No. PSH-16-0006 (Tr.).

## II. Regulatory Standard

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictates 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 and 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 [or her] 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). This standard implies that there is a presumption against granting or restoring a security clearance. 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); *see also Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard indicates “that security determinations should err, if they must, on the side of denials”).

## III. Notification Letter and Associated Security Concerns

As previously noted, the Notification Letter cited Criteria H and J as the basis for suspending the Individual’s security clearance. Criterion H concerns information that an individual has an illness or mental condition which causes or may cause a significant defect in judgment or reliability. 10 C.F.R. § 710.8(h). Further, federal agencies adjudicating security clearances must consider that

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<sup>2</sup> Criterion H concerns information that a person has “[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or a licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Criterion J applies where an individual has been, or is, a user of alcohol habitually to excess or has been diagnosed by a psychologist as alcohol dependent or suffering from alcohol abuse. *Id.* § 710.8(j).

“[c]ertain emotional, mental, and personality conditions can impair judgment, reliability or trustworthiness.” *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House* (December 19, 2005), Guideline I. Criterion J applies where an individual has been, or is, a user of alcohol habitually to excess or has been diagnosed by a DOE psychologist as alcohol dependent or suffering from alcohol abuse. 10 C.F.R. § 710.8(j). Again, federal agencies adjudicating security clearances must consider that “[e]xcessive 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 Guidelines*, Guideline G.

With respect to the Criteria above, the LSO asserts that the Individual was diagnosed by the DOE psychologist with alcohol abuse. Ex. 1 at 1. Further, the DOE psychologist stated that the Individual’s alcohol abuse was an illness or mental condition. *Id.*

#### **IV. Hearing Testimony and Findings of Fact**

On June 20, 2015, the Individual was arrested and charged with Driving While Intoxicated (DWI). Ex. 1 at 1. After the arrest, which the Individual reported promptly to the LSO, the Individual underwent a Personnel Security Interview (PSI) in August 2015 and was evaluated by the DOE psychologist in October 2015. Ex. 10; Ex. 8; Ex. 13. After the evaluation, the DOE psychologist diagnosed the Individual with alcohol abuse and opined that he suffered from an illness or medical condition which causes or may cause a significant defect in judgement or reliability. Ex. 8 at 5. At the PSI, the Individual stated that he was consuming 12 beers every evening after his divorce. Ex. 13 at 63; Tr. at 25. Prior to his DWI, he would send his girlfriend a message in the evening indicating the number of beers he had consumed. Tr. at 80. In addition to his June 2015 DWI, the Individual had a previous DWI in February 2009. Ex. 1 at 1.

At the hearing, the Individual did not dispute the DOE psychologist’s diagnosis of alcohol abuse. Tr. at 73. He stated that his last alcohol consumption was June 26, 2015, six days after his DWI arrest. Tr. at 75. He started an Individual Outpatient Treatment Program (IOP) immediately after the DWI. Tr. at 75. He completed the IOP program in a timely manner. Tr. at 111. The Individual began aftercare in February 2016, after reading the DOE psychologist’s report which recommended aftercare or Alcoholics Anonymous. Tr. at 82, 110. He also started to see his IOP counselor regularly. Tr. at 111.

The Individual’s witnesses testified that his personality has undergone a transformation since he stopped consuming alcohol. His sister, father, girlfriend, co-workers, and counselor all testified that he is a different person. Tr. at 12, 25, 29, 37, 51, 106. His IOP counselor testified that, “[h]e was a jerk,” the first time she met him, but that she’s seen a remarkable change that surprised her because it was so dramatic. Tr. at 106, 107. The witnesses testified that he is “at peace.” Tr. at 12, 39, 44. The Individual’s witnesses also testified that he does not smell of alcohol, there is no alcohol in his house, and when he is in a social situation, he drinks either water or tea. Tr. at 13, 20, 26, 68.

The DOE psychologist and the counselor testified that the Individual’s risk of relapse is low. Tr. at 114, 124. However, the DOE psychologist still stated that the Individual needed one year of sobriety before he would consider him rehabilitated or reformed. Tr. at 124.

## V. Administrative Judge's 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. 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.

As an initial matter, I find that the LSO has properly raised a security concern under Criteria H and J, regarding the Individual's alcohol misuse. The Individual does not dispute the DOE psychologist's diagnosis of alcohol abuse.

In considering whether the Individual has mitigated the properly raised security concerns, I must look to the Adjudicative Guidelines in evaluating the evidence before me. The relevant paragraphs list conditions that could mitigate these types of security concern, including, regarding Criterion H:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) 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;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past emotional instability was a temporary condition (e.g., one caused by a death, illness, or marital breakup), the situation has been resolved, and the individual no longer shows indications of emotional instability;

Adjudicative Guidelines, ¶ 29(a-d). And regarding Criterion J:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);
- (c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Adjudicative Guidelines, ¶ 23(a)-(d).

Regarding the above factors, I cannot find that, as applied to the instant matter, they sufficiently mitigate the security concerns raised by the LSO. With respect to ¶¶ 29(b), (c), and 23(d), the Individual has not received an opinion by the DOE psychologist that the Individual's alcohol abuse is under control or in remission. The Individual's counselor testified that the Individual is doing well and his risk of relapse is low. Tr. at 117. The DOE psychologist also testified that the Individual's risk of relapse is low but stated that the Individual needs one year of abstinence before the DOE psychologist could opine that the Individual is rehabilitated or reformed. Tr. at 124. The DOE psychologist did state that the Individual has established a good pattern of abstinence with aftercare and counseling. Tr. at 124.

Regarding ¶¶ 29(d) and 23(a), it is true that the Individual appears to have begun drinking more heavily during his divorce, but his previous DWI, was while he was still married and had no apparent marital problems. Further, his DWI was less than one year prior to the hearing and his alcohol consumption was not infrequent. The hearing testimony indicates that he would frequently send his current girlfriend text messages indicating how many beers he had consumed in an evening. Tr. at 80.

It is possible that the remaining factors, ¶¶ 29(a) and 23(b) and(c) may weigh for the restoration of the Individual's security clearance. The Individual's condition is identifiable and is controllable with treatment, with which he is complying. The Individual has acknowledged his alcohol abuse, provided evidence of his actions taken to overcome his problem and established a pattern of abstinence. Finally, the Individual is a current employee and is participating in counseling. He has no history of previous treatment and relapse. Both the DOE psychologist and his counselor have testified that he is making excellent progress. Tr. at 114, 117, 125, 126.

Nevertheless, in prior cases involving Criteria H and J, Administrative Judges generally accord deference to the opinion of mental health professionals regarding the issue of rehabilitation and reformation. *See, e.g., Personnel Security Hearing*, Case No. TSO-1057 (2011); *Personnel Security Hearing*, Case No. TSO-0562 (2008). The DOE psychologist did not change his original recommendation that the Individual needs a total of 12 months of abstinence to achieve rehabilitation or reformation after hearing the testimony presented. For this reason, I cannot find that the Individual has resolved the security concerns raised by his alcohol misuse.

## **VI. Conclusion**

In the above analysis, I have found that there was derogatory information in the possession of the DOE that was sufficient to raise serious security concerns under Criteria H and 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 resolve the security concerns associated with Criteria H and J. 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. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman  
Administrative Judge  
Office of Hearings and Appeals

Date: June 2, 2016