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

In the Matter of: Personnel Security Hearing)
)
Filing Date: February 29, 2016)
_____)

Case No.: PSH-16-0010

Issued: May 25, 2016

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (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 March 4, 2015, the Individual was involved in a minor motor vehicle collision while working at a DOE facility. Pursuant to standard procedure, the Individual was administered two breath tests for alcohol, which indicated that the Individual had a blood alcohol level of .047 at 9:53 a.m., and .045 at 10:11 a.m. The Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual on August 6, 2015, and sponsored a forensic psychiatric evaluation of the Individual which occurred on September 25, 2015. The PSI and forensic psychiatric evaluation raised concerns about the extent and frequency of the Individual’s alcohol consumption, and indicated that the Individual has an Alcohol Abuse Disorder, (under the American Psychiatric Association’s Diagnostic and Statistical Manual-Fourth Edition Text Revision, DSM-IV-TR) or an Alcohol Use Disorder (under the American Psychiatric Association’s Diagnostic and Statistical Manual-Fifth Edition, DSM-V). The LSO, therefore 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 and the LSO forwarded the

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>.

Individual's request to the OHA. The Director of OHA appointed me as the Administrative Judge in this matter on February 29, 2016.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his expert witness (the Expert Witness), and a DOE consultant psychiatrist (the Psychiatrist). *See* Transcript of Hearing, Case No. PSH-16-0010 (hereinafter cited as "Tr."). The LSO submitted nine exhibits, marked as Exhibits 1 through 9, while the Individual submitted six exhibits, which are marked as Exhibits A through G.

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.

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 or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). Specifically, the Notification Letter alleges that the Psychiatrist has opined that the Individual has "an Alcohol Abuse Disorder using DSM-IV or an Alcohol Use Disorder using DSM-5." Exhibit 1 at 2. 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 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 March 4, 2015, the Individual was involved in a minor motor vehicle collision while working at a DOE facility. The Individual was administered two breath tests for alcohol, which indicated that the Individual had a blood alcohol level of .047 at 9:53 a.m., and .045 at 10:11 a.m. Ex. 3 at 2; Ex. 4 at 28, 31-32. It is likely that the Individual's blood alcohol level exceeded 0.10, when he drove to work from home that morning. Ex. 3 at 8.

The Individual has history of three alcohol-related arrests, each of which occurred when he was a minor: February 22, 1984 (Underage Consumption), March 19, 1983 (Underage Consumption and Criminal Mischief), and May 15, 1981 (Underage Drinking). Ex. 3 at 2; Ex. 4 at 8-9.

The PSI

On August 6, 2015, the LSO conducted a PSI of the Individual. The Individual reported that his last use of alcohol occurred on March 16, 2015. Ex. 4 at 48. The Individual stated that on the night of March 3, 2016, he had been drinking alone at home from approximately 8:30 p.m. until approximately midnight. Ex. 4 at 22, 23, 54. The Individual did not initially recall how much alcohol he had consumed that evening, other than "obviously too much." Ex. 4 at 25. The Individual first guessed that he had about eight to ten drinks during that time. Ex. 4 at 26. The Individual later estimated his consumption of alcohol as half of a "fifth." Ex. 4 at 27. The Individual reported that he left his house for work at about 6:00 a.m. on March 4, 2015. Ex. 4 at 28-29. He reported that the accident occurred at 8:53 a.m.

The Individual reported that he signed a Last Chance Agreement (LCA) with his employer which required that he make an appointment with the Employee Assistance Program (EAP) and undergo substance abuse counseling. Ex. 4 at 35-37. The EAP sent him to see a substance abuse counselor (SAC). Ex. 4 at 35-36. Under the LCA, the Individual agreed to abstain from alcohol use for one year after returning to work. Ex. 4 at 27. The EAP also required that he abstain from alcohol as well. Ex. 4 at 37. The Individual met with the SAC for five one-hour sessions on March 25, 2015, April 8, 2015, April 15, 2015, April 22, 2015, and May 6, 2015. Ex. 4 at 38. The SAC told the Individual that he is a "binge drinker." Ex. 4 at 39. The EAP also required the Individual to attend two Alcoholics Anonymous (AA) meetings, which he attended on April 2, 2015, and April 16, 2015. Ex. 4 at 39-40. The Individual was further required to check in with the EAP on a monthly basis. Ex. 4 at 40. Under the LCA, the Individual will be subject to random alcohol tests for one year upon returning to work. Ex. 4 at 40. The EAP did not require further alcohol counseling or AA attendance, and the Individual has completed all of the EAP's treatment recommendations. Ex. 4 at 41, 58. The Individual reported that he had no desire to continue with AA after he attended the two required meetings. Ex. 4 at 57. The Individual denied being an alcoholic, but opined that he thought he has a

problem with alcohol. Ex. 4 at 58. The Individual stated that he intends to abstain from alcohol use in the future, but might one day return to using alcohol. Ex. 4 at 58.

The Psychiatrist

At the request of the LSO, the Psychiatrist evaluated the Individual on September 21, 2015. Ex. 3 at 1. In addition to conducting a one-hour forensic psychiatric interview of the Individual, the Psychiatrist reviewed the Individual's personnel security file, the Individual's medical records, and the Individual's pharmacy records. Ex. 3 at 1. After completing his evaluation of the Individual, the Psychiatrist issued a report (the Psychiatric Report) on September 25, 2015, in which he found that the Individual had a mental condition: Alcohol Abuse Disorder in early full remission (Under DSM-IV-TR) or an Alcohol Use Disorder (Under DSM-V).³ Ex. 3 at 8-9. The Psychiatrist noted that while the Individual had been abstaining from alcohol use,⁴ he was not in any alcohol treatment program or AA. Ex. 3 at 10.

The Hearing

At the hearing, the Expert Witness, a licensed substance abuse counselor, testified on behalf of the Individual. Tr. at 10. The Expert Witness testified that she had administered the Michigan Alcohol Screening Test (MAST) to the Individual. Tr. at 11. The Individual's MAST score (from two to three) and her interview of the Individual indicated that "he was approaching . . . [the] beginning stages of middle to early problem drinking." Tr. at 12-13. She further testified that she believed that the Individual is a "binge drinker." Tr. at 12. The Expert Witness testified that the Individual had not used alcohol for eight months.⁵ Tr. at 13. The Expert Witness testified that she agrees that the Individual has an Alcohol Abuse or Alcohol Use Disorder. Tr. at 17; 27. The Expert Witness testified that the Individual is in "very early remission." Tr. at 27. She further testified that she generally agrees with the findings of the Psychiatrist. Tr. at 19. However, she noted, six months passed between the Psychiatrist's Report and her examination of the Individual. Tr. at 19. The Expert Witness testified that during that six-month period the Individual had made significant progress. Tr. at 19. She noted that, since February 11, 2016, (the hearing took place on April 20, 2016) the Individual had been participating in AA, working the Twelve-Step Program on a daily basis, and had obtained a sponsor⁶ with whom he has daily contact. Tr. at 21, 27. The Expert Witness characterized the Individual's depth of commitment to his sobriety as "very strong." Tr. at 27. She noted that he has now fully accepted that he has an issue with alcohol. Tr. at 27. The Expert Witness further testified that the Individual "is in a steady remission from any alcohol use or abuse or binge drinking." Tr. at 13. The Expert Witness testified that "individuals who have sponsors who are attending 12-step -- in this case Alcoholics Anonymous and working the 12 steps of the program along with a strong support

³ The Psychiatrist noted that the SAC had diagnosed the Individual with Alcohol Abuse. Ex. 3 at 2.

⁴ The Individual reported to the Psychiatrist that his last use of alcohol occurred on March 16, 2015. Ex. 3 at 5. The Individual also reported to the Psychiatrist that he is willing to abstain from alcohol use, but not for the rest of his life. Ex. 3 at 5.

⁵ The record shows that this testimony was inaccurate. The Individual's last use of alcohol occurred on March 16, 2015, over twelve months prior to the hearing.

⁶ The Expert Witness testified that she verified that the Individual has a sponsor. Tr. at 13.

system around them have a very good prognosis, roughly six months forward, to continue on a path of sobriety.” Tr. at 13. The Expert Witness further testified:

Moving forward, continuing on the path that he is in or on, I should say, his prognosis is very strong. He has -- had a very strong sense of his spirituality, of his sense of personal growth, and he is dedicated to the 12 steps; has found it extremely helpful; has a strong relationship with his sponsor, is actively working the steps, which are known to assist in personal transformation; and, ultimately, I believe that he will stay the course and do very well.

Tr. at 13-14. Finally, the Expert Witness stated that the Individual has no intention of returning to alcohol use. Tr. at 30.

At the hearing, the Individual testified that since March 16, 2015, he no longer uses alcohol. Tr. at 38. He testified that he intends to permanently abstain from using alcohol, and recognizes that he can never safely use alcohol again. Tr. at 42, 58. He testified that he has not experienced any withdrawal symptoms since he stopped drinking, and has no urges to use alcohol. Tr. at 38, 46. The Individual said that he did not continue with the AA program initially, because he was not experiencing any problems with abstaining from alcohol. Tr. at 42, 49. It was only when he became aware that he had been diagnosed with an alcohol disorder did he decide to return to AA. Tr. at 42. He became aware that he had been diagnosed with an alcohol disorder when he read the Notification Letter. Tr. at 42. He testified that he was unaware that the SAC had diagnosed him with Alcohol Abuse. Tr. at 48. He is presently working Step Four of the AA Twelve-Step Program. Tr. at 61. The Individual testified that he found AA helpful, and that it was helping him with his day-to-day life. Tr. at 42-43. He testified that he has an AA sponsor. Tr. at 43. The Individual testified that he attends two AA meetings a week and that he enjoys the fellowship. Tr. at 43. He also enjoys his volunteer firefighting work and he goes to the gym on a daily basis. Tr. at 44. He testified that he has a strong support network. Tr. at 46.

Before he testified at the hearing, the Psychiatrist observed each of the other witnesses' testimony. The Psychiatrist testified that he had examined the Individual on September 21, 2015. Tr. at 66. The Psychiatrist noted that he would still diagnose the Individual with Alcohol Abuse Disorder under DSM-IV-TR and Alcohol Use Disorder under DSM-V. Tr. at 71-72. The Psychiatrist testified that the Individual's Alcohol Use Disorder was of moderate severity. Tr. at 75. The Psychiatrist further noted that the Individual would now be considered to be in sustained full remission, because he has not used alcohol for over a year. Tr. at 72. He testified that the Individual is now receiving the appropriate intervention for his alcohol disorder. Tr. at 79. When the Psychiatrist first interviewed the Individual, it did not appear that the Individual was committed to addressing his alcohol problem. Tr. at 72-73. The Psychiatrist agreed that the Individual's recent participation in AA, the absence of a family history of alcohol problems, and his commitment to sobriety improves his prognosis. Tr. at 76, 78. The Psychiatrist characterized the Individual's prognosis as "favorable." Tr. at 78. He further opined that the Individual is unlikely to relapse in the next year. Tr. at 78.

After carefully considering the evidence in the record, I find that the Individual has mitigated the security concerns raised by his Alcohol Abuse or Alcohol Use Disorder, by establishing that he has abstained from alcohol use for over one year, is currently actively involved in AA, and has a favorable prognosis. Moreover, I am convinced that the Individual has modified his behavior so that, going

forward, he is unlikely to resume alcohol consumption and therefore presents an acceptable 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 sufficiently mitigated the Criterion J security concerns. Accordingly, the Individual has 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 be restored at this time. The LSO 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: May 25, 2016