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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: March 10, 2016) Case No.: PSH-16-0015
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Issued: June 7, 2016

Administrative Judge Decision

Richard A. Cronin, Jr., Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization¹ under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” As discussed below, after carefully considering the record before me, I have determined that the DOE should restore the Individual’s suspended access authorization.

I. Background

The Individual is employed by DOE in a position that requires him to maintain a DOE security clearance. The Individual was arrested in August 2015, for an incident with his ex-girlfriend where the Individual was intoxicated.² Ex. 3. In September 2015, the LSO conducted a personnel security

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

² This altercation occurred approximately two weeks after the Individual and the ex-girlfriend ended their relationship. The Individual’s ex-girlfriend informed the police that the Individual had stabbed himself in the bicep. The Individual informed police that his ex-girlfriend had stabbed him. Ex. 8 at 3. The police took the Individual to a local hospital because the Individual was intoxicated. While at the hospital with the police attempting to take pictures of the Individual’s wounds, the Individual, according to the police, assumed an “aggressive demeanor” with two policemen

interview with the Individual (PSI). Ex. 10. The Individual was then referred for a forensic psychological evaluation by a DOE-contractor psychologist (DOE Psychologist). In a February 2016 letter (Notification Letter), the LSO informed the Individual that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance and that his security clearance was suspended. Ex. 1.

The Notification Letter explained that that the derogatory information fell within the purview of two potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j) (Criteria H and J, respectively).³

Upon his receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. The DOE submitted 10 Exhibits (Exs. 1-10) into the record and presented the testimony of the DOE Psychologist. At the hearing, the Individual presented his own testimony along with the testimony of a colleague at his workplace facility (Colleague), a division leader at the facility (Division Leader), his Employee Assistance Program Counselor (EAP Counselor), and a psychologist (Individual's Psychologist) with whom he has sought treatment. *See* Transcript of Hearing, Case No. PSH-16-0015 ("Tr.").

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1998) ("clearly consistent with the national interest standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

at the hospital and then a "boxing stance" with clinched fists towards the policeman. The Individual was subsequently charged with two counts of Assault Against a Police Officer along with Making a False Report regarding his ex-girlfriend. Ex. 8 at 3. The charges related to this arrest were dismissed with prejudice by the local authorities. Exhibit (Ex.). 2 at 30. The Individual has submitted evidence to establish that his account of the incident with his ex-girlfriend was in fact accurate. Ex. 2. However, the criminal charges themselves have not been cited by the local security office (LSO) as derogatory information under Part 710 and, as such, I need not make a determination on this issue.

³ Criterion H refers to information indicating that an individual has "[a]n 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). Criterion J references information showing that an individual has "[b]een, 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).

An individual must come forward with evidence to convince the DOE that restoring his 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). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Administrative Judge’s Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person’s access authorization eligibility in favor of the national security. *Id.* In considering these factors, the Administrative Judge also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors and considerations. *See* Revised Adjudicative Guidelines for Determining Eligibility for Access Classified Information, The White House (December 19, 2005) (Adjudicative Guidelines).

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites Criteria H and J as the basis for suspending the Individual’s security clearance. The LSO cites the Individual’s alcohol-related arrest in August 2015, and an evaluative report from the DOE Psychologist opining that the Individual suffers from Major Depressive Disorder, Single Episode, Moderate, (Major Depressive Disorder) and Alcohol Use Disorder, Not Otherwise Specified (Alcohol Use Disorder), as Criteria H and J derogatory information. Ex. 1; *see* Ex. 4 at 16; Ex. 7; Ex. 8; Ex. 9. 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 Guidelines, Guideline G, at ¶ 21. Further, certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. Adjudicative Guidelines, Guideline I, at ¶ 27.

IV. Findings of Fact

The Individual has been abstinent from alcohol since August 2015. Tr. at 165. The Individual testified that since his arrest in August 2015, the Individual has attended Alcohol Anonymous (AA) meetings and has been reflecting on his actions leading to his arrest.⁴ Tr. at 138. The

⁴ In his response to the Notification Letter, the Individual asserts that he has attended AA meetings for seven months and has submitted records documenting his attendance. Ex. 2. Attendance at AA was a requirement for the local authorities to dismiss and expunge the charges related to the August 2015 incident. Ex.4 at 8.

Individual has submitted documents indicating that he has completed an alcohol awareness program with the EAP Counselor at his workplace. Ex. 2. In his response to the Notification Letter, the Individual asserts that he successfully completed six months of random drug and alcohol tests as mandated by an August 2015 Court Order Setting Conditions of Release and Bond (Order) as well as random alcohol tests performed at his workplace. Ex. 8.⁵ Tr. at 148. He has experienced no problems with abstaining from alcohol. Tr. at 148. In his work with the EAP Counselor, he learned an estimation technique regarding how much alcohol he can consume without being impaired. Tr. at 155-56. He believes that he is better equipped to monitor and control his alcohol consumption if he decides to resume alcohol use in the future. The Individual has been working with the Individual's Psychologist regarding his relationships. Tr. at 142. The Individual affirmed that he has been taking a prescription anti-depressant since 2011 or 2012 after he separated from his wife. Tr. at 146.

The Individual accepts the diagnosis of the DOE Psychologist of Alcohol Use Disorder and knows that he had been engaging in high-risk alcohol consumption and could be considered a "borderline alcoholic" if he does not take the appropriate actions. Tr. at 148. The Individual has not consumed alcohol since the arrest and he has not experienced any problems with being abstinent despite the stresses of life. Tr. at 149. He deeply regrets his decision to drink excessively at home prior to the incident with his ex-girlfriend that resulted in his arrest. Tr. at 152.

The EAP Counselor testified that the Individual had been initially referred to her for alcohol awareness and education and that she has seen him for nine sessions. Tr. at 76, 94. She also worked with the Individual on issues regarding the incident that led to his arrest and his alcohol consumption prior to the arrest. Tr. at 77. The EAP Counselor generally agreed with the DOE Psychologist's assessment of the Individual as recorded in the DOE Psychologist's report. Tr. at 78. She informed the Individual that he would not have behaved as he did during the arrest had he not consumed an excessive amount of alcohol. Tr. at 79. His excessive consumption of alcohol prior to the incident was motivated either by news that he was going to be promoted to be a division leader at his facility or by various stressful text messages the Individual received from his ex-girlfriend. Tr. at 79-80. The Individual also desired to work with the EAP Counselor on alternate methods for dealing with stress, conflict and other personal issues. Tr. at 79.

The EAP Counselor stated that she believed that the amount of alcohol the individual consumed before the incident was higher than the amount he would usually consume when drinking. Tr. at 81. Her assessment of the Individual indicated that his alcohol consumption pattern prior to the incident would be in the "low risk" category. Tr. at 82. The EAP Counselor believes that the Individual has maintained his abstinence. Tr. at 82-83.

With regard to the DOE Psychologist's diagnosis of Major Depressive Disorder, the EAP Counselor believes that the Individual may suffer from Dysthymia, a lower level of depressive illness. Tr. at 84. Such an illness usually does not cause functional problems. Tr. at 84. The EAP

⁵ The Order required the Individual to stop consuming or possessing alcohol. Ex. 8.

Counselor has seen significant improvement from the Individual since she began to work with him as well as improvement in his overall demeanor and mood. Tr. at 87. In sum, the EAP Counselor does not believe that the Individual has any alcohol or other psychological problem that would prevent him from possessing a security clearance. Tr. at 93.

The Individual's Psychologist testified that she had first been contacted by the Individual in January 2015. Tr. at 106-07. The Individual sought help with relationship problems. Tr. at 107. She opined that the Individual suffered from Dysthymia. Tr. at 107-08. She believed that his Dysthymia was well controlled and she worked with the Individual on stress management techniques. Tr. at 108. The Individual's Psychologist testified that the Individual's relationship with his ex-girlfriend was complex and increased the Individual's stress level. Tr. at 110. She noted that before he stopped consuming alcohol, she thought he was using alcohol at a higher level than she would have liked to see. Tr. at 111. However, the Individual's Psychologist believes that the Individual's issues with alcohol are at the "low end of the spectrum." Tr. at 111. Further, she believes that the Individual now knows that he cannot use alcohol as a way of coping with stress. Tr. at 125. She does not believe that the Individual will have problems with alcohol consumption in the future. Tr. at 115. She noted that the Individual is motivated to get his career "back on track" and that he has learned from the incident that resulted in his arrest. Tr. at 112. The Individual's Psychologist testified that the Individual's Dysthymia is under control. Tr. at 108-12. In May 2015, the Individual, with the Individual's Psychologist concurrence, decided to end their sessions. Tr. at 122. However, in August, the Individual sought additional help from the Individual's Psychologist concerning the August 2015 incident. She and the Individual plan to continue their sessions together. Tr. at 126.

After listening to each of the witnesses, the DOE Psychologist testified that she believes that the diagnosis of Alcohol Use Disorder does not now apply to the Individual. Tr. at 165. Supporting her opinion are fact that the Individual has remained abstinent from alcohol for eight months, that he has consistently attended AA during that period, and that has completed the EAP alcohol education program. Tr. at 166. The DOE Psychologist noted that the Individual did not suffer from Alcohol Dependence; nor did she find that the Individual suffered from Alcohol Abuse. Tr. at 165-66.⁶

The DOE Psychologist also testified that given the additional information she received at the hearing from the EAP Counselor and the Individual's Psychologist, she now would diagnose the Individual as suffering from Dysthymia instead of Major Depressive Disorder. Tr. at 166-67. Overall, the DOE Psychologist does not believe that the Individual is suffering from any mental disorder that would cause him not to exercise good judgment in the future. Tr. at 167, 169.

⁶ In her report, the DOE Psychologist noted a number of discrepancies between the Individual's statements and other sources of information. However, after hearing the testimony at the hearing, she believes that most of these discrepancies have been resolved and the few that remain would not lead her to find that the Individual has a significant defect in judgment or reliability. Tr. at 170.

V. 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 security clearance should be restored.

The Criterion H and J security concerns center on the DOE Psychologist's diagnoses of Major Depressive Disorder, Single Episode, and Alcohol Use Disorder, Not Otherwise Specified, as contained in her report.

I have found the testimony of the DOE Psychologist, EAP Counselor and the Individual's Psychologist convincing with regard to the Individual's current state of rehabilitation. The Individual has submitted evidence indicating that he has completed the EAP alcohol education program and has attended AA meetings on a regular basis for seven months. Ex. 2 at 34 (Individual's Psychologist February 2016 letter). I find that the Individual has internalized the need to be watchful with regard to the consumption of alcoholic beverages. Further, other than an arrest in 1995 for possessing an open container of beer on a beach, there appears to be no other alcohol-related incidents involving the Individual.⁷ Ex. 4 at 10. As for the incident that triggered his arrest, the EAP Counselor and the Individual's Psychologist believes that the Individual was involved in a "toxic" relationship with his ex-girlfriend. Tr. at 89, 120. The Individual no longer has a relationship with his ex-girlfriend and has received counseling regarding his relationship issues. See Ex. 4 at 3; Ex. 2 at 24; Ex. 10 at 43; Ex. 2 at 37 (therapeutic contract with Individual's Psychologist).

The Individual's Psychologist and the DOE Psychologist concur that the Individual suffers from Dysthymia, a low level of depression, and does not now suffer from Major Depressive Disorder. The EAP Counselor testified that Dysthymia does not necessarily cause functional problems with the ability to work or socialize. Tr. at 84. Further, the Individual's Dysthymia is under control. Tr. at 108. There is no evidence before me that indicates that the Individual's Dysthymia has produced any problems with judgment or reliability. The Colleague and the Division Leader both testified as to the Individual's good judgment. Tr. at 17, 37-38, 40. Significantly, all of the experts who testified at the hearing believe that the Individual will exercise good judgment and reliability in the future.⁸ Tr. at 86, 116, 170.

⁷ This arrest was not referenced as derogatory information in the Notification Letter.

⁸ The record contains a written reprimand issued to the Individual for not disclosing the fact that he had a relationship with his ex-girlfriend since both worked at the same facility. The Individual's ex-girlfriend was not in the Individual's chain of command but on one occasion he gave his opinion on the performance and mentoring of his ex-girlfriend. Ex. 2 (September 28, 2015 written reprimand). This incident was not cited by the LSO as a security concern in the Notification Letter.

Given the evidence before me, I find that two mitigating factors listed in the Adjudicative Guidelines for problematic alcohol consumption are applicable in this case: that the Individual acknowledges his problem and has provided evidence of actions to overcome his problem, and that the Individual is a current employee who is participating in a counselling or treatment program and has no history of relapse and is making satisfactory progress. Adjudicative Guidelines, Guideline G ¶ 23(b), (c). I also find that with regard to security concerns raised by the Individual's diagnosis of Major Depressive Disorder and Alcohol Use Disorder, Not Otherwise Specified, the Individual meets three mitigating factors. I find that the Individual has voluntarily entered a counseling program for a condition that is amenable to treatment and has a favorable prognosis by a qualified mental health professional, has provided a recent opinion by a duly qualified mental health professional employed by the U.S. government that indicates that his condition is under control and has a low probability of recurrence, and the past emotional instability was a temporary condition caused by an isolated, excessive use of alcohol and his relationship with his ex-girlfriend. I further find that the situation has been resolved and the Individual no longer shows signs of emotional instability. Adjudicative Guidelines, Guideline I ¶ 29(b), (c) and (d). In sum, I find that the Individual has resolved the security concerns arising from the Criterion H and J derogatory information contained in the Notification Letter.

VI. Conclusion

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the Individual's eligibility for a security clearance under Criteria H and J of the Part 710 regulations. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has presented sufficient information to resolve the security concerns raised by the Criteria H and J derogatory information recorded in the Notification Letter. Thus, I conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, I find that the Individual's access authorization should be restored.

Richard A. Cronin, Jr.
Administrative Judge
Official of Hearings and Appeals

Date: June 7, 2016