

*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: June 9, 2016)

Case No.: PSH-16-0051

)

)

Issued: October 7, 2016

Administrative Judge Decision

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXX XXX XXXX. (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’s security clearance should not be restored at this time.²

I. BACKGROUND

The following facts are undisputed. The individual has been employed by a Department of Energy (DOE) contractor since 2003, and was granted a security clearance in connection with that employment. In 2003, the individual was arrested for domestic violence, stemming from an altercation with his then-wife during which he shoved a piece of pizza into her face. Because this arrest raised security concerns, the Local Security Office (LSO) summoned the individual for an interview with a personnel security specialist in 2004. During this Personnel Security Interview (PSI), the individual reported drinking to intoxication prior to the altercation, having consumed

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>.

“three or four” beers and three shots of tequila over the course of approximately two hours. DOE Exhibit (Ex.) 15 at 46.

The LSO referred the individual to a local psychiatrist (hereinafter referred to as the DOE psychiatrist) for an agency-sponsored evaluation in 2005. The DOE psychiatrist prepared a written report based on that evaluation. In his report, the DOE psychiatrist stated that from 1989 to 1991, the individual would drink a six-pack of beer a day, and that on approximately every other weekend, he would drink a six-pack of beer a day and a pint of tequila. According to the DOE psychiatrist, the individual’s first wife divorced him in 1991 due to his drinking. After the divorce, the individual abstained from alcohol use for approximately six months, and then resumed drinking heavily. The individual told the DOE psychiatrist that since that time, however, he had reduced his level of consumption to an average of one six-pack of beer per month. Based on this information, the DOE psychiatrist concluded that the individual used alcohol habitually to excess during the years 1990 to 1993, that his current level of usage was not excessive, and that the individual did not suffer from any alcohol use disorder or other illness or mental condition that was causing, or could cause, any significant defect in his judgment or reliability. DOE Ex. 6.

In September 2015, the individual was arrested for Driving Under the Influence of Alcohol (DUI). Because the ensuing PSI failed to resolve the security concerns raised by this arrest, the LSO referred the individual to a local psychologist (hereinafter referred to as “the DOE psychologist”) for another agency-sponsored evaluation. In the DOE psychologist’s report, she said that the individual reported having consumed four 12 ounce beers and two mixed drinks over a six hour period prior to his arrest.³ He further reported that from 2005 to the date of this most recent evaluation, his alcohol consumption consisted of an average of six beers per week, with a range of zero to 12 beers. He sometimes would drink all of the beers on the same day, and other times would spread them out. It would take the consumption of 4 to 5 beers for the individual to become intoxicated, and the DOE psychologist estimated that he was reaching this state 2 to 3 times per month, based on the information that he provided. The individual admitted during the evaluation that his second marriage may also have ended due, in part, to his alcohol consumption, and that he had driven after drinking for many years. DOE Ex. 4 at 3-5, 9.

The DOE psychologist concluded that the individual has used alcohol habitually to excess in the past, and continues to drink excessively “with some regularity.” *Id.* at 8. She diagnosed him as suffering from Unspecified Alcohol Related Disorder, and she concluded that this is an illness or mental condition that was causing, or could cause, a significant defect in his judgment or reliability. In order to exhibit adequate evidence of reformation or rehabilitation, the DOE psychologist stated, he would have to limit his alcohol consumption to no more than four drinks per day and no more than 14 drinks per week, for an indefinite period of time. *Id.* at 10.

After reviewing this report and the rest of the individual’s personnel 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

³ She noted, however, that the individual’s blood alcohol content, measured at the time of his arrest at .138 and .124, suggested the consumption of over twice as much alcohol over the same six hour period as that claimed by the individual. DOE Ex. 4 at 9.

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 15 exhibits into the record of this proceeding and presented the testimony of the DOE psychologist at the hearing. The individual presented the testimony of his supervisor and his girlfriend, in addition to testifying himself.

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

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (h) and (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 (h), information is derogatory if it indicates that an individual has an illness or mental condition which, in the opinion of a psychiatrist or licensed clinical psychologist causes, or may cause, a significant defect in the individual's judgment or reliability. 10 C.F.R. § 710.8(h). As support for this criterion, the Letter cites the DOE psychologist's diagnosis that the individual suffers from Unspecified Alcohol Related Disorder, and her finding that this condition causes, or could cause, a significant defect in the individual's judgment or reliability.

Criterion (j) defines as derogatory information indicating that the 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). In support of this criterion, the Letter relies on the information set forth in the preceding section of this Decision.

These circumstances adequately justify the DOE's invocation of criteria (h) and (j), and raise significant security concerns. Mental conditions that involve the excessive consumption of alcohol often lead to the exercise of questionable judgment or the failure to control impulses, and can therefore 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), Guidelines G and I.*

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. FINDINGS OF FACT AND ANALYSIS

A. Mitigating Evidence

For the most part, the individual did not contest the allegations set forth in the Letter or the DOE psychologist's diagnosis. Instead, he attempted to demonstrate, through his own testimony and that of his witnesses, that he no longer drinks to excess and that he is not currently suffering from any defect in his judgment or reliability.

The individual testified that he has permanently stopped drinking, and has not consumed any alcohol since he received the DOE psychologist's report in late March 2016. Hearing transcript (Tr.) at 28-29. He explained that he stopped because he was "amazed at how large [the report] was," and "how many times things have happened" to him as a result of his drinking. Tr. at 28. Although his girlfriend, with whom he lives, and his closest friends still drink, the individual is not tempted to join them, and is not uncomfortable in their presence. Tr. at 31-32. He further stated that the prospect of losing his security clearance and his desire "to be somebody that people can be proud of" provide an incentive for him to remain sober. Tr. at 32-33. His recent medical tests have not shown any unusual liver enzyme readings that might be indicative of excessive alcohol use. Tr. at 35.

The individual's girlfriend also testified that he had not consumed any alcohol since he received the DOE psychologist's report in late March 2016. Tr. at 18. He told her that he was very upset about the report, and that it caused him to "stop and pause and take a look at what was going on." Tr. at 19. She testified that he stopped drinking because "he feels better when he's not drinking," adding that "[h]e's very stubborn. When he gets something in his head, he just does it. And that got in his head, and he made some life changes." Tr. at 20. Even though she and his friends continue to drink in his presence, the individual is "O.k.," and never expresses an interest in resuming his consumption of alcohol. Tr. at 21. The individual's supervisor testified that the individual is a very

good employee, and that he has never seen any indication in the workplace that the individual has a drinking problem. Tr. at 11-12.

B. Administrative Judge's Decision

Based on this testimony, I find that the individual has abstained from drinking for approximately five and one-half months as of the date of the hearing. Despite this mitigating evidence, however, I find that the individual has not demonstrated adequate evidence of reformation or rehabilitation. I base this finding primarily on the testimony of the DOE psychologist and on the serious nature of the individual's drinking problem.

After witnessing all of the other testimony at the hearing, the DOE psychologist testified that the individual was not exhibiting adequate evidence of rehabilitation or reformation. She said that the individual's abstinence of "almost six months" was "a really good start," but that it was not yet adequate evidence that the individual was reformed or rehabilitated from his disorder. Tr. at 37. She described his chances of relapsing into an abusive pattern of drinking as being "moderate." *Id.* Although she took note of the individual's girlfriend's testimony about the individual's stubbornness and resolve, she observed that "life circumstances" often intervene and lead to a relapse. *Id.*

I agree with the DOE psychologist that less than six months of abstinence is inadequate evidence of rehabilitation or reformation from the individual's disorder. At the outset, I note that the individual has engaged in lengthy periods of excessive and binge drinking over the past 26 years. During this time, his drinking contributed to, or caused, two divorces, two arrests, and multiple instances in which the individual drove after drinking, but was not arrested. On an average of two times per year, the individual would drink 12 beers over the course of a day. DOE Ex. 4 at 4. Given the duration and severity of this excessive drinking, less than six months of abstinence is not sufficient to convince me that the chances of a return to abusive drinking by the individual are acceptably small.

Two other factors lead me to conclude that there is a significant risk that the individual may drink to excess in the future. First, the individual's girlfriend drinks, and he continues to associate with friends who consume alcohol. Although the girlfriend testified about his stubbornness and resolve, I believe that a relapse by the individual would be less likely if the people with whom he associated were also abstinent. Second, there is no evidence in the record that the individual has participated in any alcohol treatment or education programs. Although the DOE psychologist did not require participation in such programs to demonstrate adequate evidence of reformation or rehabilitation, I would have more confidence in the individual's ability to abstain or to adhere to a non-abusive pattern of consumption with the support that these programs can provide. The individual has not adequately addressed the DOE's security concerns under criteria (h) and (j).

V. CONCLUSION

For the reasons set forth above, I find that significant security concerns remain regarding the individual's alcohol usage. Consequently, I cannot conclude that restoring his 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 restore the individual's 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: October 7, 2016