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June 23, 2011

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: February 10, 2011

Case Number: TSO-1004

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter "the Individual") to have his suspended access authorization restored.¹ After reviewing the testimony and evidence presented in this matter, it is my decision that the Individual's access authorization should not be restored.²

I. APPLICABLE REGULATIONS

The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." Under Part 710, if derogatory information has been received regarding an individual and a question concerning the individual's eligibility to hold an access authorization has been raised, the individual is given the opportunity to request an administrative review hearing. 10 C.F.R. § 710.21(b). At an administrative review hearing, the individual is offered the opportunity to offer evidence as to his or her fitness to hold a security clearance. The burden lies with the individual to prove that "the grant . . . of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *See* 10 C.F.R. § 710.27(a). The ultimate decision concerning eligibility is a comprehensive, common sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a).

¹ An access authorization (or 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.

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>.

II. BACKGROUND

The Individual has been a contractor employee at a DOE facility since 1975. Exhibit (Ex.) 9 at 7; Ex. 13. In June 2010, the Individual reported to the facility's local security office (LSO) that he had recently been arrested for Driving Under the Influence (DUI). Ex. 6; Ex. 11.

To resolve the issues raised by the Individual's recent arrest, the LSO conducted personnel security interviews with the Individual in July 2010 (7/10 PSI) and September 2010 (9/10 PSI). Ex. 14. Additionally, the Individual was referred to a DOE-contractor psychologist (DOE Psychologist) for a psychological evaluation. Ex. 9. Because neither the PSIs nor the psychological evaluation resolved the security concerns raised by the Individual's recent alcohol-related arrest and admitted alcohol usage, the LSO suspended the Individual's access authorization and issued a notification letter (Notification Letter) to the Individual in November 2010. Ex. 1; Ex. 2. In the Notification Letter, the Individual was informed of the suspension of his access authorization. As grounds for the suspension, the LSO informed the Individual that the DOE Psychologist had diagnosed the Individual as suffering from Alcohol Related Disorder, Not Otherwise Specified, and that this diagnosis constituted derogatory information under 10 C.F.R. § 710.8(h) and (j) (Criteria H and J).³ Additionally, the Individual's June 2010 alcohol-related arrest, the Individual's admissions in the 9/10 PSI that he had driven while intoxicated approximately once a year, and the Individual's stated intention to continue to consume alcohol and drive were cited as derogatory information under Criteria H and J.

A hearing was held in this matter. At the hearing, DOE presented testimony from the DOE Psychologist. The Individual testified on his own behalf and presented testimony from a co-worker (Co-Worker). The DOE submitted 17 exhibits for the record (Exs. 1-17). The Individual did not submit any exhibits.

III. FACTUAL FINDINGS

The facts in this case are essentially not in dispute.⁴ A brief summary is provided below.

In 2001, the LSO received information pursuant to an investigation that the Individual had been seen in an intoxicated state. An interviewee informed an Office of Personnel Management Investigator that the Individual consumed two glasses of wine on the weekends at home and that

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 pertains to information indicating 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).

⁴ At the hearing, the Individual challenged the statement in the DOE Psychologist's Report that he consumed beer two or three times a month in high school. Tr. at 25-26; Ex. 9 at 3. The DOE Psychologist testified that she was unsure where she obtained this information but noted that this information was not critical in making her diagnosis. Transcript of Hearing (Tr.) at 73. This disputed fact is also not critical with regard to my decision in this case. Consequently, I need not resolve this dispute.

when he went to a local bar, the Individual consumed 3 to 4 beers during the course of a game. Ex. 17 at 58. Additionally, the interviewee reported that the Individual became intoxicated once a month by consuming 3 to 4 “shots” of liquor along with 8 beers. Ex. 17 at 58. The interviewee further reported that, over the three or four weeks prior to the interview, she observed the Individual intoxicated twice at a local bar. Ex. 17 at 58. Consequently, the LSO conducted a personnel security interview with the Individual in April 2001 (4/01 PSI). Ex. 16. During the 4/01 PSI, the Individual stated that, on the occasions he would consume alcohol, he would consume on average two beers or a glass of wine three times a week. Ex. 16 at 10-12, 28. The Individual also admitted he was “a little cavalier” about his alcohol consumption but that as long as he was responsible he did not worry about the amount of alcohol he consumed. Ex. 16 at 18. During the 4/01 PSI, the Individual denied the interviewee accounts indicating that he had been intoxicated twice in one month. Ex. 9 at 9; *see* Ex. 17 at 58.

The Individual was arrested in June 2010 for DUI. Ex. 11. The Individual reported his arrest to the LSO several days later. Ex. 6.

Because of the Individual’s alcohol-related arrest, the LSO conducted the 7/10 PSI, at which the Individual described his consumption of alcohol as follows. The Individual consumes three or four “drinks” over a weekend three times a month during football season. Ex. 15 at 33-34. During the rest of the year, he consumes the same amount of alcohol once a month. Ex. 15 at 34-35. Additionally, the Individual consumes a couple of beers at a business meeting he attends on three out of four Tuesdays a month with his son. Ex. 15 at 35-36.

At the 9/10 PSI, the Individual generally confirmed the circumstances regarding his DUI arrest and informed the interviewer that, during the early 1990s, he consumed more alcohol than he believed was wise – sometimes up to eight alcoholic beverages at an occasion. Ex. 14 at 79-81. The Individual stated that he had driven in an intoxicated state approximately once a year for the past 40 years and that his intention was to continue to drive on occasion after consuming alcoholic beverages but only in circumstances where there was no chance that he would be operating a vehicle while intoxicated. Ex. 14 at 79-81, 86-87.

During the DOE Psychologist’s examination in October 2010, the Individual informed the DOE Psychologist that he intends to continue to consume alcohol and drive but that if he believes he has consumed too much alcohol he will ask a friend to take him home or ride a taxi. Ex. 9 at 3. The DOE Psychologist subsequently issued a report (Report) as to her psychological findings concerning the Individual. Ex. 9 at 2. In her Report, the DOE Psychologist observed that despite the alcohol-related concerns raised in the earlier 4/01 PSI, the Individual still demonstrated a “cavalier” attitude concerning his alcohol use. Ex. 9 at 9. The DOE Psychologist noted that the Individual had given differing accounts of his alcohol usage to different investigators. Ex. 9 at 9. In the 7/10 PSI, the Individual indicated that he was restricting his consumption to two beers per day yet in the 9/10 PSI the Individual admitted to having 20 ounces of margaritas on the day prior to his 9/10 PSI, an amount which would contain more alcohol than two beers. Ex. 9 at 9. The DOE Psychologist also concluded that “[i]f he is going over his limit every 2-3 months when he is out, and he continues to drive himself, as he says he always does, he likely is driving under the influence more often than he acknowledges.” Ex. 9 at 9. Given the discrepancies in the Individual’s reported frequency of intoxication and the Individual’s intention to continue to

consume alcohol and drive despite the concerns raised by the LSO in conducting the 4/01 PSI, the DOE Psychologist diagnosed the Individual as suffering from Alcohol Related Disorder, Not Otherwise Specified. Ex. 9 at 10. The DOE Psychologist also stated that adequate evidence of rehabilitation or reformation in the Individual's case would consist of abstinence for one year along with twice weekly sessions with a mental health professional for one year. Ex. 9 at 10.

IV. ANALYSIS

The Criteria H and J concerns at issue in this case primarily arise from the Individual's admitted history of past alcohol misuse and the DOE Psychologist's diagnosis of Alcohol Related Disorder. Excessive use of alcohol raises a security concern due to the heightened risk that an individual's judgment and reliability may be impaired to the point that he or she may fail to safeguard classified matter or special nuclear material. *See Personnel Security Hearing, Case No. TSO-0733 (July 13, 2009) (Criterion J case involving alcohol misuse)*. Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, and failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. "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), at Guideline G. Given the Individual's recent diagnosis of Alcohol Related Disorder and history of excessive alcohol consumption, I find the LSO had ample grounds to invoke Criteria H and J.

The Individual asserts that his recent misuse of alcohol is best characterized as isolated incidents of "poor judgment." Tr. at 26. In an attempt to resolve the derogatory information described above, he presented the testimony of his Co-Worker to establish that his work performance has been excellent and that there have been no alcohol-related work incidents. He also gave his own testimony to establish that, given his recent DUI arrest experience, he will not ever again drive while intoxicated. Tr. at 29.

In her testimony, the Co-Worker stated that she has known the Individual for 23 years. Tr. at 13. They have worked together for most of those 23 years. Tr. at 13. The Co-Worker testified that, in her years of work experience with the Individual, she has never had any doubts as to his work performance. Tr. at 12. She went on to testify that in her opinion, the Individual exercises very good judgment and is an excellent worker. Tr. at 19.

The Co-worker testified that, during the time they have worked together, she has not observed the Individual having any workplace-related issues or absences due to alcohol use. Tr. at 14. In the early 1990's, the Co-Worker would often get together with the Individual and other friends after work to consume alcohol, but in the past 10 years she has infrequently observed the Individual consume alcohol during employee going-away parties. Tr. at 15. During the early 1990's, the Co-Worker observed the Individual intoxicated on occasion. Tr. at 15-16. During the period before the Individual's DUI arrest, the Co-Worker had never been concerned with the Individual's use of alcohol. Tr. at 16.

The Co-Worker went on to testify that, after the Individual's DUI arrest, she had an opportunity to discuss the Individual's consumption of alcohol with him. Tr. at 17. From this conversation,

the Co-Worker testified she believes that the Individual's arrest was a real "eye-opener" for him and that he has learned a "lesson." Tr. at 17. The Co-Worker testified that the consequential driving restrictions arising from the Individual's DUI arrest have been difficult for the Individual. Tr. at 17.

In his testimony, the Individual explained that any discrepancies regarding his accounts of how much alcohol he consumed over various periods of his life were unintentional and were not part of an effort to deceive anyone regarding his alcohol consumption. Tr. at 24-25. While admitting that he "probably drank too much" in the early 1990's, the Individual testified that he has reduced his alcohol consumption by 15 or 20 percent. Tr. at 42. He further testified that he now will consume alcohol at "a moderate, controllable, good judgment level and frequency." Tr. at 62. He also testified as to his belief that his current "rule" for the consumption of alcohol, a "couple drink" limit, is reasonable and that he may go two or three weeks without consuming an alcoholic beverage. Tr. at 27, 29-31, 40. After he consumes two alcoholic drinks, he then consumes soft drinks or coffee. Tr. at 40.

The Individual testified that his current alcohol consumption is a couple of drinks with his son on Tuesday nights and the consumption of a couple of drinks on one other night, usually a Thursday, Friday or Saturday. Tr. at 44-45. The Individual also testified that on some Tuesday nights he will continue to drive himself home but asserts that he is "not breaking the law." Tr. at 60. The Individual testified that in the future should he have any doubt regarding whether he is impaired by alcohol, he will not drive himself but call for a ride. Tr. at 29. The Individual admitted in his testimony that if he became intoxicated, it would be on those three or four times a year he hosts parties in his house and, therefore, he would not need to drive after consuming alcohol. Tr. at 89. Further, the Individual testified that it was far from certain that he would become intoxicated during those events. Tr. at 89.

The Individual also testified that over the past four years he has driven a car in an intoxicated state approximately once a year. Tr. at 39. The Individual explains these incidents of driving while intoxicated as incidents of "bad judgment." Tr. at 30, 62. With regard to the other areas of his life, the Individual believes that he shows good judgment. Tr. at 30. He went on to testify as to his intention never to be arrested for DUI again and his consciousness of the dangers of driving after having consumed alcohol. Tr. at 30, 40-41.

With regard to participation in an alcohol treatment program, the Individual testified that he has not undertaken any treatment for his alcohol misuse because he does not believe he needs it. Tr. at 53. He further testified to his belief that his DUI arrest and the resulting one night in jail and restriction of his driving privileges for 90 days were a more effective treatment for him than would be the recommended months of counseling. Tr. at 53-54.

After listening to all of the testimony, the DOE Psychologist testified as to her examination of the Individual and the reasoning which led to her diagnosis of the Individual. With regard to the inconsistency she noted in the Report, the DOE Psychologist testified that the inconsistencies in the accounts of the Individual's consumption of alcohol are not huge and, in themselves, are not significant. She testified that her concern is that the inconsistencies reflect a lack of attention by the Individual as to his alcohol consumption and reflect the Individual's "cavalier" attitude

regarding his alcohol consumption. Tr. at 74. She testified she did not believe that the Individual was deliberately trying to deceive anyone. Tr. at 75.

The DOE Psychologist testified that, in her opinion, the Individual did not meet the diagnostic criteria for alcohol abuse or alcohol dependency. Tr. at 77. However, the Individual sometimes is not aware of his current alcohol consumption on the occasions he consumes alcohol and thus will consume more alcohol than he intended. Tr. at 77. Consequently she diagnosed the Individual as suffering from Alcohol Related Disorder, Not Otherwise Specified. Tr. at 77.

When asked if the Individual's condition had changed since her examination in October 2010, the DOE Psychologist testified that the Individual, as a result of the DUI arrest and the current hearing regarding his security clearance, is more aware of the potential problems that alcohol misuse may cause and that the Individual's attitude is "a lot less offhand." Tr. at 75-76. Nonetheless, the DOE Psychologist testified that she is still concerned about the Individual's plan to consider driving after consuming alcohol, especially given the Individual's recent DUI arrest. Tr. at 79. In this regard, the DOE Psychologist believes that the Individual has "missed the point" in that his alcohol consumption has caused problems in the past and thus the Individual is "playing with fire." Tr. at 78-79. The DOE Psychologist testified that the Individual's focus is on not consuming enough alcohol to be at risk for another arrest rather than cutting down on his actual alcohol consumption. Tr. at 80. The DOE Psychiatrist also expressed concern with the Individual's belief that getting intoxicated at home was not an issue. Tr. at 83.

The DOE Psychiatrist testified that, in her opinion, the Individual has not demonstrated adequate evidence of rehabilitation or reformation from his alcohol problem. Tr. at 84. She noted in her testimony that the Individual has not undergone any type of treatment program nor abstained from alcohol. Tr. at 84. However, because of the change in the Individual's attitude concerning his alcohol consumption, she believes adequate evidence of rehabilitation or reformation could now be demonstrated by six months of abstinence from alcohol and six months of mental health counseling. Tr. 85.

After considering all of the evidence and testimony in this matter, I find that the Individual has not resolved the security concerns raised by his recent DUI arrest, his history of alcohol misuse, and the DOE Psychologist's diagnosis of Alcohol Related Disorder. The evidence in this case indicates that the Individual has an increased sense of awareness of the hazards of driving while intoxicated. The Individual has also demonstrated that he has not had any workplace incidents caused by alcohol consumption. However, the security concern raised the Individual's past misuse of alcohol is not only with the Individual's driving while intoxicated. As discussed above, *any* excessive use of alcohol raises a security concern due to the heightened risk that an individual's judgment and reliability may be impaired to the point that he or she may fail to safeguard classified matter or special nuclear material. At the hearing, the Individual seemed not to be aware of this risk. Tr. at 62-63 ("I'm having a real problem seeing why this [past history of driving home intoxicated] jeopardizes my clearance."). When asked about the risk that he might divulge classified information when intoxicated at home the Individual answered that "[t]heoretically it's possible. . . in the times that I was drinking to excess . . . I was with people I knew . . . I was in a controlled situation." Tr. at 63. Given the Individual's limited sensitivity to the security concerns attaching to his alcohol misuse, his failure to seek any type of treatment or

counseling, and his admission that he has driven while intoxicated approximately once per year for the past 40 years, I cannot find that the security concerns have been resolved.

V. CONCLUSION

As explained above, I find that the security concerns under Criteria H and J related to the Individual's misuse of alcohol and diagnosis of Alcohol Related Disorder have not been resolved. Consequently, I cannot conclude that restoring the Individual's 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). Therefore, 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.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: June 23, 2011