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June 9, 2011

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: February 15, 2011

Case Number: TSO-1009

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization 1/ 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 in light of the relevant regulations, I have determined that the individual's access authorization should not be restored.

I. Background

The individual is employed at a Department of Energy (DOE) facility where his work requires him to have an access authorization. In September 2010, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address the individual's alcohol use. In addition to the PSI, the LSO requested the individual's medical records and recommended a psychiatric evaluation of the individual. In November 2010, a DOE consultant psychiatrist (DOE psychiatrist) conducted a forensic psychiatric examination and concluded that the individual met the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR) diagnosis for Alcohol Dependence, in Early Partial Remission, without adequate evidence of rehabilitation or reformation. The DOE psychiatrist further concluded that the individual's mental illness causes or may cause a significant defect in his judgment and reliability.

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).

In January 2011, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of three potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h), (j) and (l) (hereinafter referred to as Criteria H, J and L respectively). 2/

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the DOE Counsel called one witness, the DOE psychiatrist. The individual presented the testimony of a professional alcohol counselor. He also testified on his own behalf. The LSO submitted a number of written exhibits prior to the hearing.

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 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denial”); *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).

The individual must come forward at the hearing 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). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

2/ Criterion H relates to information that a person 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 relates to information that a person 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). Finally, Criterion L relates in relevant part to information that a person has “[e]ngaged in unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy . . .” 10 C.F.R. § 710.8(l).

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer 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 in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As stated above, the LSO cites three criteria as bases for suspending the individual's security clearance, Criteria H, J and L. To support Criterion H, the LSO relies on the DOE psychiatrist's report that the individual has been diagnosed with Alcohol Dependence which causes or may cause a significant defect in the individual's judgment and reliability. *See* DOE Exh. 1. To support Criterion J in this case, the LSO relies, *inter alia*, on a number of alcohol-related incidents, including the following: (1) during a September 2010 PSI, the individual admitted that during a five-day period in August 2010 he consumed about 10 ounces of vodka every day. He further admitted that during a 13-day period in August 2010, he failed two breathalyzer tests and consequently was terminated from his employer's Employee Assistance Program (EAP); (2) on August 11, 2010, the individual tested positive for alcohol at his employment after an employee detected an odor of alcohol on his breath; (3) from approximately 2009 to August 11, 2010, the individual consumed one pint of vodka three to seven days per week and became impaired each time. He further admitted that, during this time frame, he would consume four to six ounces of vodka prior to going to work twice per week; (4) during a September 2010 PSI, the individual admitted that from 2007 to 2009, he consumed one or two ounces of vodka three times per week, and that he has consumed alcohol habitually to excess all of his life; (5) in May 2000, another DOE psychiatrist concluded that the individual met the DSM-IV-TR criteria for Alcohol Dependence; (6) the individual completed alcohol treatment through his employer's EAP and attended Alcoholics Anonymous (AA) meetings through 2000, but despite this treatment he relapsed in December 2007 and has continued to drink through 2010; and (7) the individual was arrested and charged with Driving Under the Influence (DUI) in 1978 and 1988 as well as Abandonment or Abuse of a Child and Battery/Domestic Violence in 1986. He further admitted to driving while impaired by alcohol once per month from 1987 to 1997 and admitted that he has experienced three alcohol-related blackouts in his lifetime. *Id.*

Finally, to support Criterion L, the LSO relies on the following information regarding the individual's honesty and trustworthiness. On August 11, 2010, the individual submitted to a breath test and told a nurse he had not consumed any alcohol within the past 24 hours. He further told his employer's security that the alcohol on his breath was residual from using Listerine. However, during a September 2010 PSI, the individual admitted to consuming six to eight ounces of vodka on August 10, 2010 and six to seven ounces of vodka on August 11, 2010, prior to the breath test. He admitted that he lied because he was afraid of losing his clearance. On August 12, 2010, the individual told his employer's psychologist that his last drink was the morning of August 11, 2010, when he consumed two shots of alcohol. When challenged, the individual stated that he had

consumed two shots of alcohol on August 12, 2010. However, during a September 2010 PSI, he admitted that he actually consumed three or four shots on August 12, 2010. *Id.*

I find that the information set forth above constitutes derogatory information that raises questions about the individual's mental health under Criterion H and his alcohol use under Criterion J. The security concerns associated with Criteria H and J are as follows. First, a mental condition such as Alcohol-Related Disorder can impair a person's judgment, reliability and trustworthiness. *See* Guideline I of 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. Second, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G. In addition, the information set forth above also raises questions about the individual's judgment and reliability under Criterion L.

IV. Findings of Fact

The relevant facts in this case are uncontested. The individual has a history of excessive alcohol use since the age of 16 and has been involved in a number of alcohol-related incidents from 1978 to 1997. In 1997, the individual was diagnosed with Alcohol Dependence by multiple mental health professionals including a DOE psychiatrist. His security clearance was subsequently suspended. The individual completed an alcohol treatment program through his EAP and regularly attended AA meetings through 2000, demonstrating adequate evidence of rehabilitation and reformation. However, after about ten years of sobriety, the individual relapsed in December 2007. According to the individual, he was attending a Christmas Eve party when he had his first drink. From 2007 through 2009, the individual began consuming one to two ounces of vodka three times per week. In 2008, the individual slipped in his garage and broke his hip. He suffered constant pain as a result and believes that his alcohol consumption worsened after this accident, stating that he began to drink almost every day. The individual acknowledged that from 2007 to 2009, he consumed one or two ounces of vodka three times per week. *See* DOE Exh. 3 and 4.

On August 11, 2010, the individual tested positive in a random breath alcohol test at work after an employee detected an odor of alcohol on his breath. *Id.* A breath test registered .057. The individual admitted to consuming six to eight ounces of vodka prior to his midnight shift on August 11, 2010. He further admitted to consuming another six or seven ounces of vodka after he returned home from work at approximately 9:00 am prior to the breath test. He was subsequently terminated from his employer's EAP and was asked to submit to a subsequent fitness for duty evaluation and PSI in September 2010. *Id.*

During the PSI, the individual admitted that between August 11, 2010 and August 16, 2010, he consumed nine or ten ounces of vodka every day. He further admitted that from approximately 2009 to August 11, 2010, he consumed a pint of vodka three to seven days per week and became impaired each time. *Id.* The individual acknowledged that during this time frame he would consume four to

six ounces of vodka prior to going to work twice per week. According to the individual, he has consumed alcohol habitually to excess all of his life. When the 2010 PSI did not resolve the individual's alcohol issues, the LSO referred the individual to a DOE psychiatrist in November 2010 for a psychiatric evaluation. After examining the individual, the DOE psychiatrist concluded that the individual met the criteria for Alcohol Dependence, in Early Partial Remission. *See* DOE Exh. 4. She further concluded that the individual's illness causes or may cause a significant defect in his judgment or reliability. *Id.*

V. Analysis

I have thoroughly considered the record in 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). 3/ 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.

A. The Diagnosis of Alcohol Dependence - Criteria H and J

1. The Individual's Testimony

The individual did not dispute his diagnosis or his past alcohol-related incidents. At the hearing the individual acknowledged that he relapsed in 2007, after achieving almost ten years of sobriety. Transcript of Hearing (Tr.) at 38. He stated that he was in constant pain after he broke his hip and attributed this pain to his relapse. He testified that his relapse began in 2007 at a Christmas Eve party when he drank "moonshine" at the party. According to the individual, his drinking progressed from that point. The individual further testified that once he relapsed, he "knew he needed help [with his drinking]," but was afraid to ask for help. *Id.* at 39.

The individual testified that he has been participating in alcohol counseling sessions since the Fall of 2010, attending three sessions a week. He believes the counseling sessions have helped him to stay focused on his sobriety. *Id.* at 41. When questioned about why he did not tell the nurse the truth when called in for a breath test in August 2010, the individual could not explain his behavior other than he was feeling embarrassed and guilty. *Id.* at 38. He acknowledged that he did not tell the truth about his alcohol consumption and stated that he apologized to his employer for his behavior.

3/ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his 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.

During the hearing, the individual offered the testimony of a professional alcohol counselor who testified that he met the individual for an initial consultation in late August 2010. He testified that he sees the individual on average, about three times a week. He meets individually once a week for an hour session, and the individual attends group sessions which are about two-and-a-half hours in length. In addition, the alcohol counselor stated that the individual attends Alcoholics Anonymous (AA) occasionally, but alternatively participates in the Self Management and Recovery Training Program (SMART) on a regular basis. The alcohol counselor testified that he agreed with the DOE psychiatrist's diagnosis of Alcohol Dependence for the individual, but questioned the three-year total abstinence time suggested by her. He noted that the DSM-IV recommends twelve months of consistent abstinence to be considered in full remission. The alcohol counselor further noted that the individual's sobriety date, the date in which he stopped drinking, is September 26, 2010. He testified that although he met with the individual in August 2010 for an initial consultation, the individual struggled with abstaining for a couple of weeks until his sobriety date. *Id.* at 12.

The alcohol counselor opined that the individual relapsed for several reasons, including the fact that he was experiencing a lot of pain from arthritis, and was using alcohol for self-medication to deal with the pain. *Id.* He further testified that he believes the individual is deeply committed to alcohol treatment and stated that the individual has not exhibited any denial about his relapse and his return to alcohol. *Id.* at 15. He stated that part of his alcohol program entails working with the individual's primary care physician, who has prescribed medication to help the individual deal with depression. According to the alcohol counselor, most people who have an alcohol or drug abuse problem, struggle with some other co-occurring disorder such as anxiety or depression. *Id.* at 16. Finally, the alcohol counselor testified that the individual's prognosis is good, but guarded, and noted that the individual has not yet abstained from alcohol for a year. However, he stated that the individual's chance of relapse is low because he has internalized that alcohol will not work for him.

2. The DOE Psychiatrist's Testimony and Report

The DOE psychiatrist stated in her Psychiatric Report that the individual meets the criteria for Alcohol Dependence, in Early Partial Remission, without adequate evidence of rehabilitation or reformation. DOE Exh. 4. She further opined that the individual's illness causes a significant defect in his judgment and reliability. After listening to the testimony of all of the witnesses in this case, the DOE psychiatrist testified that nothing substantial has changed from her original diagnosis. *Id.* at 57. However, she stated some of her concerns based on the testimony at the hearing. The DOE Psychiatrist disagreed with the alcohol counselor's assessment of the individual's low risk of relapse. She noted that the DSM-IV's 12-month remission guideline is "a guideline for what is considered as full remission of someone who has alcohol or other substance dependence, and remission being the absence of any of the criteria that are required to diagnose alcohol dependence." She noted that at the time she evaluated the individual, he still had at least one active and ongoing criterion present and was still struggling with craving alcohol at the time of the evaluation. Because the individual met this criterion, the DOE psychiatrist stated that the successful maintenance of abstinence at that time was still volatile, and thus diagnosed the individual in early partial remission. After listening to the testimony, she was uncertain as to whether the individual's cravings have significantly improved. In addition, the DOE psychiatrist stated that the testimony suggests the

possibility of a dual disorder, in light of the individual's depression. She opined the individual's chronic pain needs to be addressed in a more aggressive way, such as in a pain clinic or pain management. While she did not believe the individual's relapse was triggered by his chronic pain, she believes his anxiety level was escalated or aggravated by the pain.

The DOE psychiatrist further testified that time is an important factor in rehabilitation. She testified that the individual has only been abstinent for a short period of time, noting that it is difficult to predict whether this is only a transient remission for the individual. According to the DOE psychiatrist, a longer period of sobriety (three years) is required of the individual because his alcohol dependence is on the severe end of the spectrum. She noted that the individual met all seven of the criteria when he was first diagnosed by another mental health professional, and met six of the seven criteria when she diagnosed him in November 2010. *Id.* at 63. The DOE psychiatrist reiterated that seven months of sobriety is too short a time to lower the probability of the risk of relapse. She stated that she still recommends three years of sobriety with treatment or support, such as AA, for a minimum of one year. *Id.* at 65.

3. Hearing Officer's Evaluation of the Evidence

In the administrative process, Hearing Officers accord deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing*, Case No. TSO-0728 (2009). ^{4/} Regarding rehabilitation, I gave considerable weight to the opinion of the DOE psychiatrist, who opined that the individual is not yet adequately rehabilitated. During the hearing, the individual testified that he has taken positive steps toward rehabilitation. He credibly testified that he is currently involved in an alcohol counseling program and is committed to the program. However, the individual, who testified that he has not consumed alcohol in seven months, has not yet established a sufficient pattern of abstinence. *See* Adjudicative Guideline G at 23(b). I am persuaded by the DOE psychiatrist's opinion that the individual's alcohol dependence is on the severe end of the spectrum, and thus requires a longer period of sobriety to be considered rehabilitated and reformed. Because there is compelling expert testimony that the individual needs three years of sobriety with a minimum of one year of treatment, I find that the individual has not yet provided adequate evidence to mitigate the security concerns under Criteria H and J.

B. Criterion L

With respect to the Criterion L security concerns which relate to the individual's honesty and trustworthiness, I believe these concerns are inextricably intertwined with the judgement and reliability concerns found in Criteria H and J. During the hearing, the individual did not offer any explanation, other than his guilt and embarrassment, for not telling the truth when questioned about his alcohol after an August 2010 breath test. He intentionally misrepresented the truth because he

^{4/} Decisions issued by 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>.

was afraid of the consequences of his behavior. After considering the “whole person,” I am convinced that the DOE cannot rely, at this time, on the individual’s ability to make sound judgment calls regarding the safeguarding of classified information. *See* Adjudicative Guidelines at (2)a. I therefore find that the individual has not mitigated the LSO’s concerns with this conduct.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H, J and L. 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 find that the individual has not brought forth convincing evidence to mitigate the security concerns associated with Criteria H, J and L. I therefore cannot find that restoring the individual’s access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find 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.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: June 9, 2011