

* 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: November 9, 2012)
) Case No.: PSH-12-0129
)
)
_____)

Issued: February 14, 2013

Hearing Officer Decision

Steven L. Fine, Hearing Officer:

This Decision concerns the eligibility of XXX X. XXX (hereinafter referred to as “the Individual”) to hold a security clearance 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 conclude that the Individual’s security clearance should not be restored.

I. BACKGROUND

The administrative review proceeding began when a Local Security Office (LSO) issued a Notification Letter to the Individual. *See* 10 C.F.R. § 710.21. The letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. Specifically, the LSO stated that the Individual had: (1) been diagnosed by a psychologist with Alcohol Disorder Not Otherwise Specified (Alcohol Disorder NOS), (2) “historically” used alcohol to excess, and (3) engaged in a pattern of criminal behavior which brought into question his honesty, reliability, and trustworthiness.¹

The Notification Letter further informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for a security clearance. The Individual requested a hearing, and the LSO forwarded the Individual’s request

¹ *See* 10 C.F.R. § 710.8(h), (j), and (l) (Criterion H, J, and L, respectively).

to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on November 13, 2012.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his Alcoholics Anonymous (AA) sponsor, his estranged spouse, a fellow AA participant, two treating counselors (Counselors A and B), and a DOE consultant psychologist (the DOE Psychologist). *See* Transcript of Hearing, Case No. PSH-12-0129 (hereinafter cited as “Tr.”). The LSO submitted 15 exhibits, marked as Exhibits 1 through 15, while the Individual submitted eight exhibits, marked as Exhibits A through H.

II. FINDINGS OF FACT

The Individual has a history of two alcohol-related arrests. On September 22, 2008, he was arrested for Aggravated Driving While Under the Influence of Intoxicating Liquor (DUI). After this arrest, the Individual stopped consuming alcohol, began individual counseling,² and started attending AA meetings. Approximately six months after his DUI arrest, the Individual began a temporary work assignment in another community. The Individual discontinued his individual counseling and stopped attending AA meetings. The Individual then resumed using alcohol.

On April 22, 2012, police arrested and charged the Individual with False Imprisonment (4th Degree Felony), and Interference with Telephone Communications (Misdemeanor). This arrest resulted from an incident in which the Individual consumed three 12-ounce beers and one shot of whiskey in a 30-minute period, then drove three blocks from his residence to his estranged spouse’s residence, where he grabbed her in a “bear-hug,” and used force to prevent her from telephoning the police. Following this incident, the Individual resumed attending AA, and sought individual counseling.

At the request of the LSO, the DOE Psychologist evaluated the Individual on June 29, 2012. The DOE Psychologist reviewed selected portions of the Individual’s personnel security file, administered a standardized psychological screening test to the Individual, and interviewed the Individual. After completing his evaluation of the Individual, the DOE Psychologist issued a report on July 1, 2012, in which he found that the Individual met the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revised (DSM-IV-TR) for “Alcohol-Related Disorder (NOS).”³ Exhibit 8 at 7-8. The DOE Psychologist also found that the Individual “had historically been and was a user of alcohol to excess until he began his AA participation in late April 2012.” *Id.* at 7. The DOE Psychologist further found the Individual’s Alcohol-Related Disorder (NOS) to be an illness or condition that causes, or may cause, a significant defect in the Individual’s judgment and reliability. *Id.* at 7-8. Noting that the Individual was not yet rehabilitated but “clearly committed to rehabilitation,” the DOE Psychologist opined:

² This individual counseling was provided by a psychologist (the 2008 Psychologist), who diagnosed the Individual with Alcohol Dependence. Exhibit 8 at 4.

³ A copy of this Report appears in the record as Exhibit 8.

I recommend nine additional months of continued participation in AA, and a minimum of nine additional months of participation in at least one of his counseling programs. (A full year of both is probably unnecessary.) This together with one full year of abstinence from alcohol should be adequate evidence of rehabilitation or reformation.

Id. at 7. The DOE Psychologist further opined:

[The Individual's] tendency to rationalize and deny problems, his avoidance of dealing directly with emotionally difficult challenges, and his need to camouflage weakness and appear more competent and in charge than he actually is will interfere with his treatments and contribute to an ongoing drumbeat of frustration that will, in turn, make it difficult for him to maintain abstinence. His failure to resolve his marital difficulties and his ongoing extramarital relationship will also complicate [his] commitment to abstinence.

Id. at 8.

III. STANDARD OF REVIEW

The Hearing Officer'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 or 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. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

The Individual has been arrested twice for alcohol-related offenses, first on September 22, 2008, and then on April 10, 2012. In July 2012, the DOE Psychologist diagnosed the Individual with Alcohol-Related Disorder (NOS).⁴ This information raises security concerns about the

⁴ The DOE Psychologist's Report states that the Individual “had **historically** been and was a user of alcohol to excess **until . . . April 2012.**” Exhibit 8 at 7 (emphasis supplied). This statement apparently led the LSO to conclude that the DOE Psychologist had found that the Individual had “**habitually** used alcohol to excess” and therefore the Individual's behavior had raised a security concern under 10 C.F.R. § 710.8(j) (Criterion J) (emphasis supplied). However, the DOE Psychologist's use of the term “historic” rather than “habitual,” along with the DOE

Individual under Criterion H, since the Individual's Alcohol-Related Disorder (NOS) constitutes an illness or condition that causes, or may cause, a significant defect in the Individual's judgment and reliability. Exhibit 8 at 7. 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. *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 ¶ 21. In the present case, an association exists between the Individual's consumption of alcohol and his subsequent failure to exercise good judgment and to control his impulses, as evidenced by operation of a motor vehicle on public roads and involvement in a domestic incident while in a state of intoxication.

The Individual's two alcohol-related arrests constitute criminal conduct that raises security concerns under Criterion L. "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." Adjudicative Guidelines at ¶ 15. "Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations." *Id.* at ¶ 30.

V. ANALYSIS

A. Criterion H

I find that the Individual has not mitigated the security concerns raised under Criterion H by his Alcohol-Related Disorder (NOS) and two alcohol-related arrests. The Individual does not dispute the DOE Psychologist's conclusion that he suffers from Alcohol-Related Disorder (NOS). He describes himself as an "alcoholic" and his two treating counselors, who both testified on his behalf at the hearing, diagnosed him with Alcohol Dependence. Request for Hearing at 1; Tr. at 32, 56. He has demonstrated that he recognizes that he has an alcohol problem and that he is fully engaged and committed to addressing it. To that end, he has abstained from the use of alcohol since June 2012, sought individual counseling from two counselors, and has become an active participant in two AA groups. He has obtained a sponsor, and he is actively working in the AA 12-step program. He has submitted evidence, which was corroborated by the testimony of his sponsor and a fellow AA participant, showing that he regularly attends AA meetings on an almost daily basis, in addition to meeting with his sponsor on a weekly basis. Exhibit B; Exhibit D at 3-4; Tr. at 93, 98, 108.

Two treating Counselors testified on the Individual's behalf at the hearing. The first treating Counselor (Counselor A) began seeing the Individual on a weekly basis in April 2012. Tr. at 31.

Psychologist's finding that the Individual's use of alcohol to excess ended in April 2012, indicates that that the DOE Psychologist had concluded that the Individual had been "a user of alcohol to excess." The record does not indicate that the DOE Psychologist found that the Individual's excessive alcohol use was "habitual." Accordingly, I find that the LSO has not properly invoked Criterion J in the present case. This finding, however, has no effect upon my analysis of the case, and ultimate conclusion that the Individual's security clearance should not be restored at this time.

Counselor A testified that a colleague in her practice diagnosed the Individual with Alcohol Dependence, and an Adjustment Disorder with mixed anxiety with depressed mood. *Id.* at 32. Counselor A testified that she focused on the Individual's Adjustment Disorder, because of her understanding that Counselor B was focusing upon the Individual's Alcohol Dependence issues. *Id.* at 32-33. She testified that the Individual is responding well to treatment, and characterized the Individual's prognosis as "very good." *Id.* at 36-37, 41.

The second treating Counselor (Counselor B) began seeing the Individual on a bi-weekly basis in April 2012. *Tr.* at 55. Counselor B testified that she diagnosed the Individual with Alcohol Dependence, and an Adjustment Disorder with depression and anxiety. *Id.* at 56-57. When the Individual began therapy with her, he had poor coping skills, interpersonal problems and a tumultuous relationship with his estranged spouse. *Id.* Counselor B testified that she focused on the Individual's Adjustment Disorder, because of her understanding that Counselor A was focusing upon the Individual's Alcohol Dependence issues. *Id.* at 58-60. She testified that the Individual was committed to his sobriety. *Id.* at 61. She noted that the Individual has been able to maintain his sobriety even in the face of significant stressors. *Id.* at 65. She testified that the Individual has a strong support system. *Id.* at 68. Counselor B testified that the Individual's decision to seek a divorce had enabled him to build a stronger relationship with his sons. *Id.* at 68. Counselor B testified that the Individual's Alcohol Dependence was responding to treatment and was now in full remission. *Id.* at 71, 82. She further testified that he was not likely to resume using alcohol as long as he continued to participate in AA. *Id.* at 82. Counselor B described the Individual's prognosis as "very good." *Id.* at 83. Given Counselor B's testimony that she was not treating the Individual's Alcohol Dependence, I assign little evidentiary weight to her opinions concerning the effectiveness of the Individual's alcohol treatment.

At the hearing, the DOE Psychologist observed the testimony of each of the other witnesses before he testified. The DOE Psychologist testified that he was concerned that Counselor A and Counselor B each testified that they believed that the other counselor was focusing on the Individual's alcohol issues and were therefore each focusing their respective treatment on the Individual's Adjustment Disorder, rather than treating his alcohol disorder. *Tr.* at 160. The DOE Psychologist further testified that the Individual's impending divorce from his lifelong friend was likely to complicate his path to sobriety. *Id.* at 161. To this end, the DOE Psychologist testified that "there's a moderate risk of relapse until the divorce has become final and he has recovered reasonably from the grief of the divorce." *Id.* at 168. The DOE Psychologist opined that the Individual's past history of treatment and relapse also increased his risk of relapse. *Tr.* at 162-163.

The Individual has demonstrated a commitment to achieving and maintaining his long-term sobriety, and has taken several constructive steps towards this end. However, I was convinced by the evidence in the record that the Individual has not yet shown sufficient evidence of rehabilitation. The DOE Psychologist recommended that the Individual needed to abstain from alcohol use for one year, receive one year of individual counseling,⁵ and attend AA for a period of one year. The DOE Psychologist's recommendations are supported by the evidence in the record, discussed above, showing that three treating mental health professionals (the 2008

⁵ His report does not specifically indicate whether this counseling needed to be specifically focused upon the Individual's alcohol issues or the other issues he cited in his report.

Psychologist and Counselors A and B) diagnosed the Individual with Alcohol Dependence, which under the DSM-IV-TR requires a period of one year of recovery before an individual is considered to be in “sustained full remission.” DSM-IV-TR at 196. At the time of the hearing, the Individual had only abstained from alcohol use for seven months, and had only been receiving individual counseling and participating in AA for a period of nine months. Given the evidence in the record showing that the Individual has a history of treatment and relapse, and the fact that the Individual’s counseling was not specifically addressing his alcohol disorder, I was not convinced that the Individual has received enough counseling, attended AA for a sufficient period of time, or had abstained from using alcohol for a sufficient period of time to establish reformation or rehabilitation from his alcohol disorder. Based upon the foregoing, I find that the Individual has not sufficiently mitigated the security concerns raised under Criterion H.

B. Criterion L

The Individual’s two arrests constitute criminal conduct that raises security concerns under Criterion L. “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.” Adjudicative Guidelines at ¶ 15. “Criminal activity creates doubt about a person’s judgment, reliability and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.” *Id.* at ¶ 30.

The criminal conduct cited in the Notification Letter is clearly a symptom of his alcohol disorder. Given the role that alcohol has played in the Individual’s past conduct, I find that until the concerns raised by his alcohol disorder are sufficiently resolved, those concerns about the Individual’s judgment, reliability and trustworthiness raised by his criminal conduct will also remain unresolved. Accordingly, I find that the security concerns raised under Criterion L by the Individual’s two arrests have not been resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H, and L. I find that unmitigated security concerns remain under both of these criteria. Accordingly, the Individual has not 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 not be restored at this time. The Individual 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
Hearing Officer
Office of Hearings and Appeals

Date: February 14, 2013