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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: July 29, 2013)	Case No.: PSH-13-0094
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_____)	

Issued: November 5, 2013

Hearing Officer Decision

Kimberly Jenkins-Chapman, Hearing Officer:

This Decision concerns the eligibility of xxxxxxxxxxxx (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 fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should not be restored.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. In March 2013, the individual tested positive for alcohol after submitting to a breath alcohol test at work. In April 2013, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address concerns about his alcohol use. In addition to the PSI, the LSO requested the individual’s medical records and recommended a psychological evaluation of the individual by a DOE consultant psychologist (DOE psychologist). The DOE psychologist examined the individual in May 2013 and memorialized his findings in a report (Psychological Report).

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.

According to the DOE psychologist, the individual suffers from Alcohol Dependence. The DOE psychologist further concluded that the individual's Alcohol Dependence is a mental illness that causes or may cause a significant defect in his judgment and reliability.

In June 2013, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created 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 two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j) (hereinafter referred to as Criteria H and J 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 individual presented his own testimony and that of four witnesses. The DOE Counsel called one witness, the DOE psychologist. Both the DOE and the individual presented 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 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).

B. Basis for 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 previously noted, the LSO cites two criteria as bases for suspending the individual's security clearance: Criteria H and J. To support Criterion H, the LSO relies on the diagnosis of the DOE psychologist that the individual suffers from Alcohol Dependence, and the expert's opinion that Alcohol Dependence is a mental illness that could cause a significant defect in the individual's judgment and reliability. As for Criterion J, the LSO cites the DOE psychologist's opinion and the individual's alcohol use, as well as the individual's positive breath alcohol test. *See* DOE Exh. 1.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under both Criteria H and J. First, a mental condition such as Alcohol Abuse can impair a person's judgment and 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 (Adjudicative Guidelines). 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.

IV. Findings of Fact

On March 18, 2013, the individual tested positive for alcohol at work. The test was administered at 9:30 am and the individual's breath alcohol content registered 0.30. The individual was subsequently placed on administrative leave which prompted a PSI. During his April 2013 PSI, the individual admitted to feeling impaired and under the influence of alcohol while at work on the morning of his positive alcohol test. He also admitted that in the fall of 2012, he changed from drinking beer on weekends to strictly drinking bourbon because he liked the quicker numbing effect it had on him to help him cope with life events. The individual further admitted that he had a problem with alcohol and that his wife expressed concerns about his drinking and encouraged him to seek help for his alcohol consumption. Despite his wife's concerns and his attendance in Alcoholics Anonymous (AA), the individual continued to consume a fifth of bourbon every Friday and Saturday up until March 18, 2013. DOE Exhs. 1 and 3.

Based on this information, the individual was referred to a DOE psychologist for a psychological evaluation. On May 10, 2013, the DOE psychologist evaluated the individual. In his Report, he concluded that the individual met the criteria for Alcohol Dependence in Early Full Remission, without adequate evidence of rehabilitation and reformation. The DOE psychologist further concluded that the individual's Alcohol Dependence is an illness or mental condition, which causes, or may cause, a significant defect in judgment and reliability. DOE Exh. 6.

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 and the Adjudicative Guidelines. 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

The individual does not dispute the DOE psychologist's diagnosis of Alcohol Dependence. Therefore, the focus of the analysis will be on whether the individual has demonstrated adequate evidence of rehabilitation or reformation from Alcohol Dependence.

B. Evidence of Rehabilitation and Reformation from Alcohol Dependence

During the hearing, the individual described his drinking habits prior to his positive alcohol breath test. Transcript of Hearing (Tr.) at 28. He testified that he started drinking beer every weekend, shifting to drinking a fifth of bourbon over the weekends about a year ago. According to the individual, his drinking began to increase in September 2012 when his sister, a close friend, and relative passed away. The individual testified that he again shifted his drinking habits from drinking on the weekends to drinking during the week or whenever he felt the urge. He estimated that he drank a one and one-half pints to a pint of bourbon during the week since January 2013. *Id.* at 33. The individual testified that his wife expressed her concerns about his drinking around November 2012 and asked him to see a counselor. *Id.* at 36. He stated that he refused to see a counselor at the time because he did not believe he had a problem. The individual now acknowledges that he has an alcohol problem.

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.

The individual testified about the day he tested positive for alcohol at work. According to the individual, he drank about a fifth of bourbon the night before the test and got very little sleep. He stated that this drinking incident was the “dumbest thing” he has ever done and acknowledged that his BAC registered a very high .30. *Id.* at 39. The individual also acknowledged that he has experienced tremors and shakes due to his alcohol usage. *Id.* at 42. He testified that his prior attempt at abstaining from alcohol a year ago only lasted for two months. However, the individual stated that he has been sober for the last six months since his positive alcohol test. He testified that he has entered into a recovery agreement with his employer’s Employee Assistance Program (EAP), has successfully completed an Intensive Outpatient Treatment (IOP) program and participates in AA. The individual further testified that his wife, parents and pastor provide a support network for him. Finally, the individual testified that his future intention is to abstain from alcohol.

During the hearing, the individual offered the testimony of his therapist, his AA sponsor and two close friends/colleagues. The individual’s therapist is the Clinical Director of the IOP. He testified that the individual has successfully completed his IOP in June 2013 which consisted of a 10-week, 30-session program. *Id.* at 100 and 102. He further testified that the individual is currently participating in an aftercare group which meets once a week. The therapist opined the individual has experienced a lot of grief in his life which has been a trigger to his past heavy drinking. When questioned about whether the individual has abstained from alcohol since he entered the IOP, within the past five months, the individual’s therapist testified that the individual disclosed that he had consumed one drink about two or three weeks prior to the hearing. *Id.* at 106. The individual told the therapist that he drank a Blood Mary on his back porch. According to the therapist, the individual was upfront and honest about his relapse which he believes was triggered by relationship problems. He stated that the individual told him that he had reported his relapse to his sponsor. *Id.* The therapist testified that the individual’s prognosis is fair at this point, but believes that if the individual continues with his participation in AA, his prognosis can go from fair to good. *Id.* at 106 and 107. He added that he has known the individual to be complacent in his participation in AA at times.

The individual’s AA sponsor testified that he became the individual’s sponsor two months ago. He testified that the individual regularly attends AA meetings and is working on step 4 of the AA 12-step program. The individual’s sponsor further testified that to his knowledge the individual has been abstinent for the past five months, since his positive alcohol test. He did not, however, state that the individual had disclosed to him that he had a relapse a few weeks ago. Both of the individual’s friends/colleagues testified that they had never observed the individual impaired or drinking an excessive amount of alcohol.

The DOE psychologist listened to all the testimony at the hearing before testifying himself. He testified that his overall impression is that the individual has been drinking heavily for a number of years. He believes the individual has framed his drinking as situational excessive drinking and as a response to his past grief. *Id.* at 123. However, he noted that the individual’s excessive drinking has been long-standing, consuming a heavy amount of alcohol on the weekends before he experienced his losses. *Id.* at 120 and 121. Although the DOE psychologist opined that the individual’s personal losses could serve as a trigger, he noted that the individual suffered a relapse at a time when there were no significant emotional triggers for him. *Id.* at 129.

According to the DOE psychologist, the individual's prognosis is slightly below fair for the next year. *Id.* at 128. He further opined the individual should be abstinent for one year from the date of his relapse and should continue aftercare for a year in order to be considered adequately rehabilitated. The DOE psychologist noted that, at this time, the individual has a strong vulnerability to relapsing. *Id.* at 129.

C. Hearing Officer's Evaluation of the Evidence

In the administrative process, Hearing Officers accord deference to the expert opinion of psychiatrists, psychologists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing, Case No. TSO-0728 (2009)*.⁴ At the outset, I am persuaded by the testimony of the DOE psychologist that the individual has not yet achieved adequate evidence of rehabilitation. Moreover, the Adjudicative Guidelines describe factors that could mitigate security concerns involving both psychological conditions and alcohol consumption. *See Adjudicative Guideline, Guidelines G and I, ¶ 23 and ¶ 29, respectively*. In this case, the individual has not satisfied any mitigating factors: (1) although the individual has acknowledged his alcohol dependence, he has not yet established a pattern of abstinence; (2) the individual has not yet completed required aftercare, nor has he demonstrated a clear and established pattern of abstinence in accordance with his treatment recommendations, i.e., his participation in AA meetings, and receiving a favorable prognosis by a duly qualified medical professional; and (3) the DOE psychologist has opined that the individual has a strong vulnerability to relapsing at this time. *Adjudicative Guidelines G and I, ¶ 23 (b) and (d) and ¶ 29 (c), respectively*. For these reasons, I find that the individual has not sufficiently mitigated the DOE's security concerns under Criteria H and J.

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 and J. 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 and J. 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

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>.

Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Officer of Hearings and Appeals

Date: November 5, 2013