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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
)
Filing Date: August 29, 2013)
) Case No.: PSH-13-0101
)
_____)

Issued : February 12, 2014

Hearing Officer Decision

Wade M. Boswell, Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (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 be granted.

I. Background

The individual is an applicant for a DOE security clearance in conjunction with his employment by a DOE contractor. In February 2013, the individual completed a Questionnaire for National Security Positions (QNSP) as part of his application for a DOE security clearance and, in April 2013, the Local Security Office (LSO) conducted a personnel security interview (PSI) with the individual to address, *inter alia*, information he disclosed on the QNSP with respect to alcohol consumption and treatment. *See* Exhibits 8 and 9. The PSI did not resolve concerns over the individual's history of

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.

alcohol use and, as a result, the individual was referred for a psychological evaluation by a DOE consulting psychologist, who conducted the evaluation of the individual on May 29, 2013. *See* Exhibit 6.

Since neither the PSI nor the psychological evaluation resolved the security concerns arising from the individual's alcohol usage, the LSO informed the individual in a letter dated July 30, 2013 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsections (j) (hereinafter referred to as Criterion J).² *See* Exhibit 1.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. *See* Exhibit 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO introduced nine numbered exhibits into the record and presented the testimony of one witness, the DOE consulting psychologist. The individual introduced one lettered exhibit (Exhibit A) into the record and presented the testimony of five witnesses, including that of himself and that of his wife. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.³

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 denials"); *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).

² 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).

³ OHA decisions are available on the OHA website at www.oha.doe.gov. A decision may be accessed by entering the case number in the search engine at www.oha.gov/search.htm.

The individual must come forward with evidence to convince the DOE that granting 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). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

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 eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cited one criterion as the basis for denying the individual’s security clearance: Criterion J. Criterion J refers 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(h). Excessive alcohol consumption raises a security concern because it can lead to questionable judgment and the failure to control impulses, which in turn can raise questions about a person’s reliability and trustworthiness. *See* Guideline G 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); *Personnel Security Hearing*, Case No. PSH-11-0035 (April 19, 2012). With respect to Criterion J, the LSO relied upon the report of the DOE psychologist, dated May 29, 2013, which concluded that the individual has been a user of alcohol habitually to excess, without adequate evidence of rehabilitation or reformation. Ex. 6 at 9. Additionally, the LSO noted details of the individual’s earlier patterns of alcohol consumption, his participation in a 35-day alcohol treatment program and his acknowledgment that his wife had previously expressed concerns regarding his alcohol use. *See* Ex. 1.

In light of the information available to the LSO, the LSO properly invoked Criterion J.

IV. Findings of Fact

The individual does not contest the essential accuracy of the facts cited by the LSO in the Notification Letter. Tr. at 8, 49 – 52, 65 – 66.

The individual acknowledges that he regularly consumed alcohol between 1984 and 2009. Although his daily consumption of alcohol would vary, he had two distinct patterns of alcohol consumption during this period. From 1984 to 1987, the individual typically consumed 12 beers over the course of a week, six of them on Friday nights, and became intoxicated once or twice a week and, from 1987 to 2009, the individual typically consumed two to twelve alcoholic drinks, five times each week, and became intoxicated each time he drank. *Id.* at 51 – 52; Ex. 8. at 47 – 50, 51 – 53.

In 2009, the individual was admitted to a hospital for ketoacidosis and, while hospitalized, he experienced symptoms of withdrawal from alcohol and concluded that he was an alcoholic. Tr. at 50. He decided to abstain from consuming alcohol and did so successfully for nine months without the benefit of a treatment or counseling program. *Id.* at 25, 51. Thereafter, the individual resumed consuming alcohol and, from 2010 to 2012, consumed one to two beers each day. During this period, the individual consumed six beers on three or four occasions and became intoxicated. *Id.* at 54 – 55.

In March 2012, the individual made suicidal comments after he had consumed six beers and was hospitalized for two or three days. *Id.* at 52 – 53; Ex. 8 at 25 – 26. Following his release from the hospital, he voluntarily entered and completed a 35-day in-patient alcohol treatment program. Tr. at 53 – 54, 59. Following his completion of the program, the individual drank two beers on two different occasions; however, since May 2012, the individual has consumed no alcohol. *Id.* at 57, 59.

Subsequently, the individual was approached about a job with a DOE contractor and, in June 2012, commenced such employment. The individual's decisions to enter the alcohol treatment program and to abstain from alcohol were made prior to any awareness of potential employment within the DOE complex. *Id.* at 49, 64 – 65.

The individual's employer requested that the individual be granted access authorization and, as a result of the information disclosed by the individual on his QNSP and during his PSI, the LSO referred the individual to a DOE consulting psychologist for evaluation. *See* Ex. 5. At the time of the DOE psychological evaluation, the individual had been abstinent from alcohol for 12 months. The DOE consulting psychologist concluded that the individual had "used alcohol to excess in the past," which the psychologist said could be "characterized per NIH guidelines⁴ for males as more than 14 drinks per week, or more than four drinks any one day in a month." Ex. 6 at 8. Her written report also opines that the individual meets the *Diagnostic Statistical Manual of the American Psychiatric Association IVth Edition Text Revision (DSM-IV-TR)* criteria for "Alcohol Dependence, in sustained full remission," but states that, as of the time of the evaluation, the individual "is not alcohol dependent or suffering from alcohol abuse" and does not have an illness or mental condition which causes or may cause a significant defect in judgment or reliability. *Id.* at 8 – 9.

⁴ The DOE consulting psychologist refers to the "NIH 2005 guidelines" in her written evaluation, without providing a formal citation. I have assumed that she is referring to "Helping Patients Who Drink Too Much: A Clinician's Guide," updated 2005 edition, published by the U.S. Department of Health & Human Services, National Institutes of Health, and National Institute on Alcohol Abuse and Alcoholism (NIH Guidelines).

The DOE psychologist opined that to be “considered completely reformed and rehabilitated” with respect to his prior patterns of alcohol consumption, the individual would need to abstain from consuming alcohol for one additional year – until May 2014. *Id.* at 9.

As of the hearing in November 2013, the individual had continued his abstinence from alcohol. His abstinence is reflected in improved results on his blood tests, which resulted in his primary care physician reducing the individual’s medication for diabetes. Tr. at 22 – 23, 32, 57; Ex. A. The individual intends to continue his abstinence indefinitely. Tr. at 63 – 64.

V. Analysis

I have thoroughly considered the record of 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)⁵ and the Adjudicative Guidelines. After due deliberation, I have determined that the individual’s access authorization should be granted. The specific findings that I make in support of this decision are discussed below.

A legitimate security concern arose as a result of the individual’s prior patterns of alcohol consumption and the conclusion of the DOE consulting psychologist that the individual has been a user of alcohol habitually to excess without adequate evidence of rehabilitation or reformation. *See* Ex. 1. The question before me is whether that concern has been mitigated.

Many individuals confront alcohol issues only when required to do so by the legal system or their employers. To the individual’s credit, he voluntarily entered and completed a 35-day inpatient alcohol treatment program without external compulsion. Tr. at 25 – 26. He completed his treatment program and commenced his abstinence from alcohol prior to contemplating employment within the DOE complex or the need for a DOE security clearance. *Id.* at 25, 56 – 57. He credibly testified that he had been abstinent for 18 months as of the date of the hearing and that his intent is to not consume alcohol at any time in the future. *Id.* at 57, 63 – 64. His spouse and co-workers provided corroboration of his testimony, as did his primary care physician by writing that, based upon the individual’s abstinence from alcohol and resultant improved blood tests, his diabetes medications had been lowered. *Id.* at 12 – 20, 21 – 34, 34 – 42; Ex. A.

⁵ 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's present abstinence appears more stable than his earlier attempt at abstinence. In 2009, he had attempted abstinence independent of a treatment program, with the motivation of improving his health. Tr. at 25, 56 – 57. His present abstinence was commenced following a 35-day treatment program and has been reinforced by his desire for a different relationship with his family, particularly his younger children. *Id.* at 64. His family (particularly, his wife) provide support for his abstinence. Additionally, if needed, he feels he could rely upon a 12-step group that he had attended prior to commencing his present work schedule with a DOE contractor. *Id.* at 66 – 67. His wife testified that the individual experienced difficulty early in his abstinence when they went out to establishments that they had patronized when he was drinking, but that they could now patronize and relax in those same establishments without the individual experiencing any difficulties. *Id.* at 27.

The DOE consulting psychologist's report states that the individual at the time of the psychological evaluation was not alcohol dependent or suffering from alcohol abuse. Ex. 6 at 9. Notwithstanding the psychologist's conclusion that he had been a user of alcohol habitually to excess and was, at one time, abusing alcohol, the psychologist concludes that the individual does not have an illness or mental condition which causes or may cause significant defect in judgment or reliability. *Id.* At the hearing, following the testimony of all the other witnesses, the DOE consulting psychologist testified that she continued in her belief that the individual needed to be abstinent until May 2014 in order to evidence adequate rehabilitation and reformation. Tr. at 78. The individual presented no expert testimony.

There are several aspects of the DOE consulting psychologist's report and testimony that are concerning. Her report states that the individual meets the diagnostic criteria set forth in the *DSM-IV-TR* for "Alcohol Dependence, in sustained full remission" without citing the *DSM-IV-TR* for the specific criteria upon which she based her opinion. Ex. 6 at 8. Her report also states the individual had been "abusing alcohol" in the past, without referencing the *DSM-IV-TR* and it is unclear whether her use of the term is medical or colloquial. *See Id.* at 9. At the hearing, DOE counsel asked her, with respect to the *DSM-IV-TR* diagnosis of "Alcohol Dependence, in sustained full remission" contained in her report, what diagnosis she would make for the individual under the *Diagnostic Statistical Manual of the American Psychiatric Association Fifth Edition (DSM-5)*. She responded that "it would be the same." Tr. at 74. My concern is that "Alcohol Dependence" is not a diagnosis contained in the *DSM-5*.

One of the three supporting factors listed in her report to support her conclusion that the individual needed an additional year of abstinence was that, at the time of the evaluation, "he still sometimes has an urge to go into a bar." Ex. 6. at 8. During testimony, she acknowledged that she now understood the individual to mean that when he would drive past a bar he formerly frequented he would be thinking "'Okay, that's where I used to go and, yeah, I remember pulling in there and – but I'm not doing that now,' you know, and then you just keep going." Tr. at 77. She testified that the individual's thinking about the bar as he drove past it did not have any clinical significance and that the individual never indicated that he was having any alcohol cravings. *Id.* Her testimony did not reconcile her

changed understanding of this factor with her continuing recommendation with respect to abstinence.

The psychologist testified that, at the time of her initial evaluation of the individual, she did not believe he needed any treatment beyond that treatment he had voluntarily undertaken the year before and he did not need to participate in a 12-step program as he had done immediately after completion of his in-patient treatment program. As of the time of the hearing, she believed this continued to be true and stated that she had no concerns regarding his recovery from alcohol at that time and placed his risk of relapse at “moderately low.” *Id.* at 76 – 79. She further testified that his risk of relapse upon completion of her recommended abstinence through May 2014 would also be “moderately low.” *Id.* at 82. In light of the individual having the same risk of relapse at the time of the hearing as he would upon completing the recommended additional abstinence, it is unclear from her testimony what benefit is garnered by requiring the additional abstinence.

The LSO’s security concern under Criterion J is based on the psychologist’s conclusion that the individual has been a user of alcohol habitually to excess. *See* Ex. 1. The psychologist states in her report that the individual, at the time of the evaluation, was “not alcohol dependent or suffering from alcohol abuse.” Ex. 6 at 9. In both her report and her testimony, she bases her conclusion that the individual consumed alcohol “to excess” on the fact that his consumption of alcohol was in excess of the NIH Guidelines. Tr. at 74 – 76; Ex. 6 at 8. The NIH Guidelines were developed to assist clinicians in working with clients whose drinking “causes or elevates the risk for alcohol-related problems or complicates the management of other health problems.” NIH Guidelines at 1. The focus of the NIH Guidelines is drinking that could compromise one’s health or, as the psychologist testified, “unhealthy drinking.” Tr. at 75. The focus of the security concern respecting alcohol use is alcohol consumption that can lead to the exercise of questionable judgment or the failure to control impulses and, therefore, raises concerns about an individual’s reliability and trustworthiness. Adjudicative Guidelines at Guideline G, ¶21. Although the Part 710 regulations do not define the phrase “user of alcohol habitually to excess” or require a diagnosis by a mental health professional to reach such a conclusion, caution should be exercised before the *a priori* application of standards crafted for preserving physical health to regulations promulgated to preserve national security.

The DOE psychologist testified that the individual did not need to do anything additional as part of his rehabilitation and reformation and she testified that she had no concerns about his recovery from alcohol at the time of the hearing; however, she believed he needed a longer period of abstinence than the 18 months he had as of the hearing. Tr. at 76 – 78. While Hearing Officers customarily accord deference to mental health professionals with respect to security concerns under Criterion J, the Part 710 regulations require that my decision reflect my comprehensive, common-sense judgment after consideration of all factors. *See* 10 C.F.R. § 710.7(a). Common sense requires that I not ignore the weaknesses or apparent inconsistencies in the psychological report or the psychologist’s testimony in reaching my decision. In analyzing the individual’s prior alcohol treatment and the stability of his abstinence as of the date of the hearing, I

conclude that the individual's past alcohol use does not cast doubt on his current reliability, trustworthiness or good judgment. *See* Adjudicative Guidelines at Guideline G, ¶23(a), (b) and (c). I find that the individual has resolved the Criterion J security concern.

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 Criterion 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 have found that the individual has brought forth sufficient evidence to mitigate the security concerns associated with Criterion J. Accordingly, I have determined that the individual's access authorization should be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Wade M. Boswell
Hearing Officer
Office of Hearings and Appeals

Date: February 12, 2014