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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: December 11, 2013)

Case No.: PSH-13-0134

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Issued: March 28, 2014

Decision and Order

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the individual should not be granted a security clearance at this time.²

I. BACKGROUND

The individual’s employer, a Department of Energy (DOE) contractor, requested a security clearance on the individual’s behalf. In response to that request, the local security office (LSO) conducted an investigation of the individual. During the course of that investigation, the LSO

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will also be referred to in this Decision as a security clearance.

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>.

obtained information about the individual that raised security concerns. The LSO summoned the individual for interviews with a personnel security specialist on May 21 and May 22, 2013. After these Personnel Security Interviews (PSIs) failed to resolve the concerns, the LSO referred the individual to a local psychiatrist (hereinafter referred to as “the DOE psychiatrist”) for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report based on that evaluation, and submitted it to the LSO. After reviewing that report and the rest of the individual’s personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual’s eligibility for access authorization. It informed the individual of this determination in a letter that set forth the DOE’s security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. The DOE introduced 12 exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist at the hearing. The individual introduced seven exhibits and presented the testimony of three witnesses, in addition to testifying himself.

II. THE NOTIFICATION LETTER AND THE DOE’S SECURITY CONCERNS

As indicated above, the Notification Letter includes a statement of derogatory information that the LSO concluded raises a substantial doubt as to the individual’s eligibility for a security clearance. This derogatory information pertains to paragraphs (f), (h), (j) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Under criterion (f), information is derogatory if it indicates that an individual has deliberately misrepresented, falsified, or omitted significant information from a Questionnaire for National Security Positions (QNSP), a PSI, or from written or oral statements made in response to official inquiry on a matter that is relevant to a clearance eligibility determination. In support of this criterion, the Notification Letter cites the individual’s answers on his 1998 and 1999 QNSPs indicating that he had not illegally used drugs within the last seven years or since his 16th birthday.³ However, the Letter states that during his May 2013 PSIs, he admitted that he had used marijuana two or three times between 1992 and 1994, and a horse tranquilizer in 1993 or 1994, and that he did not disclose this illegal drug usage because he thought that he would not get a clearance if he did so.

Criterion (h) pertains to information indicating that the individual has an illness or mental condition which, in the opinion of a psychiatrist causes, or may cause, a significant defect in his judgment or reliability. 10 C.F.R. § 710.8(h). Criterion (j) defines as derogatory information indicating that the individual “has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or licensed clinical psychologist as alcohol dependant or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j). As support for these criteria, the Letter cites the 2013

³ These QNSPs were executed by the individual in connection with earlier security clearances held by the individual. The first was issued pursuant to his employment with another DOE contractor and the second was issued pursuant to his military service.

diagnosis of the DOE psychiatrist that the individual suffers from Alcohol Abuse, and that this condition causes, or may cause, a significant defect in his judgment or reliability. As additional support for criterion (j), the Letter refers to the individual's May 2012 arrest for domestic assault, an event that occurred after the individual drank three beers.

Criterion (l) refers to information indicating that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of national security. Such conduct includes, but is not limited to, criminal activity. As support for the LSO's invocation of this criterion, the Letter cites the individual's illegal usages of marijuana between the years 1992 and 1994, and the following arrests and citations:

- Domestic Assault – May 2012
- Illegal Window Tint – March 1998
- Noise Ordinance – September 1997
- Fighting – August 1993
- Theft – February 1993
- Vandalism – July 1992

These circumstances adequately justify the DOE's invocation of criteria (f), (h), (j) and (l), and raise significant security concerns. Conduct involving lack of candor or dishonesty can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Mental conditions that involve the excessive consumption of alcohol, such as alcohol abuse, often lead to the exercise of questionable judgment or the failure to control impulses, and can therefore raise questions about an individual's reliability and trustworthiness. Finally, illegal activity also 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. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines E, G, I, and J.*

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, an Administrative Judge must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting or restoring a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring 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). *See Personnel Security Hearing*, Case No. VSO-0013, (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. ANALYSIS

At the hearing, the individual attempted to demonstrate, through his own testimony and that of his mother, step-father and fiancée, that he is an honest and law-abiding person who does not suffer from an alcohol use disorder. However, for the reasons set forth below, I find that this testimony and the documentary evidence submitted by the individual are not sufficient to mitigate the serious security concerns set forth in the Notification letter.

A. Criterion (f)

During the hearing, the individual admitted that he deliberately provided false information concerning his past illegal drug usage on his 1998 and 1999 QNSPs. Hearing transcript (Tr.) at 56-57. He explained that he failed to disclose this usage on his 1998 QNSP because he believed that he would not be granted a security clearance if he did so. *Id.* However, he claimed that he did not reveal his illegal drug usage on his 1999 QNSP, which he completed before joining the military, because he was advised by recruiters to omit that information, telling him that “it is a lot of extra paperwork to get a waiver to come [into the military] off using marijuana.” Tr. at 57. The individual’s fiancée testified that she believes him to be an honest and trustworthy person. Tr. at 48.

Paragraph 17(b) of the *Adjudicative Guidelines* provides that inadequate or improper advice from authorized personnel causing an omission or concealment is a potentially mitigating condition. However, given the individual’s earlier omission of this same information and other misrepresentations and inconsistencies in the individual’s statements, I am not willing to accept the individual’s explanation of the 1999 omission as true without independent supporting evidence. The individual has presented no such evidence.

There is evidence, however, that the individual has engaged in a pattern of providing false, inconsistent or misleading information to security personnel. During his May 21st PSI, the individual said that the last time that he had drunk to intoxication, approximately three weeks earlier, he consumed five beers, and the last time he drank alcohol in any amount, he had two beers. DOE Exhibit (DOE Ex.) 11 at 75, 76. During his PSI on the following day, the individual said that he drank eight beers on the last occasion that he drank to intoxication, and three or four beers the last time that he drank. DOE Ex. 10 at 3, 4. During his background investigation in

2013, he told the investigator that there was no “third party involvement on his part” during his marriage to his second wife. DOE Ex. 12 at 75. Nevertheless, during both PSIs, he admitted to having an extra-marital affair during this union. DOE Ex. 10 at 11; DOE Ex. 11 at 54. The individual also told the DOE psychiatrist during his evaluation that he had never had a hangover and had never driven after having had even one beer. Tr. at 106. However, the individual’s fiancée testified that the individual had been hung over once approximately six months before his evaluation, and that he sometimes would drive after having a beer. Tr. at 50-51. Because of these deliberate falsifications and inconsistencies, I have substantial doubts about the individual’s honesty and trustworthiness. Significant security concerns remain under criterion (f).

B. Criteria (h) and (j)

At the hearing, the individual expressed his disagreement with the DOE psychiatrist’s diagnosis of Alcohol Abuse and his finding that this condition caused, or could cause, a significant defect in the individual’s judgment or reliability. He testified that the 2012 Domestic Assault arrest is his only alcohol-related incident, that his latest liver function tests produced normal results, showing no signs of excessive alcohol use, and that he has stopped drinking completely. Tr. at 99-100. He added that he has been abstinent for approximately three and one-half months, and that it was his intention to permanently refrain from future drinking. Tr. at 101-102. The individual’s fiancée described the individual’s alcohol consumption prior to his quitting as “casual,” consisting of “just a few beers every now and then.” Tr. at 42. There was nothing about his drinking that was indicative of any alcohol disorder or that caused her any concern. *Id.*

During his evaluation, the DOE psychiatrist expressed serious concerns about the individual’s reliability and honesty, given the omissions and misrepresentations cited above, and other inconsistencies in the individual’s statements. DOE Ex. 6 at 3-4, 8-9, 11. Consequently, the DOE psychiatrist relied largely on an account of the individual’s alcohol consumption provided by his second wife to the OPM investigator during the individual’s background investigation. According to that account, the individual consumed alcohol every day, and this usage became intolerable to the second wife, which would lead to arguments during their marriage. He allegedly drank to extreme intoxication at least twice a month, and had a high tolerance due to his daily consumption of a variety of alcoholic beverages. The second wife told the investigator that she had seen the individual drink a 12-pack of beer before going to bed, without any apparent effect, and consume a gallon of lime-flavored gin over the course of “a day or two.” DOE Ex. 12 at 60. The individual disputes this account. Tr. at 76-77.

In making his diagnosis, the DOE psychiatrist applied the criteria set forth in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (Text Revision) (DSM-IV-TR)*. The *DSM-IV-TR* sets forth four criteria for Alcohol Abuse, at least one of which must be met within any 12-month period. At the hearing, the DOE psychiatrist testified that the individual met the fourth criterion, “continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance.” He specifically cited the individual’s arguments with his second wife about his drinking (which the individual denied having occurred), and the incidents leading up to the individual’s 2012 Domestic Assault arrest, before which he admittedly consumed three beers. Tr. at 112-113; DOE Ex. 11 at 10. He also testified that the individual’s drinking during his second marriage met several of the criteria

for Alcohol Dependence, including tolerance and binge drinking. Tr. at 114. Furthermore, the DOE psychiatrist stated that the individual's normal liver function test results do not necessarily mean that he is not suffering from an alcohol use disorder. He explained that elevated levels of liver enzymes are more suggestive of problem drinking than normal levels are indicative of the absence of such a problem. He added that he has "seen many alcoholics and alcohol abuse individuals who still had normal functions. . ." Tr. at 116.

Given the individual's lack of credibility, I find that the DOE psychiatrist acted reasonably in according more weight to the second wife's account than to that of the individual. Moreover, the individual has admitted that his actions on the evening of his 2012 arrest, including his forcible restraint of his then-girlfriend, were affected by his earlier consumption of alcohol. Tr. at 100. The DOE psychiatrist's diagnosis of Alcohol Abuse is adequately supported by the record in this case.

In his report, the DOE psychiatrist opined that, in order to show adequate evidence of reformation or rehabilitation from Alcohol Abuse, the individual would have to obtain counseling, document his participation in 12-step recovery meetings, and remain abstinent from all alcohol use for a period of one year. DOE Ex. 6 at 12. After observing all of the testimony during the hearing, the DOE psychiatrist concluded that the individual had not made such a showing. Tr. at 116.

I agree that the individual has not demonstrated adequate evidence of reformation or rehabilitation. There is no evidence that the individual has sought counseling, or has attended any 12-step recovery meetings. Moreover, his claimed three and one half months of sobriety fall far short of the one year period recommended by the DOE psychiatrist. Indeed, his failure to seek outside help and his testimony at the hearing lead me to believe that the individual does not believe that he suffers from any alcohol use disorder. The individual has not successfully addressed the DOE's security concerns regarding his alcohol use.

C. Criterion (l)

The individual's illegal drug usage and his six arrests or citations over a twenty year period also raise criterion (l) concerns about his ability or willingness to conform his behavior to the requirements of the law. Most of the offenses appear to have been relatively minor in nature and to have occurred while the individual was still a teenager. However, the number of incidents and the fact that the most serious of them, the Domestic Assault arrest, occurred less than two years prior to the hearing lead me to believe that valid concerns still exist regarding the individual's personal conduct. This concern is magnified by the individual's untreated alcohol use disorder. Excessive drinking can lead to impaired judgment and control, and alcohol was a contributing factor to the individual's 2012 arrest. Significant security concerns remain under criterion (l).

V. CONCLUSION

For the reasons set forth above, I find that the individual has not adequately addressed the DOE's concerns under criteria (f), (h), (j) and (l). Consequently, he has failed to convince me that

restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not grant the

individual a security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Administrative Judge
Office of Hearings and Appeals

Date: March 28, 2014