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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 19, 2013 )  
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Case No.: PSH-13-0138

Issued: March 21, 2014

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**Decision and Order**  
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Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (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.”<sup>1</sup> For the reasons set forth below, I conclude that the individual’s security clearance should not be restored at this time.<sup>2</sup>

**I. BACKGROUND**

The individual is employed by a Department of Energy (DOE) contractor and was granted a security clearance in connection with that employment. During the course of a routine re-

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<sup>1</sup>An 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.

<sup>2</sup> 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>.

investigation, the local security office (LSO) obtained information about the individual that raised security concerns. In order to obtain further information, the LSO summoned the individual for an interview with a personnel security specialist in July 2013. After this Personnel Security Interview (PSI) failed to resolve the concerns, the LSO referred the individual to a local psychologist (hereinafter referred to as “the DOE psychologist”) for an agency-sponsored evaluation. The DOE psychologist 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 her 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 10 exhibits into the record of this proceeding and presented the testimony of the DOE psychologist at the hearing. The individual presented the testimony of two witnesses, in addition testifying himself, and submitted 10 exhibits.

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

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual’s eligibility to hold a clearance. This information pertains to paragraphs (h) and (j) 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 (h), information is derogatory if it indicates that an individual has an illness or mental condition which, in the opinion of a psychiatrist or licensed clinical psychologist causes, or may cause, a significant defect in the individual’s 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 dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j). As support for these criteria, the Letter cites the diagnosis of the DOE psychologist that the individual suffers from Alcohol Dependence With Physiological Dependence, in Partial Remission, and her conclusion that this condition causes, or may cause, a significant defect in the individual’s judgment or reliability. As additional support for criterion (j), the Letter cites statements that the individual made during his PSI indicating that (i) for the last 18 years, he has consumed a six-pack of beer on most weekdays and two eighteen-packs over the course of each weekend; (ii) sometime between 2008 and 2011, his wife told him that she thought he had an alcohol problem; and (iii) that the individual will drive his vehicle on his property while under the influence of alcohol or intoxicated. The Letter also refers to the individual’s 1988 arrest for Driving While Ability Impaired, an event that occurred after the individual consumed several beers.

These circumstances adequately justify the DOE's invocation of criteria (h) and (j), and raise significant security concerns. Mental conditions that involve the excessive consumption of alcohol 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. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines G and I.*

### **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, 24 DOE ¶ 82,752 at 85,511 (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. FINDINGS OF FACT AND ANALYSIS**

#### **A. Mitigating Evidence**

At the hearing, the individual confirmed that the statements cited in the Notification Letter concerning his alcohol consumption were accurate. Hearing Transcript (Tr.) at 27-28. He further stated that since his clearance was suspended, he has reduced his consumption to anywhere from two to six beers per weekday after work and at least six beers on Saturdays. Tr. at 26, 32-33, 40-41. Although he disagreed with the DOE psychologist's diagnosis, he did not present any countervailing expert testimony, and his disagreement appeared to be based largely on the facts that he drinks at home, does not drive while intoxicated, and has not experienced any recent legal difficulties due to his alcohol use. Tr. at 29, 38, 39. He went on to testify that he should not be

considered an unacceptable security risk because he is a decorated veteran of the armed forces who has dedicated his life to public service, and because he has been very honest and forthcoming in all of his dealings with the DOE. Tr. at 23-24, 25.

The individual's friend testified that he has never been concerned about the individual's drinking, and that the individual is a good and responsible worker. Tr. at 14. The individual's wife confirmed that her husband has reduced his alcohol consumption, and stated that she has never known him to exercise poor judgment after drinking. Tr. at 50, 53.

## **B. Administrative Judge's Decision**

For the reasons set forth below, I find that the DOE psychologist's diagnosis of Alcohol Dependence with Physiological Dependence in Partial Remission is adequately supported by the record in this case. I further find that the mitigating evidence presented by the individual falls far short of adequately addressing the DOE's legitimate security concerns regarding his alcohol use.

The DOE psychologist's diagnosis was based upon her application of the criteria for Alcohol Dependence set forth in the *Diagnostic and Statistical Manual of Mental Disorders – Fourth Edition, Text Revision (DSM-IV-TR)*. The *DSM-IV-TR* sets forth seven criteria, at least three of which must manifest themselves within a twelve-month period, for a diagnosis of Alcohol Dependence. At the hearing, the DOE psychologist testified about the basis for her diagnosis. She indicated that she found four of the seven criteria to be applicable to the individual. Tr. at 57.

The first criterion found by the DOE psychologist is "tolerance," which the *DSM-IV-TR* defines as either a need for markedly increased amounts of alcohol to achieve the desired effect, or a markedly diminished effect with continued use of the same amount of alcohol. The DOE psychologist testified that the individual exhibited both of these characteristics. She explained that the estimated blood alcohol content (BAC) levels attained by the individual during the week "exceeded the level for intoxication; and then on the weekends, with the 18-packs, [his BAC] was over .20," a level that would put most people in a "stupor." Tr. at 58. "[A]nybody who can continue to function with that much alcohol in their system," as the individual apparently did, "has, by definition, reached tolerance," the DOE psychiatrist added. *Id.*

The second and third criteria, alcohol consumption in larger amounts or over a longer period of time than was intended, and important social or occupational losses due to alcohol use, are supported by the individual's statements during his PSI that he sometimes drank more than he intended during the week, and that he sometimes missed work due to being "hung over." DOE Ex. 9 at 88-90. The fourth criterion, large amounts of time spent obtaining or using alcohol, or recovering from its effects, is supported by the sheer volume of beer habitually consumed by the individual. DOE Ex. 4 at 6. The record indicates that from 1995 until the individual's security clearance was suspended in November 2013, he drank a six-pack of beer on most weekdays and two eighteen-packs every weekend. Despite the individual's practice of consuming alcohol only while at home, and his avoidance of any recent alcohol-related arrests, I find that the DOE psychiatrist's diagnosis of Alcohol Dependence clearly applies to the individual.

I also conclude that serious security concerns remain despite the mitigating information presented by the individual. *Adjudicative Guideline G* describes the potentially disqualifying and potentially mitigating conditions concerning alcohol usage. As discussed above, potentially disqualifying conditions (c) (habitual or binge consumption of alcohol to the point of impaired judgment) and (d) (diagnosis by a duly qualified medical professional of Alcohol Abuse or Alcohol Dependence) are applicable in this case. In contrast, none of the potentially mitigating conditions set forth in *Guideline G* exist with regard to the individual.

The first such condition is that “so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” *Adjudicative Guidelines*, ¶ 23(a). The individual’s excessive drinking was recent, and so frequent as to have become a routine part of the individual’s life. This potentially mitigating condition does not exist in this case.

The second potentially mitigating condition, acknowledging his alcoholism, providing evidence of actions taken to overcome this problem, and establishing a pattern of abstinence, *Adjudicative Guidelines*, ¶ 23(b), is also not applicable to the individual. As of the date of the hearing, the individual had not acknowledged his alcoholism. He testified that he disagreed with the DOE psychologist’s diagnosis, Tr. at 39, and that any “drinking problem” he had was due to the loss of his clearance, rather than to his habitual, excessive consumption of alcohol. Tr. at 39-40. He also testified that he was still drinking. Tr. at 40-41. This potentially mitigating condition does not apply to the individual.

As of the date of the hearing, the individual had not enrolled in an alcohol counseling or treatment program. Consequently, the third potentially mitigating condition, set forth at *Adjudicative Guidelines*, ¶ 23(c), is also inapplicable to the individual.<sup>3</sup>

The final potentially mitigating condition set forth in the *Adjudicative Guidelines* is successful completion of inpatient or outpatient rehabilitation along with any required aftercare, demonstration of an established pattern of abstinence in accordance with treatment recommendations, and receipt of a favorable prognosis by a duly qualified medical professional. *Adjudicative Guidelines*, ¶ 23(d). In her report, the DOE psychologist recommended that, in order to demonstrate adequate evidence of reformation or rehabilitation, the individual abstain from all alcohol use for 18 months, while undergoing alcohol treatment. As of the date of the hearing, the individual had not accomplished either of these goals. After hearing all of the testimony at the hearing, the DOE psychologist testified that she would not change any of the

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<sup>3</sup> After the hearing, in an e-mail dated March 6, 2014, the individual informed me that he had begun counseling, and he gave me permission to contact his counselor to confirm his participation, and to inquire about his progress. I did not do so, as such contact would have violated 10 C.F.R. § 710.26(a), which prohibits me from engaging in *ex parte* communications. However, even assuming that the individual has begun counseling and is making satisfactory progress, several weeks of counseling and abstinence could not adequately address the security concerns raised by almost 20 years of excessive drinking.

findings or recommendations in her report. Tr. at 54. This potentially mitigating condition also does not exist in this case.

At the hearing, the individual did express a willingness to enter into treatment, Tr. at 41-42, and I find this to be of some scant mitigating value. However, it does not adequately address the substantial security concerns raised by the individual's lengthy history of excessive drinking and the DOE psychologist's diagnosis.

## **V. CONCLUSION**

For the reasons set forth above, I find that serious security concerns remain regarding the individual's alcohol usage. Consequently, I cannot conclude 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 restore the individual's 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 21, 2014