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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: April 4, 2014)
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Case No.: PSH-14-0031

Issued: June 18, 2014

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXX (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 be granted.

I. BACKGROUND

This case involves an Individual with five Driving Under the Influence (DUI) arrests. The LSO conducted a Personnel Security Interview (PSI) of the Individual and requested that he be examined by a DOE consultant Psychologist (the Psychologist), who diagnosed him with Alcohol Abuse in accordance with the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition - Text Revision (DSM-IV-TR). Unable to resolve the derogatory information, the 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 been found to suffer from Alcohol Abuse without evidence of rehabilitation or reformation. This information comes within the purview of Criterion J.¹

¹ Specifically, the Notification Letter alleges that the Individual “has been diagnosed by . . . a licensed clinical psychologist . . . as suffering from alcohol abuse,” 10 C.F.R. § 710.8(j) (Criterion J).

The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge² 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 to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual and the Psychologist. *See* Transcript of Hearing, Case No. PSH-14-0031 (hereinafter cited as "Tr."). The LSO submitted nine exhibits, marked as Exhibits 1 through 9, while the Individual submitted seven exhibits, marked as Exhibits A through G.

II. STANDARD OF REVIEW

The Administrative Judge'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.

III. FACTUAL BACKGROUND

The Individual has a history of five DUI arrests, the most recent of which occurred on December 22, 2005. Tr. at 18. The Individual's previous DUI arrests occurred in February 1997, February 1995, August 1993, and December 1992. Tr. at 16-18. In addition, the Individual regularly consumed alcohol in 1992, 1993, 1997 and 2005, in spite of court orders to abstain from alcohol use. Tr. at 25.

At the request of the LSO, the Psychologist evaluated the Individual on November 29, 2013. Exhibit 6 at 2. The Psychologist reviewed selected portions of the Individual's personnel security file, administered a battery of standardized psychological tests to the Individual, and

² Effective October 1, 2013, the titles of attorneys in the Office of Hearings and Appeals (OHA) changed from Hearing Officer to Administrative Judge. *See* 78 Fed. Reg. 52389 (August 23, 2013). The title change was undertaken to bring OHA staff in line with the title used at other federal agencies for officials performing identical or similar adjudicatory work.

interviewed the Individual. Exhibit 6 at 2. After completing her evaluation of the Individual, the Psychologist issued a report on November 30, 2013, in which she specifically found that the Individual met the criteria for Alcohol Abuse set forth in the DSM-IV-TR. Exhibit 6 at 9-10. The Psychologist concluded that the Individual was not reformed or rehabilitated from his Alcohol Abuse. Exhibit 6 at 10. The Psychologist recommended that the Individual “attend three [Alcoholics Anonymous (AA)] meetings per week for a minimum of one year and that proof of attendance be required, . . . that [the Individual] meet with a therapist once weekly for a minimum of one year, and that proof of attendance be required.” Exhibit 6 at 10.

IV. DEROGATORY INFORMATION AND SECURITY CONCERNS

The Individual’s five alcohol-related arrests and his Alcohol Abuse diagnosis raise security concerns because his alcohol use might lead to the exercise of questionable judgment or the failure to control impulses, or negatively impact his 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) Guideline G at ¶ 21. The Adjudicative Guidelines state that: “alcohol-related incidents away from work, such as driving while under the influence, . . . ; diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse. . . ; [and] (g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence” are “conditions that could raise a security concern and may be disqualifying.” Adjudicative Guideline G at ¶ 22 (a), (d), and (g).

V. ANALYSIS

At the hearing, the Individual acknowledged that he suffers from Alcohol Abuse and has a problem with alcohol. Tr. at 33, 41. However, he notes that he has not exhibited any symptoms of his Alcohol Abuse since the end of 2005. Tr. at 12. Since that time, he has matured, and has built his life around his family (including his spouse and three sons), church, community, and career. Tr. at 12- 15. He is highly motivated to address his alcohol disorder in order to maintain the life he has built for himself. Tr. at 12-15, 41-42. He has attended AA meetings, but recently, his attendance has fallen off because he has been busy coaching. Tr. at 30. He submitted Exhibit A, which documents his attendance at five AA meetings, between December 5, 2013, and February 12, 2014. The Individual testified that he has had an AA sponsor for several years. Tr. at 36, 40. The Individual testified that he has been seeing a counselor, once every two to three weeks, since March 17, 2014. Tr. at 31-32. He submitted Exhibits E and F, which corroborate this testimony. The Individual testified that he has a strong support network. Tr. at 36.

The Individual testified that he quit drinking after his most recent DUI, in 2005. Tr. at 20. His counselor at the time recommended that he permanently abstain from alcohol use. Tr. at 28. He eventually began drinking again in 2010 or 2011, in a controlled fashion, after consultation with his spouse and family. Tr. at 21-25, 28. The Individual, however, has abstained from using alcohol since October 2013, and intends to continue abstaining. Tr. at 32, 39, 41. The Individual testified that being subjected to a DOE Personnel Security Interview “kind of opened my eyes to the fact that, . . . maybe alcohol doesn't belong in my life, you know, regardless if I can -- I feel I

can control it, minimize it or keep it under control with the family environment.” Tr. at 34. He further testified that when he looked back at his life he could see that alcohol was hindering him. Tr. at 34.

At the hearing, the Psychologist listened to the Individual’s testimony before she testified. She testified that the Individual had a history of intermittent Alcohol Abuse, with several extended periods of abstinence. Tr. at 45-46. She described the Individual as a “binge drinker.” Tr. at 46. She noted that the Individual has had no difficulty in abstaining when he chose to do so. Tr. at 46. The Psychologist testified that the Individual was “heavily engaged in a recovery community” as well as his community, his friends, and church. Tr. at 50. She believes that the Individual is “really committed to not drinking” and has “support and structure.” Tr. at 50. The Psychologist testified that the Individual’s one-on-one counseling is sufficient and appropriate. Tr. at 56. She testified that having a long term sponsor has improved the Individual’s chances of maintain sobriety. Tr. at 50. She also testified that she thought the Individual should continue attending AA meetings at least once a month, but that three meetings a week was not necessary. Tr. at 51. The Psychologist testified that she wasn’t concerned about the Individual relapsing in the next six months or a year, but was concerned about the long term. Tr. at 51. She testified that if the Individual continues in AA his prognosis is excellent. Without AA, however, she felt his prognosis would not be “so great.” Tr. at 53. She testified that the Individual has “very clear insight into the dangers” of alcohol, and that he understands the disease sufficiently. Tr. at 54-55. She testified that the Individual has “a moderate chance of relapse in the future.” Tr. at 55. The Psychologist testified that she did not see the Individual as a “big risk currently” but, as is true of anybody who has an alcohol abuse problem, she was concerned that the Individual might run into trouble in the long run if he is not sufficiently involved in a recovery community. Tr. at 56-57. The Psychologist testified that the Individual is currently “doing very well.” Tr. at 58. Finally, the Psychologist testified that she did not believe that the fact that the Individual has only abstained from alcohol use for eight rather than 12 months is significant. Tr. at 59-60.

The Adjudicative Guidelines set forth a series of conditions that can mitigate security concerns arising from Alcohol consumption. Guideline G at ¶ 23. One of the conditions set forth in Guideline G specifically provides: “the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser).” Guideline G ¶ 23(b). As the evidence set forth above shows, the Individual has acknowledged his Alcohol Abuse, has shown that he has taken several actions to address this disorder (including attendance at AA meetings, obtaining an AA sponsor, working AA’s Twelve-Step Program, attending individual counseling,) and has established an eight month pattern of abstaining from alcohol use. Accordingly, I find that the Individual has resolved the security concerns raised by his Alcohol Abuse under Criterion J.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criterion J. I find, however, that the Individual has sufficiently mitigated the security concerns under Criterion J. Accordingly, the Individual has demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest.

Therefore, I find that the Individual's security clearance should be granted at this time. The DOE 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
Administrative Judge
Office of Hearings and Appeals

Date: June 18, 2014