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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 25, 2014) Case No.: PSH-14-0043
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Issued: September 23, 2014

Administrative Judge Decision

Kimberly Jenkins-Chapman, Administrative Judge:

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 restored.

I. Background

The individual is employed by a DOE contractor in a position that requires her to hold a DOE security clearance. In November 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 her 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 January 2014 and memorialized her findings in a report (Psychological Report). According to the DOE psychologist, the individual suffers from Alcohol Abuse. The DOE psychologist

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.

further concluded that the individual has not yet demonstrated adequate evidence of rehabilitation or reformation.

In March 2014, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created substantial doubt regarding her 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 one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (j) (hereinafter referred to as Criterion J).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 Administrative Judge in this case. At the hearing that I convened, the individual presented her own testimony and that of four witnesses. The DOE Counsel called one witness, the DOE psychologist. Both the LSO and the individual submitted 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 her 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 her 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.

B. Basis for Administrative Judge's Decision

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).

In personnel security cases arising under Part 710, it is my role as the Administrative Judge 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 one criterion as a basis for suspending the individual's security clearance: Criterion J. To support Criterion J, the LSO cites the DOE psychologist's opinion that the individual suffers from Alcohol Abuse, as well as her history of alcohol use. *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 Criterion J. 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* 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).

IV. Findings of Fact

According to the individual, her alcohol use became problematic in 2011 after her father had a stroke. DOE Exh. 3. It was at this time that she began experiencing severe anxiety. During her November 2013 PSI, the individual admitted that from 2011 to October 2012, she consumed alcohol in order to self-medicate, cope with stress, and numb her emotions. DOE Exh. 1. She further admitted that she went to work with a hangover once or twice per week and missed work due to having a hangover two times a month. *Id.* On August 25, 2012, the individual admitted that she consumed two vodka tonic mix drinks, consuming her last drink around midnight. *Id.* She stated that on August 26, 2012, she was called into work around 4:00 am. *Id.* While driving to work, she became disoriented and had to pull off the road. The individual was transported to the hospital where the doctor informed her that she had a blood alcohol level of .30. DOE Exh. 3. The individual also admitted that she has gone to work smelling of alcohol and further that she consumed one glass of wine about an hour and a half prior to her clearance suspension meeting. *Id.*

On September 13, 2013, the individual's supervisor reported to DOE that she smelled of alcohol at work on September 10, 2013, during a 6:00 am weekly meeting; on September 3, 2013, when he made a no-notice visit to administer a letter of warning; and in November 2012, during a deployment. In October 2013, the individual was hospitalized with a swollen pancreas and gall bladder, and significantly high liver enzymes. According to the individual, in January 2013, she attempted to wean herself off alcohol and alleviate her stomach pain by switching from hard alcohol to wine. *Id.*

Based on this information, the individual was referred to the DOE psychologist for an evaluation. On January 10, 2014, the DOE psychologist evaluated the individual. In her Report, she concluded that the individual met the Diagnostic and Statistical Manual of Mental Disorders, IVth Edition TR (DSM-IV-TR) criteria for Alcohol Abuse. DOE Exh. 4.

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 be restored. Based on the facts in this record, I 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. Evidence of Rehabilitation and Reformation from Alcohol Abuse

During the hearing, the individual did not dispute any of the security concerns outlined in the Notification Letter; nor did she disagree with the information set forth in the DOE psychologist's Report. Rather, the individual readily acknowledged her alcohol problem and described a number of factors in her life that led to her alcohol abuse. Transcript of Hearing (Tr.) at 53. She testified that beginning in 2011, she experienced a great deal of trauma in her life, including her father suffering from multiple strokes, her step-mother's unexpected death and her troubled teenage son. *Id.* In addition, the individual testified that she was very ill during this time period as she had significant, undiagnosed hormonal problems. *Id.* She asserted that this series of events led to a "perfect storm" in her life and she began to drink alcohol as a coping mechanism. *Id.* at 54. The individual acknowledges that she did not have the coping skills to deal with her various stressors at the time. *Id.* She testified that she realized she needed help with her drinking problem and voluntarily sought help from a therapist. *Id.* The individual further testified that she has attended therapy sessions and Alcoholics Anonymous meetings on a weekly basis since the beginning of October 2013, and asserts that she consumed her last drink on October 15, 2013. *Id.* at 52 and 56. According to the individual, she has learned a great deal from the recovery process, including coping skills and an understanding of how to create boundaries. She also testified that she has a strong support system, including her therapist, her husband, her father and friends. Finally, the individual testified that her future intention is to completely abstain from alcohol. *Id.* at 56.

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.

During the hearing, the individual also offered the testimony of her therapist, supervisor, co-worker and former team captain. The individual's therapist, who is a licensed psychotherapist and has an extensive background in substance abuse, marriage and family counseling and anxiety disorders, testified that he has been working with the individual since October 2013. *Id.* at 37. The therapist stated that the focus of the individual's therapy was to help the individual abstain from alcohol, recover from her grief, and to deal with panic attacks. *Id.* at 37. He opined that the individual turned to alcohol as way of escaping her anxiety and grief. *Id.* at 38. The therapist testified that he assisted the individual in engaging in activities that would support her recovery, including 12-Step work, stress management skills and extending her support network. *Id.* at 39. Based on his observations, he believes individual has resolved her alcohol and anxiety issues and has a strong conviction to remain abstinent. *Id.* at 41. The therapist further believes that the individual has a good prognosis going forward.⁴ *Id.*

The DOE psychologist listened to all the testimony at the hearing before testifying herself. She testified that after evaluating the individual in January 2014, she recommended that the individual abstain from alcohol for approximately three months in order to be more secure in her sobriety. *Id.* at 69. Based on the hearing testimony, she believes the individual has met her criteria and has now provided adequate evidence of rehabilitation and reformation. The DOE psychologist testified that the individual has demonstrated that she is deeply engaged in the process of being well. She noted that the individual has a good support network and has found a way to be engaged and excited about her career. *Id.* at 72. The DOE psychologist opined that the individual's prognosis is very good for remaining alcohol free. She stated that the individual is at a lower risk of relapse because she has a heightened awareness of the role alcohol has played in her life. *Id.* at 73. Although she did not want to minimize the individual's alcohol problem, she believes the individual's risk of relapse is low because alcohol was not the driving force behind the individual's problems, but rather the result of other problems where she was vulnerable. She reiterated that the individual used alcohol as a way to manage her stress. *Id.* at 74.

B. Administrative Judge's Evaluation of the Evidence

In the administrative process, Administrative Judges 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).*⁵ At the outset, I am persuaded by the testimony of the DOE psychologist that the individual has achieved adequate evidence of rehabilitation. Moreover, the Adjudicative Guidelines describe factors that could mitigate security concerns involving alcohol consumption. *See Adjudicative Guideline, Guidelines G.* In this case, the individual has satisfied the following mitigating factors: (1) the individual has acknowledged her alcohol problem, provided evidence of actions taken to address her problem and has established a pattern of responsible use; (2) the individual has successfully

⁴ The individual's supervisor, co-worker and former team leader, all who have both known the individual for over 10 years, testified that they have never observed the individual impaired at work. *Id.* at 13, 21 and 30.

⁵ 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>.

completed outpatient counseling, has demonstrated a clear and established pattern of abstinence in accordance with her treatment recommendations, i.e., her participation in therapy, and has received a favorable prognosis by a duly qualified medical professional; and (3) the DOE psychologist has opined that the individual's condition has a low probability of recurrence and that she has a very good prognosis. *Id.* For these reasons, I find that the individual has adequately mitigated the DOE's security concerns under Criterion J.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised 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 find that the individual has brought forth convincing evidence to substantially mitigate the security concerns associated with Criterion J. I therefore 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 be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Administrative Judge
Officer of Hearings and Appeals

Date: September 23, 2014