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

In the Matter of: Personnel Security Hearing)

Filing Date: June 9, 2014)

Case No.: PSH-14-0062

_____)

Issued: September 16, 2014

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXX X. XXX (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 not be granted.

I. BACKGROUND

This administrative review proceeding began when a Local Security Office (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 diagnosed by a psychologist with Alcohol Abuse.

The Notification Letter further informed the Individual that he was entitled to a hearing before an Administrative Judge 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 OHA. The Director of OHA appointed me as the Administrative Judge in this matter on June 9, 2014.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his mother, and a DOE consultant psychologist (the Psychologist). *See* Transcript of Hearing, Case No. PSH-14-0062 (hereinafter cited as “Tr.”). The LSO submitted ten exhibits, marked as Exhibits 1 through 10, while the Individual submitted no exhibits.

II. FINDINGS OF FACT

The Individual has a history of two alcohol-related arrests. On November 5, 1993, he was charged with Simple Assault, and in April 2000, he was charged with Disturbing the Peace.

The LSO conducted a Personnel Security Interview (PSI) of the Individual on September 17, 2013. Exhibit 8 at 1. During this PSI, the Individual reported that his first arrest resulted from a “domestic dispute” and occurred after he had been drinking. Exhibit 8 at 18, 20. He reported that he could not recall the incident because he had blacked out. Exhibit 8 at 22-23; Tr. at 28. The Individual reported that his second arrest occurred in 2000, after he had been drinking as well. Exhibit 8 at 23. He recalled that the arresting officers found him sleeping naked on a public beach. Exhibit 8 at 23-24. When the Individual was asked about his current alcohol consumption, he reported that he typically consumed three alcoholic beverages a day on Friday, Saturday, and Sunday. Exhibit 8 at 32. He further stated that he “could go through a 12-pack of beer on a weekend.” Exhibit 8 at 33. He stated that he would sometimes drink Jim Beam and Coke instead of beer, and that he would typically consume seven and a half ounces (or five standard drinks) of Jim Beam on those occasions. Exhibit 8 at 33-35. He further reported that he would typically consume a 750ml bottle of Jim Beam over a weekend. Exhibit 8 at 36-37. The Individual claimed that he is rarely intoxicated. Exhibit 8 at 43. He estimated that it would take four mixed drinks or eight beers to intoxicate him. Exhibit 8 at 44-45. The Individual claimed that he had begun to reduce his alcohol consumption in the recent months. Exhibit 8 at 45. He stated that his future intention towards alcohol is to reduce his use of it. Exhibit 8 at 53.

At the request of the LSO, the Psychologist evaluated the Individual on November 5, 2013. Exhibit 10 at 1. In addition to conducting a forensic psychological interview of the Individual, the Psychologist reviewed the Individual’s personnel security file and administered several psychological tests to the Individual. After completing his evaluation of the Individual, the Psychologist issued a report (the Psychological Report), in which he found that the Individual has a mental condition, Alcohol Abuse which causes, or may cause, a significant defect in judgment or reliability. Exhibit 10 at 4-5. The Psychological Report states that the Individual informed the Psychologist that he consumes eight to nine beers or a 750 ml bottle of Jim Beam over a typical weekend. Exhibit 10 at 3. The Psychologist found the Individual to be “remarkably forthcoming.” Exhibit 10 at 4. However, the Psychologist further opined that the Individual “has failed to comprehend the real effects of his binge drinking” and “appears to lack basic information about the behavioral and health issues associated with his current report of binge drinking.” Exhibit 10 at 4. The Psychologist stated that the Individual needs treatment by “an experienced private practice clinician,” to “help him develop a rational approach to his alcohol use as well as learn about approaches to his drinking such as harm reduction and relapse prevention.” Exhibit 10 at 4.

III. 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 and 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.

IV. DEROGATORY INFORMATION AND ASSOCIATED SECURITY CONCERNS

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's 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. Furthermore, the Psychologist diagnosed the Individual with Alcohol Abuse. This information raises security concerns about the Individual under Criterion H, since the Individual's Alcohol Abuse constitutes an illness or condition that causes, or may cause, a significant defect in the Individual's judgment and reliability. Adjudicative Guidelines I at ¶ 27 and G at ¶ 21, 22(e).

V. ANALYSIS

I find that the Individual has not adequately mitigated the security concerns raised under Criteria H and J.

At the hearing, the Individual testified that he typically consumed less than a 12-pack of beer over a typical weekend. Tr. at 12. He testified that he did not volunteer that he would consume a 12-pack over a weekend, instead the Personnel Security Specialist suggested that amount. Tr. at 12. He admitted that when he drank mixed drinks, he would consume a 750ml bottle of Jim Beam whiskey over a weekend. Tr. at 13-14. The Individual emphasized that he did not consume beer and a 750ml bottle of Jim Beam whiskey over the same weekend, but rather would consume one or the other. Tr. at 25. The Individual testified that he has never received treatment for alcoholism or alcohol abuse. Tr. at 17. He testified that, until he received the Psychologist's Report, he did not believe his alcohol consumption was excessive, and was not

concerned about his drinking until he read the Psychologist's Report and the Notification Letter. Tr. at 26. However, once he received the Notification Letter, he reduced his alcohol consumption, "considerably," and described his present use of alcohol as "carefully controlled." Tr. at 26, 32, 36. He has reduced his consumption of alcohol to a six-pack of beer or a pint or half-pint of whiskey over a weekend. He drinks three out of four weekends a month. Tr. at 14-15, 22. The Individual testified that he never drinks to intoxication. Tr. at 15. The Individual testified that he does not believe that he has a problem with alcohol. Tr. at 34.

At the hearing, the Psychologist listened to the testimony of the other witnesses before he testified. The Psychologist testified that nothing he had heard at the hearing had changed his opinion that the Individual suffers from Alcohol Abuse. Tr. at 57. The Psychologist testified that that Individual appeared to be unusually forthcoming and sincere. Tr. at 58, 61-62. The Psychologist testified that the quantities of alcohol that the Individual reported consuming should have raised his blood alcohol level "in the range of well over point one, pushing up into point two blood alcohol."¹ Tr. at 59. The Psychologist noted that the Individual's testimony that he wasn't becoming intoxicated when consuming such large amounts of alcohol reveals the Individual's significant lack of insight into his relationship with alcohol and shows that he is in denial about his alcohol problem. Tr. at 60. The Psychologist testified that the Individual is a binge drinker and needs to work with a certified alcohol instructor to understand his drinking and its consequences. Tr. at 60-61, 66. The Psychologist testified that while the amounts of alcohol that the Individual has reported are "enormously problematic from a medical and substance abuse standpoint," it is likely that the Individual would respond well to treatment. Tr. at 62. However, the Psychologist is concerned that, without proper treatment, the Individual will return to problematic drinking. Tr. at 63-67.

After carefully considering all the evidence, I find that the Individual has not shown that the Psychologist's conclusion that he suffers from Alcohol Abuse is in error, and I find that the Psychologist's opinion to be well supported in the record, and by his convincing testimony at the hearing. Moreover, as the Psychologist has opined, the Individual has not received sufficient treatment, developed sufficient insight into his Alcohol Abuse, or shown that he can consume alcohol responsibly for a sufficient period of time, to establish reformation or rehabilitation from his Alcohol Abuse. Nor has the Individual shown that he has met any of the mitigating criteria set forth in Adjudicative Guideline G at ¶ 23, or Adjudicative Guideline I at ¶ 29. Based upon the foregoing, I find that the Individual has not sufficiently mitigated the security concerns raised by his Alcohol Abuse under Criteria H or J. The Individual has offered no expert testimony to the contrary.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H and J. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has not mitigated the Criteria H and J security concerns. Accordingly, the Individual has not demonstrated that granting him a security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the

¹ This blood alcohol level would have produced profound intoxication in most people. See <http://www.nhtsa.gov/links/sid/ABCsBACWeb/page2.htm>.

Individual's security clearance should not be granted at this time. The Individual 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: September 16, 2014