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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: September 5, 2014)
) Case No.: PSH-14-0084
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Issued: November 21, 2014

Administrative Judge Decision

William M. Schwartz, 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 discussed below, after carefully considering the record before me in light of the relevant regulations and the Adjudicative Guidelines, I have determined that the individual’s access authorization should not be restored at this time.

I. Background

The individual works for a DOE contractor in a position that requires that he hold a DOE security clearance. Investigation into the individual’s history of alcohol consumption and recent alcohol-related arrest raised security concerns in the opinion of the Local Security Office (LSO). The LSO conducted a Personnel Security Interview (PSI) with the individual on February 11, 2014, and had the individual evaluated by a DOE consultant psychologist (DOE psychologist). On July 31, 2014, the LSO sent a letter (Notification Letter) to the individual advising her that it had reliable information that created a substantial doubt regarding her eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the

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.

purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j) (hereinafter referred to as Criteria H and J, respectively).²

Upon her receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations by requesting an administrative review hearing, and I was appointed the Administrative Judge in the case. At the hearing that I conducted, the individual presented her own testimony and that of two other witnesses, and the LSO presented the testimony of one witness, the DOE psychologist who had evaluated the individual. In addition to the testimonial evidence, the LSO submitted 15 numbered exhibits into the record, and the individual submitted one exhibit, documentation of her attendance at a Victim Impact Panel program sponsored by Mothers Against Drunk Driving. The LSO's exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.

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 denials"); *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 his 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 his 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 evidence 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.

² Criterion H concerns information that a person suffers from "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). 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).

B. Basis for the Administrative Judge's Decision

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 eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As support for its security concerns under Criteria H and J, the LSO relies on the opinion of the DOE psychologist, who determined that the individual suffers from Alcohol Abuse and Alcohol Use Disorder, which, in her opinion, cause or may cause significant defects in the individual's judgment and reliability. In addition, the LSO cites a 2014 arrest for Driving Under the Influence (DUI) and the individual's statements regarding her pattern of alcohol consumption from 2009 through the date of her 2014 arrest. Ex. 1.

I find that there is ample information in the Notification Letter to support the LSO's reliance on Criteria H and J. The excessive consumption of alcohol 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 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) at Guideline G.

IV. Findings of Fact

The individual reported during her February 11, 2014, PSI that, from 2009 to the middle of 2013, she consumed three to four 14- to 16-ounce beers in two to three hours, or one to two mixed drinks in an hour, once a week or once every other week. Ex. 14 at 73-75. From late 2013 through the date of her DUI arrest, January 17, 2014, her consumption increased to roughly five to six 14-ounce beers or three mixed drinks in three to four hours, twice a week. *Id.* at 80-82. At her psychological evaluation, she described her alcohol consumption since the arrest as two to three glasses of wine or three to four beers in a 16-ounce mug, roughly once every two weeks. Ex. 7 at 4. These amounts are less than what the individual believes will render her "buzzed" or intoxicated. *Id.*

The DOE psychologist evaluated the individual in April 2014. She determined that the individual met the criteria for Alcohol Abuse as set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association*, Fourth Edition Text Revised (DSM-IV-TR) and Alcohol Use Disorder as set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association*, Fifth Edition (DSM-5). *Id.* at 12. She reached this diagnosis after considering the individual's reported history of alcohol use, her family's history of alcohol, drug, and emotional problems, the results of three psychological tests,

and other information she gathered for her evaluation. She further observed that the individual did not believe her alcohol use was a problem and had not sought any help for it. *Id.* As adequate evidence of rehabilitation or reformation from this alcohol condition, the DOE psychologist recommended that the individual: (1) abstain from alcohol for at least six months with random blood alcohol testing; (2) attend a Victim Impact Panel and DUI education; and (3) participate in at least six months of psychological counseling that included a strong alcohol education component as well as support for her exploration of her feelings about her divorce and other transitions. *Id.* at 13. The DOE psychologist concluded that the individual has an illness or mental condition that causes or may cause a significant defect in judgment or reliability. *Id.*

At the hearing, the individual testified that her alcohol consumption increased in late 2013 because she and her then-husband were splitting up and she was going out to drink more often, generally with her girlfriends. Tr. at 49. She stated that the DUI arrest terrified her. The Victim Impact Panel she attended impressed on her that she could have killed someone and inalterably affected the lives of many when she was driving while intoxicated. *Id.* at 44. The individual has not driven after drinking any alcohol since the April 2014 psychological evaluation. Tr. at 55. In the three months preceding the hearing, the individual consumed alcohol on four occasions, spaced weeks or more apart. On those occasions, she drank no more than “two or three beers” or one mixed drink. *Id.* at 35-36. She has not been “buzzed” or intoxicated since her psychological evaluation in April 2014. *Id.* at 56.

The individual further testified that she still did not consider that she had a problem with alcohol, even during that period of heavier consumption, because she was arrested only once, and her high consumption levels were a reaction to her high stress levels at the time. *Id.* She considered what happened on the night of the arrest a “mistake.” *Id.* at 13. While she admitted that she abused alcohol on that occasion and on her birthday in 2013, she did not believe she had a drinking problem, because she has controlled her drinking since then and her drinking has never affected her daily life. *Id.* at 52-53. Although she saw the DOE psychologist’s report in July 2014, and understood her recommendations regarding abstinence and counseling, the individual did not follow them because she felt she did not have an alcohol problem. *Id.* at 41. She did, however, meet with a counselor shortly before the hearing who, on the basis of the individual’s self-report of her current drinking habits, told the individual “she did not think I needed to make an appointment with her.” *Id.* at 38. She admitted that the counselor had not seen the DOE psychologist’s evaluation or any information about her arrest or the LSO’s concerns. *Id.* at 42. She stated that her intention was to consume no more than two or three drinks on each occasion, no more often than once or twice a month. *Id.* at 60. She considered her support group to include her housemate, her brother, her sister, her father, her ex-husband, and other friends. *Id.* at 59.

In her testimony at the hearing, the DOE psychologist maintained her opinion that the individual suffers from Alcohol Abuse and Alcohol Use Disorder. She explained that, despite the individual’s belief that her alcohol consumption was not a problem, her professional opinion was that it was in fact a problem. *Id.* at 64. The DOE psychologist acknowledged that the individual’s pattern of alcohol consumption had clearly changed since her arrest, and that her stated intention to continue drinking in a limited, controlled

manner and her support system were both important. *Id.* at 65-66. Nevertheless, the DOE psychologist stated that she did not find adequate evidence of the individual's rehabilitation or reformation with regard to her alcohol disorder. *Id.* at 64. While recognizing that the individual's changes were very positive, she felt that the individual lacked "the benefit of a whole set of tools that helps ensure that these changes can be sustained." *Id.* at 65. These tools are acquired through counseling, and include learning about the effects of alcohol on the human body and learning to recognize triggers for drinking more heavily again. *Id.* at 65-66. Counseling would lead to gaining deeper insight into alcohol use, and understanding how it developed into a problem, and how to withstand future stresses that may lead again to unhealthy drinking. *Id.* at 66-67. To demonstrate adequate evidence of rehabilitation, the DOE psychologist testified, the individual would need to engage in counseling with a strong alcohol use component. Because the individual is now drinking less alcohol, the DOE psychologist would not require abstinence, but would leave that decision up to the therapist. *Id.* at 67-69. If the individual chose not to engage in counseling, she could demonstrate adequate evidence of reformation by abstaining from alcohol for 12 months. *Id.* at 75. The DOE psychologist testified that, in her opinion, the individual was at moderate risk for relapse: not high, because she has reduced her alcohol consumption significantly, she has expressed a strong intention to control her drinking, and her disorder is mild; but not low either, because she has not obtained alcohol education, she has not engaged in counseling, and, through no fault of her own, her family includes members with histories of alcohol and drug abuse. *Id.* at 76-78.

V. Analysis

I have thoroughly considered the record of 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) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot 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.

The individual has maintained a pattern of significant alcohol consumption for at least five years. Until her DUI arrest in early 2014, she regarded her consumption as normal behavior, despite frequent intoxication, and less frequent, but still significant, episodes of driving while intoxicated. That arrest, and the Victim Impact Panel she recently attended, convinced her that she should reduce her alcohol intake and never drive after drinking even small amounts of alcohol. As of the time of the hearing, however, she still held the opinion that her pattern of alcohol consumption was not a problem that needed to be addressed. Consequently, she did not comply with the DOE psychologist's recommendations to abstain from alcohol and engage in counseling that focused on alcohol use. In the absence of such steps, the DOE psychologist stated that the individual would need to be abstinent for a full year to demonstrate adequate evidence of reformation from her alcohol disorder. I am therefore convinced that, despite her efforts, it is too soon to conclude that the individual has resolved her alcohol problem, as the

DOE psychologist estimated the individual's likelihood of relapse as of the hearing as moderate. I have taken into consideration the mitigation factors listed in Guideline G of the Adjudicative Guidelines, and find only one in her favor: responsible use of alcohol. Adjudicative Guidelines at Guideline G, ¶ 23(b). Despite this favorable factor, and after considering all the testimony and written evidence in the record, I am not convinced that the individual has resolved the LSO's security concerns that arise from her alcohol use.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H and 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 have found that the individual has not brought forth sufficient evidence to mitigate the security concerns associated with these criteria. I therefore cannot find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored at this time. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Administrative Judge
Office of Hearings and Appeals

Date: November 21, 2014