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

In the Matter of: Personnel Security Hearing)

Filing Date: February 25, 2015)

_____)

Case No.: PSH-15-0009

Issued: July 9, 2015

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXX X. XXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should be restored at this time.²

I. BACKGROUND

On August 14, 2014, police arrested the Individual and charged him with Driving While Intoxicated (DWI), Open Container, Careless Driving, and Leaving the Scene of an Accident. In order to address those concerns, the LSO Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the Individual on September 23, 2014, and sponsored a forensic psychiatric examination of the Individual which occurred on November 13, 2014. Because the PSI and forensic psychiatric examination did not resolve these concerns, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him 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. *See* 10 C.F.R. § 710.21. The Individual requested a hearing and the LSO forwarded the Individual’s request to

¹ 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.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.doe.gov/OHA>.

the OHA. The Director of OHA appointed me as the Administrative Judge in this matter on February 26, 2015.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the Individual, his shop steward, his spouse, his father, his sister-in-law, his counselor (the Counselor), and a DOE consultant psychiatrist (the Psychiatrist). *See* Transcript of Hearing, Case No. PSH-15-0009 (hereinafter cited as “Tr.”). The LSO submitted nine exhibits, marked as Exhibits 1 through 9, while the Individual submitted 16 exhibits, which are marked as Exhibits A through P.

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

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. That information pertains to paragraphs (h), (j), and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion H refers to information indicating that the Individual has: “An 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). Specifically, the Notification Letter alleges that the Individual has been diagnosed by a psychologist³ with Adjustment Disorder with Mixed Anxiety and Depressed Mood (under the American Psychiatric Association’s Diagnostic and Statistical Manual-Fifth Edition, DSM-5), and Alcohol Abuse in Early Full Remission (under the American Psychiatric Association’s Diagnostic and Statistical Manual-Fourth Edition Text Revision, DSM-IV-TR). These circumstances adequately justify the DOE’s invocation of Criterion H, and raise significant security concerns. 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) state that an opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, reliability, or trustworthiness, raises a security concern under Adjudicative Guideline I at ¶¶ 27 and 28(b).

Criterion J refers to information indicating that the Individual has: “Been, 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(l). Specifically, the Notification Letter alleges that the Individual has been diagnosed by the Psychiatrist with Alcohol Abuse after incurring three alcohol-related arrests. These circumstances adequately justify the DOE’s invocation of Criterion J, and raise significant 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.” Adjudicative Guideline G at ¶ 21. “Conditions that could raise a security concern and may be disqualifying include: . . . alcohol-related incidents away from work, such as driving while under the influence, . . . or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent, [and] (d) diagnosis by a duly qualified medical

³ The DOE expert identified as a psychologist in the notification letter is actually a psychiatrist.

professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.” Adjudicative Guideline G at ¶ 22(a) and (d).

Criterion L refers to information indicating that the Individual has: “Engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.” 10 C.F.R. § 710.8(l). Specifically, the Notification Letter, citing the Individual’s three-alcohol related arrests, alleges that the Individual has exhibited a pattern of criminal conduct. “Criminal activity creates doubt about a person’s judgment, reliability and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.” Adjudicative Guideline J at ¶ 30.

III. REGULATORY STANDARDS

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. FINDINGS OF FACT AND ANALYSIS

The Individual has a history of three alcohol-related arrests. On April 4, 1998, he was arrested and charged with DWI. On October 22, 1999, he was arrested and charged with DWI. On August 14, 2014, he was arrested and charged with DWI, Open Container, Careless Driving, and Leaving the Scene of an Accident. The Individual reported the August 14, 2014, arrest to the LSO on August 22, 2014. The August 14, 2014, arrest led the LSO to reinvestigate the Individual’s eligibility to hold a DOE security clearance, which in turn led to the present proceeding.

Throughout this proceeding, including his September 23, 2014, PSI, his November 13, 2014, forensic psychiatric examination, and his hearing testimony, the Individual has provided a

consistent account of the events leading up to his August 14, 2014, arrest. On that evening, the Individual reports, he and his cousin went bowling, where they shared one pitcher of beer. Shortly after the Individual finished his beer, they left the bowling alley and entered the Individual's motor vehicle. The Individual began driving to a restaurant. On an exit ramp, the Individual's motor vehicle spun completely around and grazed a guardrail. The Individual reports that after he inspected his vehicle and determined that it had been minimally damaged, he resumed driving to the restaurant. Before he reached the restaurant, however, he was pulled over by the police, who administered a field sobriety test and a breathalyzer test to the Individual. The police also conducted a search of the vehicle, which located an open bottle (and three closed bottles) of an alcoholic beverage. The Individual asserts that these four bottles of alcoholic beverages had remained in his car from a wedding he had attended the day before, and from a golfing expedition. In addition, the Individual admitted that his cousin had brought an open cup of beer with them, which spilled when his vehicle had spun-out.

During his September 23, 2014, PSI, the Individual was asked about the results of his breathalyzer test. He repeatedly replied that he did not know what the results of that test were. Exhibit 9 at 28, 34. The interviewer then asked him to guess. *Id.* The Individual then guessed that his breathalyzer indicated that his blood alcohol level at the time of the arrest was “.01 or whatever, little bit above the .08.” Exhibit 9 at 29. The Notification Letter incorrectly asserts that the Individual admitted that: “His breath alcohol content registered a little bit above 0.08.” Statement of Security Concerns at ¶ II.B.1.

The charges resulting from his August 14, 2014, arrest were resolved as a result of a plea agreement, which dropped several of the charges against him and placed him on probation. If he completes his probation satisfactorily, the charges will be dropped completely. The administrative proceeding against him to revoke his driver's license was resolved in his favor when the Hearing Officer found that “the evidence was insufficient to find that the concentration of alcohol in petitioner's blood was at or above [.08 percent], at the time of the alleged offense.” Exhibit D.

At the request of the LSO, the Psychiatrist evaluated the Individual on November 13, 2014. Exhibit 4 at 1. In addition to conducting a 2.17-hour forensic psychiatric interview of the Individual, the Psychiatrist reviewed the Individual's personnel security file, administered a psychological test to the Individual, and sent him to a laboratory to obtain a blood sample. Exhibit 4 at 2. After completing his evaluation of the Individual, the Psychiatrist issued a report (the Psychiatric Report) on November 24, 2014, in which he found that the Individual had two mental conditions, Adjustment Disorder With Mixed Anxiety and Depression, and Alcohol Abuse, in Early Full Remission, both of which, he opined, cause, or may cause, a significant defect in judgment or reliability. Exhibit 4 at 9-12. The Psychiatrist further opined that:

[T]here has not been sufficient time for full rehabilitation or reformation, given that the DWI was about three months earlier. There is some evidence for rehabilitation. First, he has not consumed alcohol for three months and reports no craving for alcohol. Second he is willing to participate in whatever reformation activities are required. Third, he acknowledges at least some of his interpersonal peril, by virtue of seeking psychiatric care, during the resolution of the DWI.

Full rehabilitation would be adequately evidenced by total abstinence from alcohol for 12-months, participation in the . . . EAP program, compliance with random BACs, and compliance with all special conditions of his plea.

Exhibit 4 at 11.

A. Alcohol Abuse

During his hearing testimony, the Individual disputed the Psychiatrist's finding that he has Alcohol Abuse, because he "does not drink very much." Tr. at 42-43. His testimony that he is an infrequent drinker by nature, was corroborated by the testimonies of his spouse, his father, and his sister-in-law. Tr. at 13, 16, 20, 23, 27-28. The Individual further testified that he did not believe his August 14, 2014, accident was caused by his alcohol use. Tr. at 43. He instead blamed the accident on his brakes. Tr. at 43. In support of this contention, the Individual submitted Exhibit N, a receipt for brake parts, dated August 31, 2014. The Individual's spouse corroborated this testimony at the hearing. Tr. at 11-12. The Individual testified that he did not believe he was intoxicated at the time of the accident. Tr. at 43.

More importantly, the Individual testified that his last use of alcohol occurred on August 14, 2014, the night of his last DWI, and ten months prior to his hearing.⁴ Tr. at 44. He further testified that he plans to permanently abstain from using alcohol. Tr. at 43-44. His testimony, as well as the testimony of his spouse and his Counselor, indicated that he began seeing the Counselor as a result of his arrest. Tr. at 15, 45.

The Counselor, a licensed professional counselor and addictions counselor, testified on the Individual's behalf at the hearing. Tr. at 46. The Counselor testified that the Individual proactively self-referred himself for treatment. Tr. at 47. The Counselor testified that the Individual had undergone 30 hours of treatment sessions with him. Tr. at 50. The Counselor testified that he "didn't note anything that I felt would . . . fit the criteria of alcohol abuse." Tr. at 48, 52, 54. He further testified that, based upon the Psychiatrist's Report, the Individual would not meet the criteria for Alcohol Abuse set forth in DSM-IV-TR. Tr. at 49. The Counselor testified that the Individual had been a willing participant in his treatment. Tr. at 50. The Counselor testified that he focused on helping the Individual develop coping skills. Tr. at 52.

At the hearing, the Psychiatrist listened to the testimony of each of the other witnesses before he testified. The Psychiatrist reaffirmed the Alcohol Abuse diagnosis, citing the Individual's consumption of alcohol immediately before driving, his two previous DWI's, and the results of the Personality Assessment Inventory test which indicated "that alcohol abuse was a clinical issue for him, self-acknowledged." Tr. at 61-64. The Psychiatrist further expressed a concern that the Individual was "a naïve drinker." Tr. at 66.

The Psychiatrist, however, testified that the Individual's substance abuse issues were not severe, but were "relatively minor." Tr. at 62, 65. He further testified that the Individual's reaction to

⁴ This testimony was corroborated by the hearing testimony of his spouse as well. Tr. at 15.

the arrest was proactive, constructive, and effective: the Individual sought treatment by a psychiatrist and the Counselor, and engaged in psychotherapy and substance abuse treatment. Tr. at 62-65. The Psychiatrist testified that the Individual had “taken the reins and under – and taken control of [his] life and making sure that that episode didn't proceed to the kind of alcohol use [he was] using in [his] teen years.” Tr. at 65. The Psychiatrist further cited the Individual’s strong work ethic, healthy and positive relationship with his spouse (who is a counselor herself), and his devotion to his children, as factors that contribute to his recovery and show that his judgement and reliability are intact. Tr. at 66. The Psychiatrist testified that the manner in which the Individual responded to his arrest reflected well upon his judgment and reliability. Tr. at 69. Very importantly, the Psychiatrist testified that the likelihood that the Individual would relapse is very low, and that the Individual’s prognosis is very good. Tr. at 69. The Psychiatrist no longer believes that the Individual has a mental condition or illness that effects his judgement or reliability or that may be expected to do so in the future. Tr. at 69.

After carefully considering all the evidence, I find that the Individual has shown that he is sufficiently reformed or rehabilitated from his Alcohol Abuse Disorder. Accordingly, I find that the security concerns raised by his Alcohol Abuse diagnosis under Criteria H and J are resolved.

B. Adjustment Disorder

The Counselor testified that he agreed with the Psychiatrist’s Adjustment Disorder diagnosis. Tr. at 47. The Counselor noted that he addressed the Individual’s Adjustment Disorder by helping him develop effective coping and stress reduction management skills. Tr. at 52. The Counselor testified that the Individual’s Adjustment Disorder has “run its course when the stressors were relived somewhat.” Tr. at 57. He believed that the Individual is now ready to taper off his counseling. Tr. at 52. He testified that he has no concerns about the Individual’s judgment or reliability at this time. Tr. at 57.

The Psychiatrist testified that he had diagnosed the Individual with Adjustment Disorder because the Individual had sought treatment from a psychiatrist for sleep problems and depression and had been prescribed sleep medications and anti-depressants for those problems. Tr. at 62. During his interview of the Individual, the Individual had expressed his concerns about the DWI and the effect it might have on his employment and family, which the Psychiatrist believed were all consistent with Adjustment Disorder. Tr. at 63.

The Psychiatrist, however, also testified that the Individual’s response to his Adjustment Disorder was proactive. Tr. at 63. The Psychiatrist opined that the Individual’s decision to seek treatment by a psychiatrist and the Counselor, was a “very good sign [that he was] recovering from Adjustment Disorder.” Tr. at 63. The Psychiatrist further testified that the Individual’s prognosis for recovery from his Adjustment Disorder is “very good.” Tr. at 69. The Psychiatrist testified that at this time he does not believe that the Individual has an illness or mental condition that effects his judgement or reliability or that may be expected to do so in the future. Tr. at 69.

After carefully considering all the evidence, I find that the Individual has shown that he is sufficiently reformed or rehabilitated from his Adjustment Disorder. Accordingly, I find that the security concerns raised by his Adjustment Disorder diagnosis under Criterion H are resolved.

C. Criminal Activity

The Individual's three alcohol-related arrests demonstrate a pattern of criminal conduct that raises security concerns under Criterion L. This conduct is clearly symptomatic of his Alcohol Abuse Disorder. The evidence in the record, including the testimony of the Individual, his spouse, his sister-in-law, his father, and his union shop-steward, as well as the written testimonials submitted as Exhibits F, H, J and K, show that the Individual generally conducts himself in a manner that exhibits superior judgement, reliability and trustworthiness. The only exceptions have involved circumstances where alcohol was involved. Given the role that alcohol has played in the Individual's past conduct, I find that since the concerns raised by his Alcohol Abuse Disorder have been sufficiently resolved, the concerns about the Individual's judgment, reliability and trustworthiness raised by his criminal conduct under Criterion L are also resolved.

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criteria H, J, and L. After considering all the evidence, both favorable and unfavorable, in a common sense manner, I find that Individual has sufficiently mitigated the Criteria H, J, and L security concerns. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be restored at this time. The LSO 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: July 9, 2015