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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: March 27, 2015)
) Case No.: PSH-15-0017
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Issued: July 1, 2015

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. In August 2014, the individual was arrested and charged with Open Container/Consumption While Driving. While a breath test revealed that his blood alcohol content was significantly below the legal limit for driving, he admitted that he had consumed two beers before driving, and part of one beer while driving. That incident, as well as his description of his history of alcohol consumption during a September 25, 2014, Personnel Security Interview (PSI), raised security concerns in the opinion of the Local Security Office (LSO). As a result, the LSO referred the individual

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.

to a DOE consultant psychologist (DOE psychologist) for a mental health evaluation. On February 4, 2015, the LSO sent a letter (Notification Letter) to the individual advising him that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the 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 his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. At the hearing, the individual presented his own testimony and that of five other witnesses, and the LSO presented the testimony of one witness, the DOE psychologist. In addition to the testimonial evidence, the LSO submitted seven numbered exhibits into the record. The 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 is a user of alcohol habitually to excess which, in his opinion, causes or may cause significant defects in the individual's judgment and reliability. In addition, the LSO cites the arrest for Open Container/Consumption While Driving, his contemporaneous statements about his alcohol consumption before the arrest, and his statements during his PSI with regard to his history of alcohol consumption during his college years. 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

During his sophomore year of college, the individual drank beer with his friends on Saturday nights during the off-season of the sport he played. On those occasions, he would consume between five and ten beers over a three-hour period. Ex. 7 at 39-40. About twice a month, he would drink to the level of intoxication. *Id.* at 44.

In his junior year of college, he stopped participating on a sports team, and his drinking increased. He drank three to four beers in about two hours one weekday evening per week, and eight to ten beers within three hours on each of two weekend nights. He was drinking to intoxication about once a week. *Id.* at 47, 51-52. During a summer internship in 2013, he consumed considerably less, but resumed the same pattern when he returned to college in the fall. The pattern continued until his graduation in 2014. *Id.* at 56-59.

Since graduation, the individual has been fully employed and drinks beer on average twice a week. *Id.* at 61. Although the amount he drinks varies, depending on the setting, he estimated that he consumes an average of three beers over a two-to-three-hour period, and has been intoxicated at most twice since May 2014. *Id.* at 62-63.

The individual was arrested and charged with Open Container/Consumption While Driving in August 2014 on his way to his high school reunion. While at home eating supper, he drank two beers in less than two hours. *Id.* at 16. He then left the house with two beers, so that he and a friend whom he was driving to the reunion could each drink a beer in the parking lot before attending the event. *Id.* at 18. They instead decided to drink their beers while they were en route to the event. *Id.* at 13. The police pulled the individual over for driving ten miles per hour over the posted limit, and then questioned them about their alcohol consumption. *Id.* at 13-14. The individual admitted to the officer that he had consumed two beers before driving and less than half a beer while driving. *Id.* at 14, 18. The arrest followed; the individual was taken to the police station, where he took a Breathalyzer test, which registered a blood alcohol concentration (BAC) of .007g/210L. *Id.* at 15, 24. The police released him after about one hour, and he continued to the reunion, where he consumed seven beers and one shot of liquor over four hours. *Id.* at 15, 67. He recognized that he was intoxicated, and took a cab to spend the night at a friend's house. *Id.* at 67.

The DOE psychologist evaluated the individual in November 2014. He determined that the individual did not meet the criteria for either Alcohol Abuse or Alcohol Dependence as set forth in the *Diagnostic Statistical Manual of the American Psychiatric Association*, Fourth Edition Text Revised (DSM-IV-TR). Ex. 4 (Psychological Assessment Report) at 6; *see* Tr. at 146. Nevertheless, based on his review of the individual's personnel security file and his own interview with the individual, he reached the opinion that the individual uses alcohol habitually to excess. *Id.* The DOE psychologist concluded that the individual's use of alcohol habitually to excess could cause significant defects in his judgment and reliability. *Id.* at 7. To demonstrate adequate evidence of rehabilitation or reformation, he would require that the individual remain abstinent for one year, participate in outpatient substance abuse group therapy for at least 16 weeks, and attend an aftercare follow-up program for a year, with the frequency of sessions beginning at two-week intervals and tapering off to once a month. *Id.*

After his arrest, the individual continued to drink alcohol. He reported to the DOE psychologist at his November 2014 evaluation that during the last week in October he attended a football game at which he drank ten beers over seven hours and a baseball game at which he consumed eight beers over four and a half hours. The DOE psychologist calculated that his BAC levels at those events were .11g/210L and .10g/210L, respectively. Ex. 4 at 5. At the hearing, the individual testified that he was last intoxicated at the end of October, at the football game. Tr. at 125. Apart from these events, his consumption appears to have diminished since the arrest. During a four-day trip to Las Vegas with friends, he consumed a total of ten drinks, five on one day and the rest spread out over the remaining days. Ex. 4 at 5. He drank his last alcoholic drink in early January 2015 while on vacation. Tr. at 132. When he returned to work, his access authorization was suspended; at that point, he decided to abstain from alcohol, and has maintained his abstinence through the date of the hearing. *Id.*

The individual has not participated in any form of treatment or counseling. He was not aware that his facility had an employee assistance program available to him, or that it might offer services to address his relationship with alcohol. *Id.* at 101. Moreover,

although he researched Alcoholics Anonymous online, he testified that he did not feel it was as important as abstinence, and intended to investigate it further when he was less busy with sports and his family. *Id.* at 102, 106. He related to the DOE psychologist during the evaluation that he saw himself in the future drinking one or two beers after playing summer sports, and limiting weekend drinking to five or six drinks, when he did drink at all. *Ex. 4* at 5-6. His future intention regarding weekend drinking concerned the DOE psychologist, because it “will result in a significant level of intoxication multiple times per month.” *Id.* at 7. At the hearing, the individual stated that his intention to maintain his abstinence until he received this decision; in the future, he would eventually like to drink a beer with dinner, but intended never to become intoxicated again. *Tr.* at 135.

The individual’s mother, father, brother, sister, and housemate testified on the individual’s behalf at the hearing. Taken together, their testimony supports the individual’s statements that he drank to intoxication in college with some degree of regularity and drank lightly after playing summer sports, but that he has been abstinent since the beginning of this year—in his apartment, when going out with friends, and at his parents’ house. *Id.* at 17-18, 25, 28, 43, 44, 48-50, 58, 76, 83, 89. They testified consistently as well that the individual had not discussed the LSO’s concerns about this alcohol consumption in any detail with any of them, and that it is his nature not to share his feelings and concerns with others, but rather to try to handle them on his own. *Id.* at 18, 30-31, 33, 46, 57, 63, 65, 90.

In his testimony at the hearing, the DOE psychologist maintained his opinion that the individual consumes alcohol habitually to excess, albeit now in a period of abstinence. He stated that the individual now understands the serious nature of his previous excessive drinking. This insight came fairly recently and contrasts with his decision to drink to intoxication at his August 2014 reunion, immediately following his arrest for Open Container, and his stated intention during the November 2014 evaluation to limit his weekend drinking to amounts that would render him intoxicated. *Id.* at 144. The DOE psychologist testified that he took into account the individual’s reduced level of alcohol consumption since his arrest, both in his evaluative report and at the hearing, but did not find it sufficient to lessen his concerns about the individual’s relationship to alcohol. *Id.* at 145-46. He expressed his opinion that responsible drinking, as opposed to abstinence, might be a possibility for the individual in the future, but only if he participated in some form of treatment that provided him with the appropriate level of education to understand what responsible drinking is. *Id.* at 146-47.

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 is a very young man, just recently graduated from college. While in college, he developed a pattern of drinking to intoxication with some regularity, in an environment where such behavior was tolerated, if not accepted as the norm. He is also a sensible young man, as demonstrated by the fact that he had never driven a vehicle while intoxicated. Ex. 7 at 76; Tr. at 126. The Breathalyzer test administered after his one alcohol-related arrest revealed an extremely low BAC, well below the threshold for driving while intoxicated. Unfortunately, he was slow to modify his college-based drinking pattern when he left that environment and entered the workplace. His last episode of intoxication occurred in October 2014, and he stopped consuming alcohol entirely in January 2015, when his employer notified him that his security clearance had been suspended.

The individual's five-month period of abstinence is a significant step toward altering his previous pattern of alcohol consumption. Nevertheless, I am not convinced that the LSO's security concerns regarding the individual's excessive alcohol consumption have been sufficiently mitigated at this time. The individual's decision to abstain appears to have come about from an external event—the suspension of his security clearance—rather than from internal recognition that his relationship with alcohol needs modification. Support for this conclusion rests with the individual's statement that he will remain abstinent until this proceeding is completed, and then possibly resume consuming alcohol. He has not yet engaged in any form of treatment or counseling, and the DOE psychologist testified that without it, the individual lacks the understanding to drink responsibly. I accorded significant weight to the DOE psychologist's assessment of the individual's current status.

I am therefore convinced that, despite his successful five-month period of abstinence, it is too soon to conclude that the individual has resolved his alcohol problem. Abstinence is a mitigating factor that I have taken into consideration in his favor, but it must be weighed against other factors, such as acknowledgment of an alcohol problem, and participation in a treatment program, which are absent in this case. Adjudicative Guidelines at Guideline G, ¶ 23. 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 his alcohol use at this time.

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 resolve 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: July 1, 2015