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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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Case No.: PSH-15-0032

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Issued: August 21, 2015

**Administrative Judge Decision**

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1</sup> For the reasons set forth below, I conclude that the individual's security clearance should not be restored at this time.<sup>2</sup>

**I. BACKGROUND**

The following facts are not in dispute. The individual has been employed by a Department of Energy (DOE) contractor since March 1999, and was granted a security clearance in connection with that employment. During the period between 1992 and 2008, the individual was arrested four times on alcohol-related charges: in 1992 and 2008 for Driving While Intoxicated (DWI), and in 1996 and 2002 for Open Container. Following the 2008 DWI, the individual participated in alcohol counseling through the DOE's Employee Assistance Program (EAP), and met regularly with an EAP counselor for over one year. He also attended several Alcoholics

<sup>1</sup>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.

<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (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>.

Anonymous (AA) meetings. Although no formal diagnosis was made, the EAP counselor recommended that the individual completely and permanently refrain from further alcohol consumption.

The individual remained abstinent from 2009 until 2013, when he resumed drinking. From November 2013 to March 2014, he drank one to two beers over a one to two hour period during holiday gatherings and special occasions. In March and April 2014, he drank three or four times per month, consuming three or four beers over a three or four hour period and becoming intoxicated. He would also feel hungover the day after drinking this much alcohol. By the summer of 2014, he was drinking on both Friday and Saturday of every other weekend, and was consuming five to six beers over the course of three or four hours. However, he admitted to exceeding this amount on three occasions, during which he drank eight to ten beers over a four or five hour period. One such occasion was on Sunday July 27, 2014. On the following morning, the individual was given a random Breathalyzer examination at his place of employment, and his blood alcohol content (BAC) was measured at .04 and .038. Because the DOE contractor's policies prohibited employees from working with a BAC in excess of .02, the individual was temporarily relieved of duty and was eventually given a written reprimand and a two day suspension without pay. He was also required to abstain from alcohol consumption and to participate in counseling. As part of his treatment program, the individual took part in an Intensive Outpatient Program (IOP) in September 2014.

Because this information raised significant security concerns, the Local Security Office (LSO) summoned the individual for an interview with a personnel security specialist in September 2014. After this Personnel Security Interview (PSI) failed to resolve the concerns, the LSO referred the individual to a local psychologist (hereinafter referred to as "the DOE psychologist") for an agency-sponsored evaluation. The DOE psychologist prepared a written report based on that evaluation, and submitted it to the LSO. In this report, the DOE psychologist questioned the reliability of the individual's accounts of his alcohol usage. He estimated that based on the timing of the individual's drinking on the day before the Breathalyzer and the BAC measurements, the individual drank approximately six more beers than he admitted to consuming. The DOE psychologist diagnosed the individual as suffering from Alcohol Dependence with Physiological Dependence, and opined that this is an illness or mental condition that causes, or could cause, a significant defect in his judgment or reliability. He stated that in order to demonstrate adequate evidence of rehabilitation or reformation, the individual would have to remain abstinent for a full year, and participate in aftercare as a follow-up to his IOP and AA, or a similar program, for a full year, *i.e.*, until September 2015. DOE Exhibit (Ex.) 4 at 4.

After reviewing this report and the rest of the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. It informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Administrative Judge. The DOE introduced 12 exhibits into the record of this proceeding and presented the testimony of the DOE psychologist at the hearing. The individual introduced five exhibits and presented the testimony of five witnesses, in addition to testifying himself.

## **II. THE NOTIFICATION LETTER AND THE DOE'S SECURITY CONCERNS**

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (h) and (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Under criterion (h), information is derogatory if it indicates that an individual has an illness or mental condition which, in the opinion of a psychiatrist or licensed clinical psychologist causes, or may cause, a significant defect in the individual's judgment or reliability. 10 C.F.R. § 710.8(h). Criterion (j) defines as derogatory information indicating that the individual "has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). As support for these criteria, the Letter cites the diagnosis of the DOE psychologist, his finding that the individual's condition causes, or may cause, a significant defect in his judgment or reliability, and the four alcohol-related arrests mentioned in the previous section of this Decision.

These circumstances adequately justify the DOE's invocation of criteria (h) and (j), and raise significant security concerns. Mental conditions that involve the excessive consumption of alcohol often lead to the exercise of questionable judgment or the failure to control impulses, and can therefore raise questions about an individual's reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines G and I.*

## **III. REGULATORY STANDARDS**

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, an Administrative Judge must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting or restoring a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring 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). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

#### **IV. FINDINGS OF FACT AND ANALYSIS**

##### **A. Mitigating Evidence**

At the hearing, the individual did not contest the allegations set forth in the Letter or the DOE psychologist’s diagnosis of Alcohol Dependence With Physiological Dependence. Instead, he attempted to demonstrate, through his own testimony and that of his AA co-sponsors, his wife, his supervisor, and a co-worker, that he has been rehabilitated, and that he is not currently suffering from any defect in his judgment or reliability.

The individual addressed the questions of why he resumed drinking after his 2008 DWI despite the recommendation of the EAP counselor, and why he believes that he will now be able to abstain from all future alcohol use. He testified that although he learned a lot from the EAP counselor, “the treatment did stop . . . and . . . I got comfortable, I lost focus, [and] I felt like I could have a drink or two.” Hearing Transcript (Tr.) at 52. “This time around,” he continued, “I really feel I have a strong commitment to sobriety. My treatment was a lot more rigorous. I attended IOP, and it was real eye-opening.” *Id.* After his 2008 DWI, he went to AA “a couple of times,” but now his intention is to continue going to meetings. Tr. at 54-55. He also characterized his support system, consisting of his wife, his two co-sponsors, and his management at work as “great.” Tr. at 54.

The individual’s first AA co-sponsor testified that he and the individual have talked in depth about the individual’s “triggers,” *i.e.*, the things that induce him to drink. Tr. at 30. They attend an AA meeting every week together, they meet at least every other week for breakfast so as to discuss the individual’s upcoming week and to go over the AA’s 12 steps, and they have a lot of communication by telephone. Tr. at 37, 39. During his 11 years in AA, the first co-sponsor continued, he has “learned a lot of steps and tools to help keep me sober,” and has passed that information on to the individual. For example, before the individual’s sister’s wedding, they discussed whether there was going to be alcohol, who was going to be drinking, and whether the individual had an “escape plan” if his continued presence would lead to him drinking. Tr. at 37. The individual “is very dedicated to his new life of sobriety,” and the co-sponsor sees the same determination and motivation in the individual that has enabled the co-sponsor to remain abstinent for 11 years. Tr. at 38. The individual is an active participant in the AA meetings, and is gaining the tools that he needs to live a sober lifestyle. Tr. at 40-41.

The individual's second co-sponsor testified that he has been running AA meetings for 15 years, and the most successful people have been the ones who participate in those meetings. Tr. at 47-48. The individual is one of those people, and the second co-sponsor has been "impressed" with his progress. Tr. at 47. After each meeting, he will meet with the individual and the other co-sponsor and talk about what they are doing. He also offers his time to the individual if the first co-sponsor is unavailable. Tr. at 48. The second co-sponsor estimated the individual's chances of remaining abstinent at 95 percent if he continued in AA. Tr. at 49.

The individual's wife testified that to the best of her knowledge, her husband had not consumed alcohol since the day before he tested positive for alcohol at work, in late July 2014, and that he has been "very, very vigilant" in pursuing his treatment program and maintaining his sobriety. Tr. at 24-25. She does not think that he will ever drink again, and if he did, they "would continue to seek family counseling." Tr. at 26. Both the individual's supervisor and co-worker testified that they had not seen any evidence in the workplace that the individual had a drinking problem, and the supervisor described his trustworthiness and reliability as "outstanding." Tr. at 13, 14, 20. The individual's exhibits include documentation of his participation in the IOP and aftercare, and a number of negative alcohol test results from the period of time between July 2014 and June 2015.

## **B. Administrative Judge's Decision**

This evidence establishes that the individual had abstained from alcohol use for approximately 11 months as of the date of the hearing, and that he had diligently participated in his alcohol treatment program for about nine months, or since September 2014. Despite this mitigating evidence, however, I find that the individual has not demonstrated adequate evidence of reformation or rehabilitation from Alcohol Dependence. I base this finding primarily on the testimony of the DOE psychologist and on the individual's previous relapse into an abusive pattern of alcohol consumption.

After witnessing all of the other testimony at the hearing, the DOE psychologist testified that he continued to adhere to the recommendations in his report that the individual would have to demonstrate a full year of abstinence and a full year of treatment in order to demonstrate adequate evidence of rehabilitation or reformation. Tr. at 58. This testimony was not contradicted by any other expert testimony, and was based on "research, and . . . a psychological understanding of [the importance of] going through the entire year, including the anniversary of when he got in trouble." Tr. at 59-60. The DOE psychologist explained that "some people will start drinking again on the anniversary of when they got in trouble, it's an anniversary reaction." Tr. at 60. He also pointed out that an important holiday was approaching, one often accompanied by the consumption of alcohol. *Id.*

My finding is also based on the individual's previous unsuccessful attempt to permanently refrain from alcohol use. After meeting with the EAP counselor for over a year and remaining abstinent for over three years, the individual relapsed despite the recommendation of the EAP counselor that he quit drinking permanently. This relapse occurred despite the apparent absence of any stressors that might lead someone to drink excessively, Tr. at 23, and appeared to be the result of the individual coming to believe, with the passage of time since his 2008 DWI, that he

could drink responsibly. Given this relapse, I conclude that the recommendations made by the DOE psychologist are reasonable. At the hearing, the individual agreed that he stopped his previous treatment too soon. Tr. at 63-64. I am concerned that if that happened again, the individual's risk of another relapse would be unacceptably high. The individual has not adequately addressed the DOE's security concerns under criteria (h) and (j).

## **V. CONCLUSION**

For the reasons set forth above, I find that significant security concerns remain regarding the individual's alcohol usage. Consequently, I cannot conclude that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the DOE should not restore the individual's security clearance at this time. Review of this decision by an Appeal Panel is available under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer  
Administrative Judge  
Office of Hearings and Appeals

Date: August 21, 2015