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

In the Matter of Personnel Security Hearing)

Filing Date: May 8, 2015)

Case No.: PSH-15-0037

Issued: August 17, 2015

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (“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 DOE should not restore the Individual’s access authorization at this time.

I. Background

The Individual is a DOE employee in a position that requires that he hold a DOE security clearance. In response to the Individual failing a random breath alcohol test at work, the Local Security Office (LSO) summoned the Individual for an interview with a personnel security specialist in December 2014. After the Personnel Security Interview (PSI), the LSO asked that the DOE consulting psychologist evaluate the Individual. After receiving the psychologist’s report, the LSO determined that there was sufficient derogatory information that cast into doubt the Individual’s eligibility for access authorization. The LSO informed the Individual of this

¹ Access authorization, also known as a security clearance, is an administrative determination that an Individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

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determination in a letter that set forth the DOE's security concerns and the reasons for those concerns (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 an access authorization.

On April 28, 2015, the Individual exercised his right under the Part 710 regulations to request an administrative hearing. The LSO forwarded this request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me the Administrative Judge. At the hearing, the DOE introduced 20 exhibits (Exs. 1-20) into the record. The Individual presented the testimony of four witnesses, including his own testimony and no exhibits. *See* Transcript of Hearing, Case No. PSH-15-0037 (Tr.).

II. Regulatory Standard

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictates 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). 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).

III. Notification Letter and Associated Security Concerns

The Notification Letter cited derogatory information 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). Ex. 1. In support of its Notification Letter, the LSO cited the following: 1) a DOE psychologist concluded that the individual is a user of alcohol habitually to excess without adequate evidence of rehabilitation or reformation and that his consumption causes or may cause a significant defect in his judgment or reliability; 2) in November 2014, the individual failed a random breath alcohol test at his employment; and 3) in 1989, the Individual was arrested and charged with public intoxication. Ex. 1.

I find that each of these allegations is valid and well supported by the record in this case. See 10 C.F.R. § 710.27(c) (requiring Administrative Judge to “make specific findings based upon the record as to the validity of each of the allegations contained in the notification letter”). I further find that this information adequately justifies the DOE’s invocation of Criteria H and J, as it raises significant security concerns related to excessive alcohol consumption, which often leads to the exercise of questionable judgment or the failure to control impulses, and calls into question the individual’s future reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guideline G.* Accordingly, the Individual’s alcohol consumption and his diagnosis by a psychologist that his consumption causes or may cause a significant defect in his judgment or reliability raise serious security concerns.

IV. Findings of Fact and Analysis

The facts of this case are essentially undisputed. The Individual failed a random breath alcohol test performed by his employer in November 2014. The DOE psychologist, who evaluated him in January 2015, concluded that the Individual is a user of alcohol habitually to excess, without adequate evidence of rehabilitation or reformation. Ex. 11 at 5. The DOE psychologist further concluded that the Individual’s pattern of alcohol use is an illness or mental condition which causes, or may cause, a significant defect in his judgment or reliability. Ex. 11 at 5.

At the hearing, the Individual and his wife testified that they both stopped consuming alcohol on January 1, 2015. Tr. at 13, 51. They both also testified that the Individual completed an intensive outpatient treatment program (IOP), continuing with aftercare and also Alcoholics Anonymous (AA). Tr. at 14-15, 56-57, 62. In addition, the Individual’s wife testified that there is no alcohol present in their house, with the exception of what their 21-year-old son occasionally brings in the house. Tr. at 22. The Individual’s friend and current employer confirmed there is no alcohol present, and that he has not smelled it on him. Tr. at 36.

The Individual’s counselor testified that the Individual has a low risk of relapsing to his excessive use of alcohol. Tr. at 98. She opined that the Individual found the motivation to become abstinent because he was shocked when he tested positive. Tr. at 92. She stated that the Individual is organized, controlled, and regimented, which supports his intention of remaining abstinent but also makes it difficult for him to choose an AA sponsor. Tr. at 92-93, 96. She confirmed that the Individual was an active participant in the IOP and has been compliant with her suggestions. Tr. at 102-05.

The DOE psychologist confirmed his diagnosis and opined that he would still want the Individual to be abstinent for one year before finding that he was rehabilitated or reformed. Tr. at 107. He agreed that the Individual’s “abstinence has been impressive.” Tr. at 111. In his hearing testimony, the DOE psychologist stated that he would now change his answer to the final question that DOE asked him to answer, “Does [the Individual] have an illness or mental condition, which causes, or may cause, a significant defect in judgment or reliability?” Tr. at 113. At the time of the hearing, the DOE psychologist believes that the Individual no longer had an illness or mental condition. Tr. at 113. The DOE psychologist also stated that the Individual’s risk of relapse is low, stating that the Individual’s rigidity improves the likelihood of

continued abstinence. Tr. at 115. Nonetheless, the DOE psychologist was not prepared to find reformation and rehabilitation without a year of abstinence. Tr. at 107.

Due to the DOE psychologist's opinion that the Individual no longer has an illness or mental condition which causes, or may cause, a significant defect in judgment or reliability, I find that the Individual has mitigated the Criterion H security concern raised by the DOE psychologist's prior diagnosis. I do commend the individual for having entered the IOP on his own shortly after his failed breath alcohol test in November 2014. However, despite all the positive testimony regarding the Individual's abstinence, the DOE psychologist maintained at the hearing that the individual needed a full year of treatment and monitoring of his abstinence. I find that his opinion was well-founded and reasonable, and is consistent with the findings in other cases of the significance of a one-year period of abstinence. *See, e.g., Personnel Security Hearing, Case No. PSH-12-0100 (2012); Personnel Security Hearing, Case No. TSO-0591 (2008); Personnel Security Hearing, Case No. TSO-0445 (2007); Personnel Security Hearing, Case No. TSO-0256 (2005).* In the end, OHA Administrative Judges accord deference to mental health professionals regarding issues of rehabilitation, reformation and risk assessment. I, therefore, cannot find that he has sufficiently mitigated the Criterion J security concerns relating to his alcohol use. I am convinced that, despite his successful six-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 the DOE psychologist's opinion that the Individual should be abstinent for one year. Adjudicative Guidelines at Guideline G, ¶ 23.

V. Conclusion

For the reasons set forth above, I find that the Individual has sufficiently mitigated the security concerns under Criterion H. However, I also find derogatory information in the possession of the DOE that raises serious security concerns relating to the Individual's alcohol use under Criterion 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 all of the security concerns at issue. I therefore cannot find that restoring the Individual's access authorization will not endanger the common defense and be consistent with the national interest. Accordingly, I have determined that the Individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. §710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals

Date: August 17, 2015