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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: October 18, 2015)

Case No.: PSH-15-0085

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Issued: January 25, 2016

Administrative Judge Decision

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (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.”¹ For the reasons set forth below, I conclude that the individual’s security clearance should be restored.²

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor and was granted a security clearance in connection with that employment. In April 2015, the individual received a citation for Possession of a Firearm While Under the Influence of Alcohol, and was later charged with Negligent Use of a Deadly Weapon. Because this information raised security concerns, the local security office (LSO) summoned the individual for an interview with a personnel security specialist in June 2015. After this Personnel Security Interview (PSI) failed to resolve these concerns, the LSO referred the individual to a local licensed clinical psychologist (hereinafter referred to as “the DOE psychologist”) for an agency-

¹An 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.

²Decisions 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>.

sponsored evaluation. The DOE psychologist prepared a written report based on that evaluation, and submitted it to the LSO. After reviewing that 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 eight exhibits into the record of this proceeding and presented the testimony of the DOE psychologist at the hearing. The individual introduced four 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 causes, or may cause, a significant defect in the individual's judgment or reliability. 10 C.F.R. § 710.8(h). Criterion (j) concerns 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(j). As support for these criteria, the Notification Letter cites the conclusion of the DOE psychologist that the individual is a user of alcohol habitually to excess, without adequate evidence of rehabilitation or reformation. As further support for its invocation of criterion (j), the Notification Letter refers to the individual's citation for Possession of a Firearm While Under the Influence of Alcohol, and the subsequent charge of Negligent Use of a Deadly Weapon. The Notification Letter also cites the individual's statements during the June 2015 PSI that he consumes two beers, two to three times per week, and six to twelve beers, once a month; that he becomes slightly intoxicated two times per month when he consumes three to four beers and highly intoxicated one time per month when he consumes six or more beers; and that he blacked out approximately five times between August 2006 and May 2010, having also blacked out two times a year since then when consuming more than twelve beers.

These circumstances adequately justify the DOE's invocation of criteria (h) and (j), and raise significant security concerns. As an initial matter, a duly qualified mental health professional retained by the U.S. Government has determined that the individual has an emotional, mental or personality condition that can impair his judgment or reliability.

Moreover, the excessive consumption of alcohol often leads 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 I and G.*

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. ANALYSIS

A. Mitigating Evidence

At the hearing, the individual attempted to show, through his own testimony and that of his supervisor, a colleague, his roommate, his Employee Assistance Program (EAP) counselor, and his licensed alcohol and drug abuse therapist (hereinafter referred to as "the therapist"), that he is no longer a user of alcohol habitually to excess.

The individual testified that he never believed his drinking to be problematic until he got a security clearance and became familiar with the DOE's standards. Hearing Transcript (Tr.) at 54. He stated that that his drinking had never previously caused him a problem, and when he did overindulge, it was always in a safe location. *Id.* After meeting with the DOE

psychologist, the individual realized how close his drinking was to being at a level of concern. Tr. at 57-58.

The individual testified that he stopped consuming alcohol in August 2015 when the DOE psychologist recommended that he abstain from alcohol for six months. Tr. at 59-60. The individual testified that since he started abstaining from alcohol, his focus has been how he was going to make himself better while going through the security clearance process. Tr. at 67-68. He also indicated that the citation, which led to the suspension of his security clearance, was eventually dismissed. Tr. at 60. Calling this incident a “huge wake-up call,” the individual stated that his future intentions were to abstain from alcohol well past the six-month recommendation. Tr. at 64-65.

The therapist also testified. The individual first contacted the therapist in August 2015, and during their first session, the therapist performed an alcohol use assessment. Tr. at 22-23. He testified that the individual was drinking according to the social norm of 27-28 year olds, and had not adjusted his drinking habits in accordance with someone who was no longer in college. Tr. at 23-25. The therapist testified that the individual participated in “five or six” therapy sessions focused on alcohol, and additional individual therapy regarding the stress caused by his legal issues and by this proceeding. Tr. at 28. He further stated that he has tested the individual about 20 times for alcohol consumption since August, including random testing, which the individual always passed. Tr. at 26. The therapist believes that this situation, i.e. the suspension of the individual’s security clearance, was a rude awakening for the individual, and gives the individual a “very good” prognosis for the future. Tr. at 29, 32.

B. Administrative Judge’s Findings

After reviewing the evidence and the record as a whole, I am convinced that no valid security concerns remain under criteria (h) and (j). I base this conclusion primarily on the testimony of the therapist, which is summarized above, the positive prognosis of the EAP Counselor, Tr. at 16-17, and on the testimony of the DOE psychologist.

The DOE psychologist testified that the individual has done more than what was asked of him as it relates to his consumption of alcohol. Tr. at 69. Specifically, the individual completed four sessions with his EAP counselor and the additional therapy described above, even though such therapy was not required in the DOE psychologist’s report for a showing of adequate reformation or rehabilitation. In that report, the DOE psychologist recommended that the individual abstain from alcohol consumption for a six-month period, and afterwards limit his consumption of alcohol to no more than two or three drinks per occasion. Although as of the date of the hearing, the individual had abstained from all alcohol use for approximately four and one half months, the DOE psychologist stated that he was confident drinking would not be a problem going forward in the individual’s life. Tr. at 71-72.

Based on the testimony and evidence presented, I conclude that the individual has demonstrated adequate evidence of reformation or rehabilitation. Although at the time of the hearing the individual had not yet reached the six-month mark, I am convinced by the

expert testimony of the EAP Counselor, the therapist and the DOE psychologist that the individual has his drinking under control and that it will not be an issue in the future.

V. CONCLUSION

For the reasons set forth above, I find that the individual has adequately addressed the DOE's concerns under criteria (h) and (j). Consequently, I am convinced 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 restore the individual's security clearance. 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: January 25, 2016