

\*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

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

In the Matter of: Personnel Security Hearing )  
 )  
Filing Date: November 23, 2015 ) Case No.: PSH-15-0097  
 )  
 )  
\_\_\_\_\_ )

Issued: March 3, 2016

\_\_\_\_\_  
**Administrative Judge Decision**  
\_\_\_\_\_

Wade M. Boswell, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization<sup>1</sup> 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 fully discussed below, after carefully considering the record before me in light of the relevant regulations and Adjudicative Guidelines, I have determined that the individual’s access authorization should be restored.

**I. Background**

The individual is employed by a DOE contractor in a position that requires him to hold a DOE security clearance. In November 2014, the individual experienced dizziness at work and was transported to a

\_\_\_\_\_  
<sup>1</sup> 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.

hospital where he was admitted for five days for dehydration, vitamin deficiencies, and hypertension. Exhibit 2 at 2-5; Exhibit 4 at 9. While hospitalized, the individual was diagnosed with liver disease, which was a likely consequence of long-term daily alcohol consumption. *Id.* at 2. His employer required him to undergo a fitness for duty examination before returning to work, which resulted in a determination that the individual was neither physically nor psychiatrically fit to return to work. *See* Exhibit 10 and Exhibit 11. These conclusions were reported to the Local Security Office (LSO), which subsequently conducted a personnel security interview (PSI) with the individual in June 2015. *See* Exhibit 5. Since the PSI did not resolve concerns about the individual's alcohol usage, the LSO referred the individual for evaluation by a DOE consulting psychiatrist, who conducted a psychiatric evaluation of the individual in August 2015. *See* Exhibit 4.

Since neither the PSI nor the psychiatric evaluation resolved the security concerns arising from the individual's alcohol usage, the LSO informed the individual in a letter dated October 19, 2015 (Notification Letter), that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (j) (hereinafter referred to as Criterion J).<sup>2</sup> *See* Exhibit 2.

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. *See* Exhibit 1. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case and, subsequently, I conducted an administrative hearing in the matter. At the hearing, the LSO introduced 11 numbered exhibits into the record and presented the testimony of one witness, the DOE consulting psychiatrist. The individual introduced six lettered exhibits (Exhibits A – F) into the record and presented the testimony of one witness, himself. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.<sup>3</sup>

## **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 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

---

<sup>2</sup> See Section III below.

<sup>3</sup> OHA decisions are available on the OHA website at [www.oha.doe.gov](http://www.oha.doe.gov). A decision may be accessed by entering the case number in the search engine at [www.oha.gov/search.htm](http://www.oha.gov/search.htm).

The individual must come forward with evidence to convince the DOE that granting or restoring his or her 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 or her 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). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **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 previously noted, the LSO cited one criterion as the basis for suspending the individual’s security clearance: Criterion J. Criterion J refers to information indicating that an individual 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). Excessive alcohol consumption raises a security concern because it can lead to questionable judgment and the failure to control impulses, which in turn can raise questions about a person’s reliability and trustworthiness. *See* Guideline G of 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); *Personnel Security Hearing*, Case No. PSH-11-0035 (April 19, 2012). With respect to Criterion J, the LSO noted, *inter alia*, (1) the individual’s November 2014 hospitalization and subsequent medical examinations and treatment and (2) his patterns of alcohol consumption over the prior 40 years, including consumption of three to six alcoholic beverages daily or every other day during the most recent ten-year period. *See* Ex. 2. Additionally, the LSO relied upon the report of the DOE consulting psychiatrist, dated August 13, 2015, which concluded that the individual met the *Diagnostic Statistical Manual of the American Psychiatric Association, IVth Edition, Text Revision (DSM-IV-TR)*, criteria for alcohol dependence in early full remission and the *Diagnostic Statistical Manual of the American Psychiatric Association, Fifth Edition (DSM-5)*, criteria for alcohol use disorder to a severe degree. *Id.*; Ex. 4 at 9-10.

In light of the information available to the LSO, the LSO properly invoked Criterion J.

### **IV. Findings of Fact**

The individual does not contest the factual accuracy of the information cited by the LSO in the Notification Letter. Ex. 1 at 2; Tr. at 12, 24-25.

The individual first consumed alcohol as a teenager and began to consume alcohol consistently in his 20's. Ex. 2 at 2-3; Ex. 4 at 4-5. For approximately forty years, he estimates he drank three to four alcoholic beverages on five to seven occasions per week. Ex. 2 at 3. During the five years prior to the individual entering treatment, he estimates that he drank three to six alcoholic beverages daily. Ex. 5 at 45-46. His alcohol consumption has largely taken place at home, where he lives alone. Tr. at 30-31.

The individual was hospitalized in November 2014 following an incident at his place of employment where he either experienced dizziness or fainted. Ex. 2 at 2-5; Ex. 4 at 9. The hospital attributed the incident to dehydration, vitamin deficiencies, and hypertension; however, medical tests while he was hospitalized revealed that he also suffered from liver disease resulting from his long-term consumption of alcohol. *Id.* at 2.

Subsequently, his employer conditioned his continued employment on his evaluation for possible treatment by an alcohol rehabilitation program. Ex. 8 at 10. The individual last consumed alcohol on January 20, 2015, approximately 13 months prior to the administrative review hearing. Tr. at 25.

On January 26, 2015, the individual entered a 28-day inpatient alcohol rehabilitation program, which he successfully completed. Ex. 1 at 2; Ex. 8 at 1, 7; Tr. at 10. Immediately after completing the inpatient program, the individual commenced a 12-week intensive outpatient program for alcohol treatment (IOP),<sup>4</sup> which he also successfully completed. Ex. 1 at 2; Ex. 8 at 1, 7; Tr. at 10. Since completion of the IOP, the individual has participated (1) weekly in an aftercare program sponsored by his IOP provider and (2) monthly in counseling provided through his employer's employee assistance program (EAP). *Id.* at 10, 18-19. He is eligible to participate in the aftercare program indefinitely at no cost and he plans to do so until at least June 2016. *Id.* at 22. The individual began attending meetings of Alcoholics Anonymous (AA) during his treatment programs; since completion of his treatment programs, the individual has attended three to five AA meetings per week. *Id.* at 18-19. He intends to continue attending AA meetings indefinitely. *Id.* at 10, 20.

In August 2015, a DOE consulting psychiatrist evaluated the individual and concluded that the individual met the *DSM-IV-TR* criteria for alcohol dependence in early full remission and the *DSM-5* criteria for alcohol use disorder to a severe degree. Ex. 4 at 9-10. The psychiatrist's evaluation did not include any assessment as to what would evidence adequate rehabilitation or reformation of the individual's disorders. *See* Ex. 4.

The individual had no history of alcohol treatment or counseling prior to his admission to the residential treatment facility in January 2015. Tr. at 25. The individual reports that he has experienced no relapses since he stopped consuming alcohol in January 2015 and that he had no withdrawal symptoms during his treatment programs. *Id.* at 25, 27. He is uncertain as to whether he is an "alcoholic," but views alcohol abstinence as important to his future health and intends to not consume alcohol at any time in the future. *Id.* at 19, 25-27, 36-37.

At the hearing, the DOE consulting psychiatrist testified that he considered the individual to be in the early stages of recovery and was not yet "fully" rehabilitated. *Id.* at 54. He noted that alcohol use

---

<sup>4</sup> The individual's IOP had two components: the first eight weeks consisted of a Partial Adult Outpatient Program and the final four weeks consisted of a Night Intensive Outpatient Program. Ex. 8 at 7.

disorders are inherently relapsing and, therefore, there exists a possibility of relapse in the future. *Id.* at 48. However, he testified that the individual currently merited the diagnosis of alcohol dependence in sustained full remission and that, if the individual maintained the present structure of his treatment, the individual was unlikely to relapse. *Id.* at 43, 52.

## 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)<sup>5</sup> and the Adjudicative Guidelines. After due deliberation, I have determined that the individual's access authorization should be restored. The specific findings that I make in support of this decision are discussed below.

Legitimate security concerns arose as a result of the individual's historic pattern of alcohol consumption, his treatment for alcohol use, and his diagnoses of alcohol dependence and alcohol use disorder under the *DSM-IV-TR* and *DSM-5*, respectively. *See Ex. 2*. The question is whether those concerns have been resolved.

The individual had had no alcohol treatment prior to his entering an inpatient treatment program in January 2015 and testified that he intends to abstain from all alcohol consumption in the future. *Tr.* at 25-26, 28. He credibly testified that he has abstained from alcohol consumption since the week before entering the treatment program. *Id.* at 14, 25. Further, he testified that he has been subject to random alcohol testing as part of his treatment programs and all tests have been negative for alcohol. *Id.* at 16-18. *Cf.* Adjudicative Guidelines at Guideline G, ¶ 23(b) (alcohol concerns may be mitigated when an individual provides evidence of actions taken to overcome the problem and has established a pattern of abstinence), ¶ 23 (c) (alcohol concerns may be mitigated when an individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress).

Since January 2015, the individual has successfully completed a 28-day inpatient alcohol treatment program and a 12-week IOP. *Tr.* at 10. Subsequently, he has participated in a weekly aftercare program sponsored by his IOP provider, monthly counseling through his employer's EAP, and three to five AA meetings per week, all of which he was continuing to do as of the date of the hearing. *Id.* at 10. The individual is working with an AA sponsor and has developed a social network through his AA attendance. *Id.* at 20, 31-33. He plans to continue his participation in AA indefinitely. *Id.* at 20. His counselor through his employer's EAP<sup>6</sup> notes that the individual has been "open, has been

---

<sup>5</sup> Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his 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.

<sup>6</sup> The Adjudicative Guidelines at Guideline G ¶ 23(d) cite receipt of a "favorable prognosis by ... a licensed clinical social worker who is a staff member of a recognized alcohol treatment program" as a potential mitigation factor for alcohol-related security concerns. I have accepted the prognosis of the individual's EAP counselor, who is a licensed clinical social worker but not associated with the individual's inpatient or IOP treatment programs, for two reasons: (1) the EAP counselor has been monitoring the individual's treatment and progress for seven months and, therefore, is well

cooperative and seems to be following through on every recommendation” and that “as long as he continues to follow the Care Plan recommendations his prognosis for continued sobriety is good.” Ex. F at 2. Cf. Adjudicative Guidelines at Guideline G, ¶ 23(d) (alcohol concerns may be sufficiently mitigated when an individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare and, *inter alia*, has a favorable prognosis by a duly qualified licensed clinical social worker who is a staff member of a recognized alcohol treatment program).

The DOE consulting psychiatrist attended the entire hearing and testified as the final witness, after reviewing the individual’s exhibits and having heard the individual’s testimony. Although the DOE psychiatrist characterized the individual as being in the early stages of his recovery<sup>7</sup> and noted concerns related to potential relapses in alcohol use disorders, he also noted that the individual had maintained abstinence during the first year of his treatment which is usually the most difficult year for someone undergoing alcohol treatment. Tr. at 48, 54. As long as the individual maintains the present structure of his treatment program,<sup>8</sup> the DOE psychiatrist testified that relapse is unlikely. *Id.* at 52. Cf. Adjudicative Guidelines at Guideline G, ¶ 23(b), (c), and (d).

Based upon the foregoing, I find that the individual has resolved the Criterion J security concerns.

## VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Criterion J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including

---

informed about the individual’s relationship with alcohol and (2) the DOE consulting psychiatrist commented off-record at the hearing that in his decades of practice he had never seen the individual’s alcohol rehabilitation provider issue a prognosis, apparently due to concerns over liability or being brought into third party litigation. Ex. F; Email from DOE Counsel to Administrative Judge, dated February 18, 2016.

<sup>7</sup> As previously noted, the DOE consulting psychiatrist’s written evaluation (August 2015) did not provide any conclusions as to what would evidence adequate rehabilitation and reformation of the individual’s alcohol use conditions. *See* Ex. 4. At the hearing, he also declined to provide any specific conclusions with respect to the adequacy of rehabilitation or reformation and, upon my pressing the issue, he stated that there were medications that some people with alcohol use disorders take to “maintain recovery and sobriety” and seemed to suggest this is something the individual could discuss with his healthcare providers. Tr. at 54-55. I have given no weight to this potential suggestion by the DOE psychiatrist that the individual’s rehabilitation may be deficient due to a lack of pharmaceuticals as nothing in the record supports that the individual has struggled to maintain his abstinence, which began thirteen months prior to the hearing.

In cases involving alcohol dependence, OHA typically sees opinions of mental health professionals that state a person can evidence adequate rehabilitation and reformation upon the completion of an alcohol treatment program and 12 months of alcohol abstinence. *See Personnel Security Hearing*, OHA Case No. PSH-14-0095 (January 30, 2015) (DOE consulting psychologist recommended 12 months of abstinence upon the initial psychological assessment of an individual diagnosed with alcohol dependence, who had completed a residential alcohol treatment program prior to the assessment, in order for that individual to evidence adequate rehabilitation and reformation; at the hearing, the DOE psychologist concluded that the individual’s 10 months of abstinence was sufficient).

<sup>8</sup> Prior to the testimony of the DOE consulting psychiatrist, the individual had testified that he planned to discontinue his aftercare participation and EAP counseling sessions in June 2016, which was apparently consistent with the recommendations from his psychologist. Ex. 8 at 7; Tr. at 17-18. However, the individual also testified that he was willing to continue those aspects of his treatment. *Id.*

weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth sufficient evidence to resolve the security concerns associated with Criterion J. Accordingly, I have determined that the individual's access authorization should 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.

Wade M. Boswell  
Administrative Judge  
Office of Hearings and Appeals

Date: March 3, 2016