

*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)

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Filing Date: April 19, 2016)

Case No.: PSH-16-0033

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Issued: July 20, 2016

Administrative Judge Decision

Robert B. Palmer, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (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 August 2015, the individual was arrested for Driving While Intoxicated (DWI). Because this information raised security concerns, the Local Security Office (LSO) summoned the individual for an interview with a personnel security specialist in September 2015. 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. 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

_____ 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.

² 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>.

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 16 exhibits into the record of this proceeding and presented the testimony of the DOE psychologist at the hearing. The individual presented the testimony of four witnesses, in addition testifying himself, and submitted seven exhibits.

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), (j) and (l) 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 that the individual suffers from Alcohol Abuse, and his conclusion that this condition causes, or may cause, a significant defect in the individual's judgment or reliability. As additional support for criterion (j), the Letter cites the individual's 1987 citation for Under-Aged Drinking, his 1989 or 1990 arrest for Disorderly Conduct/Assault and Battery and his 2004 arrest for Battery, both of which were preceded by the consumption of alcohol to intoxication, and his DWI arrests in 2004, 2005, and 2015.

Under criterion (l), information is derogatory if it indicates that the individual has engaged in unusual conduct or is subject to circumstances that tend to show that he is not honest, reliable or trustworthy, or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of national security. Such conduct includes, but is not limited to, criminal behavior. As support for this criterion, the Letter relies on the individual's citation and arrests mentioned in the preceding paragraph.

These circumstances adequately justify the DOE's invocation of criteria (h), (j), and (l), 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. Illegal activity also creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations. *See Revised Adjudicative*

Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guidelines G, I and J.

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 Notification Letter or the diagnosis of the DOE psychologist. Instead, he attempted to demonstrate, through his own testimony and that of his counselor, his second-line manager, his Alcoholics Anonymous (AA) sponsor, and his friend, that he is now rehabilitated from his alcohol use disorder, and no longer represents an unacceptable security risk.

The individual abstained from drinking for a lengthy period of time some years ago, and he began by discussing his reasons for quitting then and why he later resumed consuming alcohol. He testified that he stopped drinking primarily because he was in a relationship with someone who did not drink. Tr. at 66-67. When that relationship ended, he resumed his consumption of alcohol to cope with the breakup. Tr. at 70. His last consumption of alcohol occurred in August 2015, on the day of his DWI arrest. Tr. at 80.

The individual then discussed his therapy, and what he has learned from it. He said that his IOP consisted of three meetings a week, for three hours each. He also met with his counselor on an individual basis once per week. Although the individual was required to attend three AA meetings per week during this period, he sometimes attended four or five. During these sessions, he has learned what the contributing factors to his alcohol consumption are, and how to cope with them without drinking. One of those factors, he continued, is his concern about being alone. Tr. at 77. He has coped with that concern by obtaining a pet, and by establishing connections with other IOP participants and with his sponsor. Tr. at 73, 77-78. The individual also stated that he no longer associates with the people whom he used to drink with, and no longer patronizes bars. Tr. at 86-87. His intention is to completely refrain from future alcohol consumption. Tr. at 89.

The individual's substance abuse counselor also testified about the individual's treatment regimen. The counselor said that when the individual began his intensive outpatient treatment program (IOP), he received a diagnosis of Alcohol Use Disorder – Severe, under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition. Hearing Transcript (Tr.) at 12. The IOP consisted of nine hours of group therapy and one hour of individual therapy a week, for 10 weeks. Tr. at 23. After 10 weeks, he was required to participate in aftercare, which consists of one 90-minute session per week for one year, Tr. at 23, and continued AA attendance. The individual successfully completed the IOP in November 2015, Individual's Exhibit (Ind. Ex.) D, and as of the date of the hearing, was participating in aftercare. Tr. at 27.

The counselor also testified about the therapy sessions. He said that they consisted largely of discussions about the events that led up to the individual's most recent DUI, the reasons that he resumed drinking after the previous period of abstinence, the effect that alcohol consumption had had on the individual's life, the individual's personality type, and whether there had been any trauma in his life that contributed to his drinking. Tr. at 14-15.

The individual's prognosis for remaining sober was good, according to the counselor, "as long as he follows the procedures and some of the suggestions made to him while he was in treatment and completing his treatment." Tr. at 15-16. He based this positive prognosis on what the individual did in treatment, on his active participation in AA, including his immediate acquisition of a sponsor, and his active participation in the group therapy sessions. In the opinion of the counselor, the individual is very committed to maintaining his sobriety. Tr. at 28.

The individual's AA sponsor then testified. He said that he became the individual's sponsor in September 2015. He and the individual "meet regularly," discuss the 12 steps, and also talk about what the sponsor does to maintain his sobriety. Tr. at 36. The individual is "very sincere," the sponsor added, and "fully committed" to remaining sober. Tr. at 40, 42.

The individual's friend testified that she had not seen him drink alcohol within the last year. Tr. at 56. He does not keep alcohol in his house. Tr. at 57. She further stated that the individual has "accepted sobriety as a way of life." Tr. at 59. He "takes it every day, like the AA program requires on a daily basis," in that he makes a daily commitment to remain sober. *Id.* She explained that she knows this because he discusses something about his AA meetings or his recovery in general every time the two

of them talk. *Id.* The individual's manager testified that the individual is a good employee, and that he has never seen any signs of impairment or alcohol use by the individual while on the job. Tr. at 47.

B. Administrative Judge's Findings

After reviewing the hearing testimony and the record as a whole, I find that the individual has adequately addressed the DOE's security concerns regarding his alcohol use. I base this finding primarily on the testimony of the individual's counselor, which is described above, and on that of the DOE psychologist.

The DOE psychologist testified that in his report, he concluded that the individual suffered from Alcohol Abuse, and that he made certain recommendations as to what the individual would have to show to demonstrate adequate evidence of reformation or rehabilitation. Tr. at 101-102. Specifically, he stated that the individual should remain abstinent for a period of at least 12 months, should complete the aftercare component of the treatment program that he is engaged in, should continue to attend AA meetings at least twice a week, and should obtain a sponsor with whom he works the 12 steps of AA. DOE Exhibit 9 at 9.

After observing all of the testimony and reviewing the record, including the evidence submitted by the individual, the DOE psychologist testified that the individual had demonstrated adequate evidence of rehabilitation. Tr. at 104. He reached this conclusion despite the individual's having been abstinent for only 10 months as of the date of the hearing, and despite his not yet having completed the aftercare program. He attributed significant weight to the positive testimony of the individual's counselor and his friend, and he explained that the individual has essentially done everything that the DOE psychologist recommended that he do. He also observed that the individual's prognosis for remaining sober "in at least the near term" was good, and that two additional months of sobriety would not make any appreciable difference in that prognosis. *Id.*

I also attribute significant mitigating value to the individual's acknowledgement that he has a drinking problem, his prompt entry into the IOP, his satisfactory progress in that program (Ind. Exs. D and F), and his significant period of abstinence (Ind. Ex. E). *See Adjudicative Guidelines*, ¶ 23(b) and ¶ 23(c).

In concluding that the individual has demonstrated adequate evidence of rehabilitation, I am aware that he returned to drinking after a previous period of abstinence of over six years, and after making a commitment to the DOE that he would remain abstinent. Tr. at 69-71. However, the individual credibly testified that he did not participate in a treatment program during that period, and did not establish the kind of support system, consisting of non-drinking friends, his AA sponsor, and his counselor, that he enjoys now. Tr. at 68-72. I find that the chances that he will resume drinking are acceptably small, and that he has therefore adequately addressed the DOE's security concerns under criteria (h) and (j). With regard to criterion (l), I note that all of the arrests and citations mentioned in the Notification Letter occurred after, and were closely related to, the individual's consumption of alcohol. Because I believe that the chances that the individual will return to alcohol consumption are

remote, I also conclude that the chances of him engaging in future illegal behavior are acceptably small. I find that there are no remaining security concerns under criterion (l).

V. CONCLUSION

For the reasons set forth above, I find that the individual has successfully addressed the DOE's security concerns under criteria (h), (j) and (l). Consequently, I 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 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: July 20, 2016